Court File No.: CL-26-00000362-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2055226 ONTARIO INC., ALLIANCE (SUTTON) INC., BERKSTAR DEVELOPMENT INC. and ROSE OPERATING I GP INC.

MARSHALLZEHR GROUP INC.

Applicant

AND

2055226 ONTARIO INC., ALLIANCE (SUTTON) INC., BERKSTAR DEVELOPMENT INC., ROSE SUTTON LIMITED PARTNERSHIP and ROSE OPERATING I GP INC.

Respondents

FACTUM OF THE APPLICANT
(Returnable August 28, 2026)

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TO: THE SERVICE LIST

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PART I - INTRODUCTION AND OVERVIEW

1. On August 24, 2026, MarshallZehr Group Inc. ("**MarshallZehr**" or the "**Applicant**") sought and obtained protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") pursuant to an initial order ("**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") in respect of 2055226 Ontario Inc. ("**205 Ontario**"), Alliance (Sutton) Inc. ("**Alliance**"), Berkstar Development Inc. ("**Berkstar**") and Rose Operating I GP Inc. ("**Rose GP**"), the general partner of Rose Sutton Limited Partnership ("**Rose Sutton LP**" and collectively, the "**CCAA Parties**").

2. Since the granting of the Initial Order, the CCAA Parties have acted and are acting in good faith and with due diligence to preserve and maximize the value of the Project, and advanced the restructuring initiatives contemplated by the Initial Order, with the assistance and oversight of the Monitor.[1]

3. This factum is filed in support of the Applicant's motion for:

(a) an amended and restated initial order (the "**ARIO**") pursuant to the CCAA in respect of 205 Ontario, Alliance Sutton, Berkstar and Rose GP., substantially in the form at **Tab "3"** to the Motion Record, amending and restating the initial order of the Honourable Justice Dunphy dated August 24, 2026 (the "**Initial Order**") including to:

(i) extend the Stay of Proceedings up to and including November 13, 2026 (the "**Stay Period**");

(ii) increase the authorized borrowings under the DIP Facility from $800,000 to $2,000,000 and approve a corresponding increase to the DIP Lender's Charge;

(iii) increase the Administration Charge from $500,000 to $650,000;

(iv) confirm Directors' Charge (as defined below) in an amount sized by the Monitor; and

(v) expand the Monitor's Enhanced Powers; and

[1] First Report of the Monitor dated August 26, 2026 (the "**First Report**") at para 34.

(b) an order approving Phase 1 Unit sales (the "**Unit Sales Order**"), substantially in the form attached at **Tab "6"** to the Motion Record, among other things:

(i) authorizing the Monitor to authorize and direct the CCAA Parties including 205 Ontario to sell, convey, transfer, or assign Phase 1 Units without the approval of this Court in respect of any transaction not exceeding $1,100,000 excluding HST and extras (a "**Permitted Transaction**");

(ii) approving the form of vesting order to be used by the Monitor in connection with each Permitted Transaction;

(iii) authorizing the Monitor and its counsel, Norton Rose Fulbright Canada LLP ("**Norton Rose**") or Goldman Sloan Nash & Haber LLP ("**GNSH**") to complete and submit such vesting orders in connection with Permitted Transactions; and

(iv) and authorizing the issuance of such vesting orders upon delivery of a Monitor's Certificate.

PART II - SUMMARY OF THE FACTS

4. The detailed facts underlying these CCAA Proceedings are set out in the Affidavit of Sean Atkinson dated August 17, 2026, sworn in support of the initial application (the "**First Atkinson Affidavit**"). All ccapitalized terms used in this factum and not otherwise defined shall have the meaning ascribed to them in the First Affidavit and Second Affidavit of Sean Atkinson sworn August 26, 2026 (the "**Second Atkinson Affidavit**"), as applicable.

A. Background on CCAA proceedings

5. 205 Ontario is a real estate developer in respect of a residential development project located in Georgina, Ontario. The Project includes three phases. Phase 1 is currently under construction and Phases 2 and 3 are vacant development lands where some servicing work has been undertaken. Phase 1 of the Project contemplated 144 cottage style bungalow homes of which 76 have been completed and sold and 21 are currently in various stages of construction.[2]

6. 205 Ontario is the registered owner of the Real Property. As a result of the Co-Owners Agreement, it holds legal title as nominee and bare trustee for Alliance, Berkstar and Rose Sutton LP (collectively, the "**Beneficial Owners**"). 205 Ontario is the borrower under MarshallZehr's Credit Agreements in respect of the Project and the Beneficial Owners are each guarantors.[3]

7. 205 Ontario is licensed with the HCRA as vendor and builder in respect of the Project. 205 Ontario is also registered as a member with Tarion.[4]

8. MarshallZehr is 205 Ontario's senior secured lender. The Credit Facilities advanced to 205 Ontario matured and 205 Ontario failed to repay the indebtedness. MarshallZehr demanded repayment of the amounts owing from 205 Ontario and the Beneficial Owners, among others, on May 22, 2026 and the CCAA Parties have failed to repay the indebtedness demonstrating that the CCAA Parties were unable to satisfy their obligations as they become

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[2] Second Affidavit of Sean Atkinson sworn August 26, 2026 (the "**Second Atkinson Affidavit**") at para 7, Tab 2 to the Motion Record of the Applicant dated August 26, 2026 (the "**Motion Record**").

[3] Second Affidavit at para 8, Tab 2 to the Motion Record.

[4] Second Affidavit at para 9, Tab 2 to the Motion Record.

due. As at August 13, 2026, the Respondents owed MarshallZehr approximately $42,907,636.19 (including principal and interest but exclusive of fees, costs and reserves).[5]

9. In addition, a number of construction liens and a condominium lien have been registered against the Project totaling in excess of $5.7 million.[6]

10. The Applicant is advised by Alexander Troop ("**Troop**"), the President of 205 Ontario, Alliance, and Alliance Homes Ltd. ("**Alliance Homes**"), the latter of which acts as the consulting/construction manager for the Project (the "**Construction Manager**"), that construction activities had substantially ceased on Phase 1 of the Project leaving 21 homes under construction of which 20 are subject to agreements of purchase and sale ("**APSs**").[7]

11. Prior to the commencement of these CCAA Proceedings, MarshallZehr engaged in discussions with certain stakeholders concerning alternatives to preserve and maximize the value of the Project, including the recommencement of construction activities and the completion of homes that were nearing completion.[8]

12. In all of the circumstances, after consultation with various Project's stakeholders, the Applicant commenced these CCAA Proceedings.[9]

13. The Initial Order, among other things:

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[5] Second Affidavit at para 10, Tab 2 to the Motion Record.
[6] Second Affidavit at para 11, Tab 2 to the Motion Record.
[7] Second Affidavit at para 12, Tab 2 to the Motion Record.
[8] Second Affidavit at para 13, Tab 2 to the Motion Record.
[9] Second Affidavit at para 14, Tab 2 to the Motion Record.

(a) declared that 205 Ontario, Alliance, Berkstar and Rose GP are companies to which the CCAA applies;

(b) provided that Rose Sutton LP would be bound by, and entitled to the benefits and protections of the Initial Order;

(c) appointed BDO Canada Limited as the Monitor of the CCAA Parties with certain enhanced powers described in the Initial Order;

(d) approved the DIP Term Sheet, authorized borrowing under the revolving interim lending facility in the maximum amount of $800,000, and granted the corresponding DIP Lender's Charge to secure advances made under the DIP Term Sheet;

(e) granted the Administration Charge in the amount of $500,000; and

(f) granted a charge over the Property in favour of the directors and officers of the Respondents up to an initial maximum amount of $325,000 (the "**Directors' Charge**").

B. Restructuring Efforts and Update Since Initial Order

Construction Activities

14. One of the primary objectives of these CCAA Proceedings since the granting of the Initial Order has been the recommencement of construction activities at the Project. Working with the Construction Manager and under the supervision of the Monitor, efforts have been undertaken to assess the status of the homes currently under construction, identify the work required to complete those homes, update construction budgets and start to coordinate the trades and suppliers necessary to resume construction activities. The recommencement and

continuation of construction activities is viewed as a critical component of preserving and maximizing the value of the Project.[10]

Phase 1 Unit Completions and Closings

15. Efforts have also focused on advancing the completion of Phase 1 Units that are currently under construction and subject to existing agreements of purchase and sale to allow for transactions to close, subject to obtaining the Unit Sales Order.[11]

16. 20 of the Phase 1 Units are subject to existing agreements of purchase and sale (the "**Existing APSs**").[12] The Existing APSs are all on substantially similar forms which, together with amendments which in some instances include adjustments of purchase price and options for upgrades, provide the conveyance of the Phase 1 Units to the intended purchasers.[13]

17. The ability to efficiently complete and close Permitted Transactions forms an important component of the restructuring efforts being undertaken in these CCAA Proceedings and is the reasons the Applicant is seeking the Unit Sales Order described herein.[14] The completion and closing of those units are expected to generate proceeds for the benefit of stakeholders, reduce carrying costs associated with partially completed homes, satisfy existing contractual obligations to purchasers, and demonstrate continued progress at the Project.[15]

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[10] Second Affidavit at para 17, Tab 2 to the Motion Record.
[11] Second Affidavit at para 18, Tab 2 to the Motion Record.
[12] First Report at para 15.
[13] First Report at para 16.
[14] Second Affidavit at para 19, Tab 2 to the Motion Record.
[15] First Report at para 19(b).

Need for Additional DIP Financing

18. The Initial Order approved borrowings under the DIP Facility up to a maximum principal amount of $800,000. Since the granting of the Initial Order, the Monitor (under the Monitor's Enhanced Powers) working with Troop and Sean Atkinson ("**Atkinson**") have continued to assess the funding requirements necessary to preserve and maximize the value of the Project. The Applicant seeks to increase the authorized borrowings under the DIP Facility to a maximum principal amount of $2,000,000, as contemplated in the DIP Term Sheet.[16]

19. The Updated Cash Flow Forecast demonstrates that this additional funding will be required during the extended Stay Period.[17] In particular, the CCAA Parties require access to additional liquidity to continue construction activities in respect of certain Phase 1 Units, complete certain of the homes currently under construction, facilitate closings, fund carrying costs and operating expenses associated with the Project, and fund the restructuring fees and activities contemplated during these CCAA Proceedings.[18]

Directors' Charge

20. After the initial August 18, 2026 Court attendance on this matter, the Applicant engaged in discussions with certain stakeholders including Sam Reisman ("**Reisman**"), who, among other roles in respect of the CCAA Parties is and officer and director of two of the CCAA Parties, 205 Ontario and Rose Sutton GP. As a result of those discussions, it was agreed

[16] Second Affidavit at para 25, Tab 2 to the Motion Record. First Report at para 26.
[17] First Report at para 43.
[18] Second Affidavit at para 26, Tab 2 to the Motion Record.

that the form of Initial Order sought on August 24, 2026 would include a Directors' Charge in favour of the officers and directors of the CCAA Parties.[19]

21. The Initial Order contemplates an indemnification of the CCAA Parties' directors and officers for obligations and liabilities that they may incur in such capacities after the commencement of these CCAA Proceedings and the creation of a Directors' Charge to protect them from these post-filing claims and liabilities.

22. In this case, the CCAA Parties do not have any employees. The risk of director liability primarily relates HST that is collected after the date of the Initial Order and is required to be remitted post-filing.[20] HST is remitted monthly.[21]

23. Reisman has indicated that he intends to continue serving as a director of 205 Ontario to assist in the preservation and maximization of value of the Property during the course of these CCAA Proceedings. [22]

24. The Monitor has sized the Director's Charge at $450,000 based on the projected maximum expected amount of HST collected in any remittance period.[23]

PART III - STATEMENT OF ISSUES

25. The issues to be determined on this motion are whether:

    (a) the stay of proceedings should be extended to November 13, 2026;

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[19] Second Affidavit at para 33, Tab 2 to the Motion Record.
[20] Second Affidavit at para 34, Tab 2 to the Motion Record.
[21] First Report at para 40.
[22] Second Affidavit at para 35, Tab 2 to the Motion Record.
[23] First Report at paras 41-42.

(b) the maximum borrowing amount under the DIP Term Sheet should be increased, with a corresponding increase to the DIP Lender's Charge should be granted;

(c) the Administration Charge should be increased;

(d) Directors' Charge should be increased;

(e) 205 Ontario should be authorized to complete sales of Phase 1 Units;

(f) the form of Vesting Order should be approved for the sale of Phase 1 Units;

(g) the Monitor's Enhanced Powers should be expanded; and

(h) the Sealing Order should be granted.

PART IV - LAW AND ARGUMENT

A. The Stay of Proceedings should be Extended

26. The Applicant seeks to extend the Stay Period to November 13, 2026.

27. A Court may grant an extension of the Stay Period where the court is satisfied that: (a) circumstances exist that make the order appropriate; and (b) the debtor has acted, and is continuing to act, in good faith and with due diligence.[24] A stay of proceedings is appropriate to provide a debtor with breathing room while it seeks to emerge from the CCAA.[25]

28. The CCAA Parties have acted and continue to act in good faith and with due diligence. Since the granting of the Initial Order, progress has been made with respect to the recommencement of construction activities, the stabilization of the Project, and the design

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[24] s. 11.02(2)-(3), CCAA.

[25] *Ted Leroy Trucking [Century Services] Ltd. (Re)*, 2010 SCC 60, at para 60; *Target Canada Co, Re*, 2015 ONSC 303 at para 8.

of the proposed unit sales process to facilitate closings and generate proceeds for the benefit of stakeholders.[26]

29. The requested Stay Period extension is consistent with the projected timeline for these restructuring steps and is supported by the Updated Cash Flow Forecast.[27] Subject to obtaining the increase to the maximum authorized limit under DIP Facility, the CCAA Parties have sufficient funds to continue their restructuring efforts during the Stay Period.[28]

30. The extension of the Stay Period will provide the CCAA Parties with the time required to: (a) have the Monitor undertake a sale process in respect of the Project, subject to approval of the Court; (b) obtain a claims procedure order to allow the Monitor to determine claims against the CCAA Parties; (c) continue and complete construction of Phase 1 Units; (d) complete sale transactions of up to 10 Phase 1 Units; (e) continue to engage with stakeholders and advance the restructuring generally.[29]

31. No stakeholder will suffer undue prejudice as a result of the requested extension.[30] To the contrary, the extension will facilitate the CCAA Parties implementation of the above noted restructuring initiatives.[31]

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[26] Second Affidavit at para 21, Tab 2 to the Motion Record. First Report at para. 34.
[27] Second Affidavit at para 23, Tab 2 to the Motion Record. First Report at para. 34.
[28] Second Affidavit at para 23, Tab 2 to the Motion Record.
[29] Second Affidavit at para 23, Tab 2 to the Motion Record.
[30] First Report at para 36.
[31] First Report at para 35.

B. The Authorized Borrowings under the DIP Term Sheet and the DIP Lender's Charge should be Increased

32. The Applicant seeks to increase the authorized borrowings under the DIP Facility to a maximum principal amount of $2,000,000, together with a corresponding increase to the DIP Lender's Charge, as contemplated in the DIP Term Sheet.[32]

33. Section 11.2 of the CCAA allows this Court to grant a DIP Lender's Charge that ranks in priority to the debtors' secured creditors, on notice to those secured creditors that would be affected, and in an amount that the Court considers appropriate, having regard to the cash flow forecast.[33]

34. In determining whether the DIP Lender's Charge is appropriate, a Court is required to consider the following non-exhaustive factors under section 11.2(4) of the CCAA:[34]

(a) The period during which the company is expected to be subject to proceedings under the CCAA;

(b) How the company's business and financial affairs are to be managed during the proceedings;

(c) Whether the company's management has the confidence of its major creditors;

(d) Whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;

(e) The nature and value of the company's property;

(f) Whether any creditor would be materially prejudiced as a result of the security or charge; and

[32] Second Affidavit at para 25, Tab 2 to the Motion Record.

[33] s. 11.2(1), CCAA.

[34] s. 11.2(4), CCAA.

(g) The monitor's report referred to in paragraph 23(1)(b), if any.

35. The DIP Term Sheet and DIP Lender's Charge have been approved by this Court in the Initial Order.

36. The non-exhaustive factors under section 11.2(4) of the CCAA support the approval of the increase of the authorized borrowings under the DIP Term Sheet. In particular,

(a) the Project and the CCAA Parties' affairs will continue to be managed under the supervision of the Monitor and subject to the Monitor's Enhanced Powers granted by this Court;

(b) absent the requested increase, the CCAA Parties will not have sufficient liquidity to continue the restructuring efforts contemplated by these CCAA proceedings;[35]

(c) the requested increase is necessary to permit the CCAA Parties to fund the construction costs to complete the Phase 1 Units which are partially complete and pay the professionals associated with the CCAA Proceedings who have accrued and will continue to accrue fees throughout these proceedings;[36]

(d) no creditor should be materially prejudiced as a result of the increase of the authorized borrowings under the DIP Term Sheet. The DIP Lender is the CCAA Parties' senior secured lender; and

(e) the Monitor (under its enhanced powers) prepared the Cash Flow Forecast and supports the increase to the permitted borrowings under the DIP Facility for the reasons set

[35] First Report at para 43.
[36] First Report at para 44.

out in the First Report including that it will provide the CCAA Parties with the necessary funding required during the extended Stay Period.[37]

37. In the circumstances, the increased DIP Facility and the corresponding increase to the DIP Lender's Charge are reasonable, necessary and appropriate and should be approved.

C. The Administration Charge should be Increased

38. The Applicant seeks to increase the Administration Charge from $500,000 to $650,000 to reflect the additional work to be undertaken by the Professionals Group during these CCAA Proceedings.

39. A court may grant an administration charge in a CCAA proceeding pursuant to section 11.52 of the CCAA.[38] In deciding whether to grant an administration charge, courts have considered a number of factors including: (a) the size and complexity of the businesses being restructured; (b) the role of the beneficiaries of the charge; (c) whether there is unwarranted duplication of roles; (d) whether the amount of the proposed charge appears to be fair and reasonable; (e) the position of the secured creditors likely to be affected by the charge; and (f) the position of the Monitor.[39]

40. The Applicants submit that it is appropriate for this Court to exercise its discretion to increase the Administration Charge. The amount of the Administration Charge in the Initial

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[37] First Report at paras 43-45.

[38] s. 11.52, CCAA.

[39] *Canwest Publishing Inc., Re*, 2010 ONSC 222 at para 54; *Re Lydian International Limited*, 2019 ONSC 7473 at para 46.

Order was limited to the estimated professional fees and disbursements of the Professionals Group during the initial Stay Period.[40]

41. The proposed increase in the Administration Charge more accurately reflects the professional fees and disbursements reasonably anticipated to be incurred during the extended Stay Period and to ensure that the Professionals Group continues to have the protection necessary to participate in these CCAA Proceedings. There is no intended duplication of efforts among the Professionals Group.[41]

42. The increased quantum of the Administration Charge is contemplated in the DIP Term Sheet that was approved by this Court in the Initial Order.[42]

43. The Monitor is of the view that the proposed Administration Charge is necessary and appropriate to protect the professionals assisting with CCAA Parties throughout the CCAA Proceedings.[43]

D. The Directors' Charge should be increased

44. As set out above, the Directors' Charge was agreed to by the parties prior to the granting of the Initial Order in an amount of $325,000. The Applicant is seeking to increase it to $450,000.

45. As discussed in the First Report, the Monitor (in accordance with the Monitor's Enhanced Powers) with the assistance of Troop and Atkinson, prepared the Updated Cash Flow Forecast and sized the Directors' Charge at $450,000. This amended amount is based on the

[40] First Affidavit at para 102, Tab 2A of the Motion Record.

[41] Second Affidavit at para 31, Tab 2A of the Motion Record.

[42] DIP Term Sheet, Exhbit WW to the First Atkinson Affidavit, Tab 2WW of the Application Record.

[43] First Report at para 38.

projected maximum expected amount of HST arising from Phase 1 Unit sales collected in any remittance period.[44]

46. The jurisdiction to grant a charge on a super-priority basis in respect to the indemnification of directors and officers is provided in section 11.51 of the CCAA.[45] The purpose of a Directors' Charge was described in *Canwest Global Communications Corp., Re*:[46]

> The purpose of such a charge is to keep the directors and officers in place during the restructuring by providing them with protection against liabilities they incur during the restructuring…Retaining the current directors and officers of the applicants would avoid destabilization and would assist in the restructuring. The proposed charge would enable the applicants to keep the experienced board of directors supported by the experienced senior management.

47. In *Jaguar Mining Inc., (Re)*, the Court set out the following factors to be considered with respect to the approval of a directors' charge:[47]

(a) whether notice has been given to the secured creditors likely to be affected;

(b) whether the amount is appropriate;

(c) whether the applicant could not obtain adequate indemnification insurance for the director or officer at a reasonable cost; and

(d) whether the charge does not apply in respect of any obligation incurred by a director or officer as a result of gross negligence or wilful misconduct.

48. The Directors' Charge is intended to protect the CCAA Parties' directors and officers against obligations and liabilities they may incur in such capacities after the commencement

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[44] First Report at paras 26 and 41-42.

[45] s. 11.51, CCAA.

[46] *Canwest* at para 48.

[47] *Jaguar Mining Inc. (Re)*, 2014 ONSC 494 at para 45.

of these CCAA Proceedings, except to the extent that the obligation or liability is incurred as a result of their gross negligence or wilful misconduct.[48]

49. It is not known whether the CCAA Parties maintain a directors' and officers' liability insurance ("**D&O Insurance**"). However, even if there is D&O Insurance, it is uncertain whether all claims for which the directors and officers may be personally liable from and after the commencement of these CCAA Proceedings will be covered by the policy.[49]

50. The Applicant is of the view that the quantum of the Directors' Charge is reasonable and is sized to address circumstances the liabilities that could lead to potential directors' liability during the initial Stay Period. The Monitor is of the view that the proposed quantum of the Directors' Charge above is appropriate in the circumstances. [50]

E. The Additional Enhanced Powers should be approved

51. In connection with the proposed Unit Sales Order, the Applicant seeks that the Monitor be granted additional enhanced powers including the following (the "**Additional Enhanced Powers**" and together with the Existing Enhanced Powers, the "**Monitor's Enhanced Powers**"). In the Monitor's view, the proposed Additional Enhanced Powers further clarify the rights and authorities of the Monitor in exercising and operating the Business (as defined in the Initial Order).[51]

[48] Second Affidavit at para 38, Tab 2 to the Motion Record

[49] Second Affidavit at para 37, Tab 2 to the Motion Record

[50] First Report at para 42.

[51] First Report at para. 47.

52. The CCAA provides this Court with broad discretion regarding the functions of a monitor.[52] Pursuant to section 23(1)(k) of the CCAA, a monitor shall "carry out any other functions in relation to the company that the court may direct".[53] Section 11 of the CCAA provides this Court with the authority to "make any order that it considers appropriate in the circumstances", provided that this discretion is exercised in furtherance of the CCAA's remedial objectives, and that the applicant demonstrates that the order sought is appropriate in the circumstances and that it has been acting in good faith and with due diligence.[54]

53. Accordingly, this Court has the jurisdiction to grant a monitor with enhanced or expanded powers as part of the ARIO.[55] The fact that granting the Monitor the Enhance Powers will potentially maximize value for stakeholders has also been a relevant consideration to grant such enhanced powers.[56]

54. The proposed Additional Enhanced Powers are necessary to maximize value for stakeholders. It is the Monitor 's assessment that the Additional Enhanced Powers will facilitate the Monitor's engagement in this matter including, where necessary engaging with stakeholders and other third parties in these CCAA Proceedings who may not be as familiar with the broad authorizations provided for under the Existing Enhanced Powers.[57] The Monitor has agreed to the proposed Additional Enhanced Powers should they be granted by

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[52] *Harte Gold Corp. (Re)*, 2022 ONSC 653 ["***Harte Gold***"], at para 91.
[53] s 23(1)(k), CCAA.
[54] *Callidus* at paras 48-49.
[55] *Chesswood Group Limited (Re)*, CV-24-00730212-00CL, Endorsement of Justice Kimmel dated October 29, 2024 at para 29.
[56] *In the Matter of a Plan of Compromise or Arrangement of LoyaltyOne, Co.*, CV-23-0069017-00CL, Endorsement of Justice Conway dated May 12, 2023 at para 13; *Harte Gold* at paras 91-93; *Arrangement relatif à 9323-7055 Québec Inc. (Aquadis International Inc.)*, 2020 QCCA 659 at paras 61-62; *Arrangement relatif à Bloom Lake General*, 2021 QCCS 2946 at para 73 ["***Bloom Lake***"].
[57] First Report at para 48.

the Court pursuant to the ARIO.[58] Accordingly, the Applicant respectfully submits that the Additional Enhanced Powers ought to be granted in these circumstances.

F. 205 Ontario should be authorized to complete sales of Phase 1 Units

55. The Applicant seeks authority for 205 Ontario, on the authorization and direction of the Monitor, to complete sales of Phase 1 Units that are currently under construction and subject to existing agreements of purchase and sale without the need to seek further Court approval in respect of each individual transaction, provided the transaction falls within the proposed monetary threshold of $1.1 million excluding HST and extras.[59] The proposed Unit Sales Order is intended to permit the efficient completion of Phase 1 Unit sales while maintaining appropriate oversight of the process.[60]

56. The sale of the Phase 1 Units is within the ordinary course of business for the CCAA Parties. The Vesting Orders are required in order to efficiently address encumbrances on title and complete the transaction.[61]

57. In considering sale-related relief under the CCAA, Courts have regard to the objectives reflected in section 36 of the CCAA and the *Soundair* principles, including whether the proposed process is fair, commercially reasonable and designed to maximize value for stakeholders.[62]

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[58] First Report at para 49.

[59] Second Affidavit at para 43, Tab 2 to the Motion Record.

[60] Second Affidavit at para 43, Tab 2 to the Motion Record.

[61] First Report at para 17.

[62] *Royal Bank v. Soundair Corp.* (1991), 7 C.B.R. (3d) 1 (Ont. C.A.); *Brainhunter Inc. (Re), 2009* CanLII 72333 (ONSC); CCAA, s. 36(3); s. 36, CCAA.

58. The proposed unit sale process satisfies those principles. The Monitor supports the Proposed Unit Sales Order[63]. In considering the appropriateness of the relief sought in this regard, the Monitor considered, among other things, that:

(a) an opinion as to value from Daniel Foch of Valery Real Estate Inc. (the "**Broker Opinion**"), who has experience selling homes of similar nature in this geographical area, and concluded that the Broker Opinion does not suggest any material additional value is likely to be attained by re-marketing the 10 Phase 1 Units projected to close during the Stay Period;[64]

(b) The closing of the Phase 1 Unit homes will generate cash proceeds which revenue will reduce carrying costs of partially completed units, be available for payment of post filing services and reduce outstanding debt within the CCAA Proceedings;[65]

(c) If closings under the Existing APSs did not occur, the Monitor would likely have to seek direction as to the disclaimer of those agreements and re-market the homes, which is not guaranteed to generate any better outcome particularly given current market conditions and once the additional professional cost, agent's commissions and delay in proceeds generation was considered;[66]

(d) The closing of the Phase 1 Units under the existing APAs is supported by the Applicant; [67]and

[63] First Report at para 21.
[64] First Report at para 19(a).
[65] First Report at para 19(b).
[66] First Report at para 19(c).
[67] First Report at para 19(d)

(e) If such closings do not occur, under the current Updated Cash Flow Forecast, the CCAA Parties will not have sufficient funds to fund their obligations as they come due during the proposed stay extension period.[68]

59. The relief sought under the Unit Sales Process is analogous to relief that was approved by Justice Kimmel *in MarshallZehr Group Inc. v. King Square Ltd*.[69] In that case, the receiver was overseeing a large real estate project comprised of numerous individual commercial condominium units. Recognizing that the receiver anticipated completing multiple unit transactions as part of the restructuring process, the Court authorized future sales below a prescribed monetary threshold without requiring a separate motion for each transaction and approved a form of vesting order that could be completed and submitted administratively in connection with those sales.[70] The Court concluded that requiring a return to Court for each individual sale would result in an unnecessary expenditure of estate resources and judicial resources.[71]

60. Similarly, in this case, the requested authority will facilitate the efficient completion of Phase 1 Unit sales, preserve estate resources and maximize value for stakeholders. The proposed sale authority is subject to meaningful safeguards: each transaction remains subject to the prescribed monetary threshold and the authorization and oversight of the Monitor. These protections ensure that the proposed relief remains consistent with the objectives of these CCAA Proceedings and the interests of stakeholders.

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[68] First Report at para 19(e).

[69] Order of Kimmel J. in *MarshallZehr Group Inc. v. King Square Ltd* (CV-23-00710215-00CL) dated April 15, 2024; Endorsement of Kimmel J. in *MarshallZehr Group Inc. v. King Square Ltd* (CV-23-00710215-00CL) dated April 15, 2024 ["***King Square Ltd***"], at paras 7-9.

[70] *King Square Ltd*, at para 2.

[71] *King Square Ltd*, at paras 7-9.

G. The form of Vesting Order should be Approved

61. The Applicant seeks approval of the proposed form of Vesting Order and authorization for the Monitor and its counsel to complete and submit such Vesting Orders in connection with approved sales of Phase 1 Units.[72]

62. In *King Square*, Justice Kimmel approved a substantially similar procedure whereby the Court approved a form of Vesting Order in advance and authorized counsel and the court-appointed officer to complete purchaser-specific information and submit completed vesting orders for issuance.[73]

63. Similarly, in this case, the proposed Vesting Order process is intended to operate in conjunction with the authority sought for future unit sales.[74] Rather than requiring a separate motion and hearing for each individual closing, the proposed process permits the Monitor and its counsel to complete transaction-specific information and submit the Vesting Order in the approved form following completion of the applicable Permitted Transaction.[75]

64. The proposed Vesting Order process is efficient, fair and consistent with existing Commercial List practice in connection with court-supervised real estate sales. As indicated, the Monitor believes the proposed Unit Sales Order provides a cost-efficient mechanism for the allowance of Vesting Orders to be issued without the requirement for the need to return to Court on multiple motions. Each of the Phase 1 Units falls under the proposed $1.1 million (excluding HST and extras) threshold.[76]

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[72] Second Affidavit at para 48, Tab 2 to the Motion Record.
[73] *King Square Ltd*, at paras 2 and 9.
[74] Second Affidavit at para 48, Tab 2 to the Motion Record.
[75] Second Affidavit at para 50, Tab 2 to the Motion Record.
[76] First Report at para 21.

H. The Sealing Order should be granted

65. The Applicant seeks a sealing order in respect of the unredacted purchase price information contained in the agreements of purchase and sale of certain Phase 1 Units and the Broker Opinion included in the Confidential Appendices to the First Report.[77]

66. This Court has jurisdiction to grant a sealing order where the order is necessary to prevent a serious risk to an important public interest, where no reasonable alternative measure will prevent that risk, and where the benefits of the order outweigh its negative effects on the open court principle. The applicable test is set out in *Sierra Club of Canada v. Canada (Minister of Finance)*, as reformulated by the Supreme Court of Canada in *Sherman Estate v. Donovan*.[78]

67. Analogous relief was approved in *MarshallZehr Group Inc. v. King Square Ltd.*, where the Court was satisfied that the limited and temporary sealing order appropriately balanced the open court principle with the need to protect commercially sensitive information [79]

68. The Confidential Appendices contain commercially sensitive valuation information. Disclosure of that information could negatively affect the ongoing unit sales process and impair any future sales of Phase 1 Units. The proposed Sealing Order being sought is temporary and contemplates that the Confidential Appendices are sealed pending the completion of the sale of all of the Phase 1 Units or further Order of the Court. [80]

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[77] Second Affidavit at para 51, Tab 2 to the Motion Record.

[78] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41; *Sherman Estate v. Donovan*, 2021 SCC 25 at para. 38.

[79] *MarshallZehr Group Inc. v. King Square Ltd. et al.* (CV-23-00710215-00CL), Endorsement of Kimmel J. dated April 15, 2024 at paras. 11-14.

[80] Second Affidavit at para 51, Tab 2 to the Motion Record. First Report at para. 22.

Accordingly, the order is limited in scope, temporary in duration, and necessary to preserve the integrity of the ongoing sales process.

PART V - ORDER REQUESTED

69. The Applicant respectfully requests that the Court grant the ARIO and the Unit Sales Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 27th day of August 2026.

KMahar mf A.Ranjbar

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SCHEDULE "A"
LIST OF AUTHORITIES

1. *Ted Leroy Trucking [Century Services] Ltd. (Re)*, 2010 SCC 60
2. *Target Canada Co, Re*, 2015 ONSC 303
3. *Canwest Publishing Inc., Re*, 2010 ONSC 222
4. *Re Lydian International Limited*, 2019 ONSC 7473
5. *Royal Bank v. Soundair Corp.* (1991), 7 C.B.R. (3d) 1 (Ont. C.A.)
6. *Brainhunter Inc. (Re), 2009* CanLII 72333 (ONSC)
7. Order of Justice Kimmel dated April 15, 2024, *MarshallZehr Group Inc. v. King Square Ltd* (CV-23-00710215-00CL)
8. Endorsement of Justice Kimmel dated April 15, 2024, *MarshallZehr Group Inc. v. King Square Ltd* (CV-23-00710215-00CL)
9. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41
10. *Sherman Estate v. Donovan*, 2021 SCC 25

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date August 27, 2026

KMahar mf A.Rasjlae

Signature

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY – LAWS

***Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended**

Stays, etc. — initial application

11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

> **(a)** staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
>
> **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> **(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Stays, etc. — other than initial application

(2) A court may, on an application in respect of a debtor company other than an initial application, make an order, on any terms that it may impose,

> **(a)** staying, until otherwise ordered by the court, for any period that the court considers necessary, all proceedings taken or that might be taken in respect of the company under an Act referred to in paragraph (1)(a);
>
> **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
>
> **(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Burden of proof on application

(3) The court shall not make the order unless

> **(a)** the applicant satisfies the court that circumstances exist that make the order appropriate; and
>
> **(b)** in the case of an order under subsection (2), the applicant also satisfies the court that the applicant has acted, and is acting, in good faith and with due diligence.

Interim financing

11.2 (1) On application by a debtor company and on notice to the secured creditors who are likely to be affected by the security or charge, a court may make an order declaring that all or part of the company’s property is subject to a security or charge — in an amount that the court considers appropriate — in favour of a person specified in the order who agrees to lend to the company an amount approved by the court as being required by the company, having regard to its cash-flow statement. The security or charge may not secure an obligation that exists before the order is made.

Priority — secured creditors

(2) The court may order that the security or charge rank in priority over the claim of any secured creditor of the company.

Priority — other orders

(3) The court may order that the security or charge rank in priority over any security or charge arising from a previous order made under subsection (1) only with the consent of the person in whose favour the previous order was made.

Factors to be considered

(4) In deciding whether to make an order, the court is to consider, among other things,

> **(a)** the period during which the company is expected to be subject to proceedings under this Act;
>
> **(b)** how the company’s business and financial affairs are to be managed during the proceedings;
>
> **(c)** whether the company’s management has the confidence of its major creditors;
>
> **(d)** whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the company;
>
> **(e)** the nature and value of the company’s property;
>
> **(f)** whether any creditor would be materially prejudiced as a result of the security or charge; and
>
> **(g)** the monitor’s report referred to in paragraph 23(1)(b), if any.

Court may order security or charge to cover certain costs

11.52 (1) On notice to the secured creditors who are likely to be affected by the security or charge, the court may make an order declaring that all or part of the property of a debtor company is subject to a security or charge — in an amount that the court considers appropriate — in respect of the fees and expenses of

> **(a)** the monitor, including the fees and expenses of any financial, legal or other experts engaged by the monitor in the performance of the monitor’s duties;
>
> **(b)** any financial, legal or other experts engaged by the company for the purpose of proceedings under this Act; and

(c) any financial, legal or other experts engaged by any other interested person if the court is satisfied that the security or charge is necessary for their effective participation in proceedings under this Act.

Restriction on disposition of business assets

36 (1) A debtor company in respect of which an order has been made under this Act may not sell or otherwise dispose of assets outside the ordinary course of business unless authorized to do so by a court. Despite any requirement for shareholder approval, including one under federal or provincial law, the court may authorize the sale or disposition even if shareholder approval was not obtained.

Notice to creditors

(2) A company that applies to the court for an authorization is to give notice of the application to the secured creditors who are likely to be affected by the proposed sale or disposition.

Factors to be considered

(3) In deciding whether to grant the authorization, the court is to consider, among other things,

(a) whether the process leading to the proposed sale or disposition was reasonable in the circumstances;

(b) whether the monitor approved the process leading to the proposed sale or disposition;

(c) whether the monitor filed with the court a report stating that in their opinion the sale or disposition would be more beneficial to the creditors than a sale or disposition under a bankruptcy;

(d) the extent to which the creditors were consulted;

(e) the effects of the proposed sale or disposition on the creditors and other interested parties; and

(f) whether the consideration to be received for the assets is reasonable and fair, taking into account their market value.

Additional factors — related persons

(4) If the proposed sale or disposition is to a person who is related to the company, the court may, after considering the factors referred to in subsection (3), grant the authorization only if it is satisfied that

(a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the company; and

(b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

Related persons

(5) For the purpose of subsection (4), a person who is related to the company includes

(a) a director or officer of the company;

(b) a person who has or has had, directly or indirectly, control in fact of the company; and

(c) a person who is related to a person described in paragraph (a) or (b).

Assets may be disposed of free and clear

(6) The court may authorize a sale or disposition free and clear of any security, charge or other restriction and, if it does, it shall also order that other assets of the company or the proceeds of the sale or disposition be subject to a security, charge or other restriction in favour of the creditor whose security, charge or other restriction is to be affected by the order.

Restriction — employers

(7) The court may grant the authorization only if the court is satisfied that the company can and will make the payments that would have been required under paragraphs 6(5)(a) and (6)(a) if the court had sanctioned the compromise or arrangement.

Restriction — intellectual property

(8) If, on the day on which an order is made under this Act in respect of the company, the company is a party to an agreement that grants to another party a right to use intellectual property that is included in a sale or disposition authorized under subsection (6), that sale or disposition does not affect that other party's right to use the intellectual property — including the other party's right to enforce an exclusive use — during the term of the agreement, including any period for which the other party extends the agreement as of right, as long as the other party continues to perform its obligations under the agreement in relation to the use of the intellectual property.

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

Court File No.: CL-26-00000362-0000

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF 2055226 ONTARIO INC. et al.

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding Commenced at
Toronto

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