

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

MERIDIAN CREDIT UNION LIMITED

Applicant

and

GARDEN VILLA RETIREMENT RESIDENCE INC.

Respondent

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**FACTUM OF THE RECEIVER  
(Motion Returnable March 5, 2026)**

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February 19, 2026

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**TO: THE SERVICE LIST**

## SERVICE LIST

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## FACTUM OF THE RECEIVER

### PART I - INTRODUCTION

1. BDO Canada Limited, in its capacity as court-appointed receiver (the "**Receiver**") of the property, assets and undertakings (the "**Property**") of Garden Villa Retirement Residence Inc. (the "**Debtor**" or "**Garden Villa**"), brings this motion for, *inter alia*, Orders:

- (a) validating service of the Notice of Motion, the Motion Record and the First Report of the Receiver dated February 18, 2026 (the "**First Report**");
- (b) approving the First Report, the Confidential Supplement to the First Report dated February 18, 2026 (the "**Confidential Supplement**") and the actions and activities of the Receiver as described therein;
- (c) approving the sale transaction and vesting in the Purchaser (defined below) all right, title and interest of the Debtor in its Property including the real property owned by the Debtor and municipally known as 66 Main Street South, Chesterville, Ontario and legally described as PIN 66146-0232 (the "**Real Property**") described in the Purchase and Sale Agreement dated October 21, 2025, as amended (the "**Purchase Agreement**") entered into between Ravi Iyer, in trust for a company to be incorporated, and assigned to 17557396 Canada Inc. (the "**Purchaser**") and the Receiver, free and clear of encumbrances and other charges and security interests as described in the Purchase Agreement (the "**Transaction**");

- (d) authorizing the Receiver to complete the Transaction, and thereafter to file the Receiver's Certificate;
- (e) approving the Receiver's Statement of Receipts and Disbursements included in the First Report;
- (f) approving the fees and disbursements of the Receiver (the "**Receiver's Fees**") to date as detailed in the First Report and authorizing the payment of the Receiver's Fees;
- (g) approving the fees and disbursements of counsel to the Receiver, Fogler, Rubinoff LLP ("**Counsel's Fees**"), as detailed in the First Report and authorizing payment of Counsel's Fees;
- (h) approving the sealing of the Confidential Supplement to the First Report until completion of the Transaction or further order of this Court;
- (i) approving the Fee Accrual defined or described in the First Report;
- (j) subject to the completion of the Transaction, authorizing and directing the Receiver to make the distributions proposed in the First Report; and
- (k) discharging the Receiver and releasing it from liability in its capacity as Receiver.

## **PART II – SUMMARY OF FACTS**

2. The facts are set out in the First Report and Confidential Supplement.

3. Briefly, Garden Villa is or was licensed by the Retirement Homes Regulatory Authority (the "**RHRA**"), and operates or operated a retirement home in Chesterville, Ontario (the "**Retirement Home**"). There are approximately 50 to 60 residents living in the Retirement Home.

4. Due to the Debtor's financial difficulties, Meridian Credit Union Limited ("**Meridian**"), as senior secured creditor, commenced legal proceedings for various relief. On October 26, 2023, the Receiver was appointed over the property of the Debtor pursuant to the Order of this Court (the "**Receivership Order**").

5. The existing manager and executive director of the Retirement Home was subsequently retained by the Receiver to continue managing the Retirement Home.

6. Also, as authorized or permitted under the Receivership Order, the Receiver took steps to market and sell the Real Property (subject to court approval) as described in the First Report including selecting a real estate broker or brokers; listing the Real Property on the market; selecting the Purchaser; entering into the Purchase Agreement with the Purchaser; seeking the completion of the Transaction; and consulting with Meridian and the RHRA during the receivership.

### **PART III – STATEMENT OF ISSUES, LAW & AUTHORITIES**

#### **Approval and Vesting Order**

7. Court-appointed receivers are frequently granted the power to sell property belonging to the debtor and apply for a vesting order. For example, paragraph 3(1) of the Receivership Order expressly empowers and authorizes the Receiver "to apply for any vesting order or other orders

necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property."

8. Also, under section 100 of the *Courts of Justice Act* (Ontario), this Honourable Court has the power to vest in any person an interest in real or personal property that the court has the authority to order be disposed of, encumbered or conveyed.<sup>1</sup>

9. The criteria to be applied when considering the approval of a sale by a Receiver are well established, and are summarized as follows:

- (a) whether the Receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been unfairness in the workout of the process.<sup>2</sup>

10. It is the Receiver's position that by listing the Real Property on the market that the Real Property was widely marketed, that any interested parties in the Real Property had a reasonable period in which to conduct due diligence, that Meridian and the RHRA were kept informed and that the listing facilitated the possibility of best offers. In this regard, it is respectfully submitted that the Transaction and related Approval and Vesting Order should be approved for the following reasons:

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<sup>1</sup> *Courts of Justice Act* (Ontario), R.S.O. 1990, c. C-43, s. 100, Schedule "B".

<sup>2</sup> [\*Royal Bank of Canada v. Soundair Corporation\*](#), 1991 CanLII 2727 (Ont. C.A.). See also [\*First Source Financial Management v. Chacon Strawberry Fields Inc.\*](#), 2024 ONSC 7229 (CanLII) at paras. 30-42 [*Chacon*].

- (a) There were two (2) appraisals of the Real Property and four (4) listing proposals. The purchase price for the Real Property under the Purchase Agreement is within the range of the listing prices or estimated valuations in the listing proposals. While the purchase price is below the range of the appraised value of the Real Property in the two appraisals, each appraisal was based on a higher occupancy rate that currently is not the case, and one appraisal included surplus land value. Without these assumptions, the purchase price is within the range of the appraised value of the Real Property;
- (b) The Real Property has been listed on MLS for a significant period;
- (c) Thirteen (13) offers were submitted for the Real Property, and the purchase price under the binding Purchase Agreement is generally within the same price range of the received offers;
- (d) The Purchaser shall assume all agreements with the residents of the Retirement Home under the Purchase Agreement, ensuring continuity of residency;
- (e) Meridian, Garden Villa's senior secured creditor and first mortgagee of the Real Property, is not opposed to the sale of the Real Property to the Purchaser; and
- (f) The RHRA is not opposed, or has not opposed to date, to the sale of the Real Property to the Purchaser; and the completion or closing of the Transaction is conditional on the RHRA's approval or granting of a licence to the Purchaser to operate the Retirement Home from the Real Property.

## Sealing Order

11. It is just, appropriate and necessary to the integrity of these receivership proceedings and the sale process that the Confidential Supplement to the First Report be sealed by this Court until the sale is completed or further order of this Court. The proposed sealed documents or information include the two appraisals, the summary of the four listing proposals (with listing price information), the summary of the thirteen offers, and the unredacted Purchase Agreement and unredacted amendment, regarding the Real Property and purchased assets. The proposed sealing is for a limited time, until the Transaction is completed or further order of the court.

12. The Court's jurisdiction to seal documents filed with it is found in s. 137(2) of the *Courts of Justice Act* (Ontario):

137(2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form a part of the public record.<sup>3</sup>

13. The test for sealing documents as set out in [\*Sierra Club of Canada v. Canada \(Minister of Finance\)\*](#)<sup>4</sup> ("**Sierra Club**") and [\*Sherman Estate v. Donovan\*](#)<sup>5</sup> is as follows: (a) court openness poses a serious risk to an important public interest; (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

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<sup>3</sup> *Courts of Justice Act* (Ontario), s. 137(2), Schedule "B".

<sup>4</sup> [\*Sierra Club of Canada v. Canada \(Minister of Finance\)\*](#), 2002 SCC 41 (CanLII), [2002] 2 S.C.R. 522 (SCC) at para. 53.

<sup>5</sup> [\*Sherman Estate v. Donovan\*](#), 2021 SCC 25 (CanLII), at paras 37, 38. See also *Chacon*, at paras. 48-53.

14. Only where all three of these prerequisites have been met can a discretionary limit on openness – for example, a sealing order – be properly ordered.

15. Applying the first criteria in the above test, there is clearly a public interest in preserving commercially sensitive confidential information. In addition, courts have acknowledged that there is a public interest in maximizing recoveries in an insolvency that goes beyond the individual case. In this regard, sealing orders are often granted in receiverships. For example, appraisals, sale agreements, bids or offers and other commercial documents, attached as confidential appendices to a receiver's report, have been sealed where they contain sensitive commercial information, the release of which could be prejudicial to stakeholders and the sales process.<sup>6</sup>

16. As to the second criteria of the test, if the commercially sensitive information contained in the Confidential Supplement were made public BEFORE the Transaction closes, there would be a serious risk that this disclosure could negatively impact the future selling price of the Real Property.

17. Regarding the third criteria of the test, the proposed sealing order is temporary and proportionate. The benefits of the sealing order outweigh the negative effects. The sealing order will preserve the integrity of the sale process. This outweighs any potential negative effect that may result from temporarily restricting public access to a limited amount of information. It is therefore respectfully submitted that the criteria outlined in the *Sherman Estate* for a sealing order over the Confidential Supplement have been met in this case.

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<sup>6</sup> [\*Royal Bank of Canada v. Walker Hall Winery Ltd.\*](#), 2011 ONSC 638 (CanLII), at paras. 13, 21, 22.

**Receiver's Fees and Receiver's Counsel's Fees**

18. The Receiver respectfully submits that the fees of the Receiver and its lawyer as detailed in the First Report should be approved in the circumstances.

19. In determining whether to approve the fees of a receiver and its counsel, the court should consider whether the remuneration and disbursements incurred in carrying out the receivership were fair and reasonable. Value provided should pre-dominate over the mathematical calculation reflected in the hours times hourly rate equation. The focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took. In making this assessment, the following factors constitute a useful guideline but are not exhaustive:

- the nature, extent and value of the assets;
- the complications and difficulties encountered;
- the degree of assistance provided by the debtor;
- the time spent;
- the receiver's knowledge, experience and skill;
- the diligence and thoroughness displayed;
- the responsibilities assumed;
- the results of the receiver's efforts; and

- the cost of comparable services when performed in a prudent and economical manner.<sup>7</sup>

20. The legal services provided by the Receiver's lawyer during this period, in which the fees and disbursements are being asked to be approved by this Court, as set out in the First Report, include the following:

- (a) Review Meridian's Application Record including draft Receivership Order and attend receivership application before this Court on October 26, 2023;
- (b) Review Meridian's loan and security documents and provide legal opinion regarding same to Receiver;
- (c) Draft, review, revise and/or finalize motion record, orders, factum, and Receiver's First Report, for this Receiver's motion for various relief including the approval and vesting order;
- (d) Review offers for Real Property; discuss offers with client;
- (e) Propose revisions to Purchase Agreement with prospective purchaser;
- (f) Communications with RHRA's counsel, Purchaser's counsel and Meridian's counsel;
- (g) Deal with any tenant or resident issues;
- (h) Close the Transaction or take steps towards closing the Transaction; and
- (i) Communications with the client.

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<sup>7</sup> [\*Bank of Nova Scotia v. Diemer\*](#), 2014 ONCA 851 (CanLII) (Ont. C.A.), at paras. 33 and 45.

21. It is the Receiver's view that it and its counsel's fees and disbursements were incurred at the Receiver's and Receiver's counsel's standard rates and charges, and are fair, reasonable and justified in the circumstances. Also, the fees and disbursements sought accurately reflect the work done by the Receiver and by its counsel in connection with the receivership. It bears noting that the Real Property includes a Retirement Home with approximately 50 to 60 senior residents and that the Debtor is or was a licensed operator under retirement homes legislation, and that it was in this context and regulatory framework that the Receiver had to operate. That is, any difficulties, challenges or complications encountered by the Receiver in overseeing the management of the Retirement Home and selling the Real Property partly arose from the Receiver's obligations under this regulatory framework.

22. The results of the Receiver's efforts to sell the Real Property have been positive in the circumstances. On closing the Transaction, the Purchaser will continue operating the Retirement Home to the benefit of the residents. Also, upon closing the Transaction, the net proceeds will generally be available to Meridian, as first mortgagee of the Real Property.

### **Distribution and Fee Accrual**

23. The Receiver seeks approval to distribute funds in accordance with the proposed scheme of distribution set out in the First Report. In particular, the Receiver is requesting permission to make a distribution, as proposed in the First Report, to Meridian, from the net proceeds of sale from the completion or closing of the Transaction. Upon the sale of the purchased assets to the Purchaser, including the Real Property, there will be no remaining material assets in the estate. Despite the proposed distribution to Meridian, Meridian will suffer a deficiency or shortfall, in

that the full amount of debt owed by the Debtor will not have been repaid by the proposed distribution.

24. The Receiver has received an opinion from its counsel that Meridian's security interest relative to the Debtor, including Meridian's first mortgage on the Real Property, is valid and enforceable.

25. After the completion of the Transaction, and certain payments or holdbacks and the distribution to Meridian are made, as described in the First Report, the Receiver will take steps to deal with any outstanding matters in order to complete the administration of the receivership.

26. Orders granting distributions, and/or with a reserve or holdback, like the Fee Accrual, to cover work to be done to complete the administration, are routinely granted by courts in insolvency proceedings and receiverships.<sup>8</sup>

27. In determining whether it is appropriate to authorize a distribution, the court may consider: (a) whether the proposed recipient's security is valid and enforceable; (b) whether the amounts that are owed to the proposed recipient exceed the proposed distribution amount; and (c) whether the proposed distribution would result in interest savings.<sup>9</sup>

28. In this case, Meridian has a valid and enforceable security interest in respect of the collateral and property of the Debtor, including the Real Property, covered by its security. Receiver's counsel provided the Receiver with a security opinion, subject to the usual qualifications, assumptions and disclaimers, which opinion confirms the validity of the charge or

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<sup>8</sup> *Re Windsor Machine & Stamping Ltd.*, 2009 CanLII 39772 (ON SC), at para. 8; *Re Abitibiwater Inc.*, 2009 QCCS 6461 (CanLII) (QC SC), at paras 70-75; *Chacon*, at paras. 43-47.

<sup>9</sup> *Chacon*, at para. 45.

mortgage granted in favour of Meridian on title of the Real Property. Also, the amount of the indebtedness or debt owed by the Debtor to Meridian exceeds the proposed distribution. That is, the proposed distribution to Meridian will be less than the amount outstanding on the loan to the Debtor. Finally, by repaying a portion of the outstanding loan, there will be interest savings.

### **Discharge of the Receiver**

29. The activities of the Receiver are described in detail in the First Report and Confidential Supplement. After the completion of the Transaction and the required payouts, holdback and distribution are made as set out in the First Report, the Receiver will have substantially completed its mandate as contemplated by the Receivership Order and the *Bankruptcy and Insolvency Act (Canada)* (the "**BIA**") and respectfully submits that it is appropriate to discharge the Receiver upon the filing of its discharge certificate.

30. Prior to filing its discharge certificate, the Receiver will complete its duties and responsibilities including by (i) ensuring that the amounts to be paid, reserved or distributed as ordered by this Court in these proceedings are paid, reserved or distributed; (ii) ensuring that the amounts secured by the Receiver's Charge under the Receivership Order regarding the Receiver's Fees and Counsel's Fees, as described in the First Report, are paid in full; and (iii) preparing and filing its final report pursuant to section 246 of the BIA.

31. Upon the above payment, reservation or distribution of funds being made by the Receiver, there will be no remaining material assets subject to this receivership.

32. The Receiver respectfully submits that it is appropriate to grant a release in its favour. In *Pinnacle v. Kraus*<sup>10</sup>, in a decision granting the discharge of a court-appointed receiver and a release on the same terms as sought herein, Pattillo J. wrote:

The release is a standard term in the Commercial List model order of discharge. In my view, in the absence of any evidence of improper or negligent conduct on the part of the Receiver, the release should issue. A receiver is entitled to close its file once and for all.

**PART IV – ORDER REQUESTED**

33. For the reasons set out above, the Receiver respectfully requests the relief sought in the First Report.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 19<sup>th</sup> day of February, 2026.



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Vern W. DaRe

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<sup>10</sup> [\*Pinnacle v. Kraus\*](#), 2012 ONSC 6376 (CanLII), at para. 47.

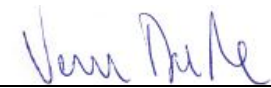
## SCHEDULE "A"

### LIST OF AUTHORITIES

1. [Royal Bank of Canada v. Soundair Corporation](#), 1991 CanLII 2727 (Ont. C.A.)
2. [Sierra Club of Canada v. Canada \(Minister of Finance\)](#), 2002 SCC 41 (CanLII) [2002] 2 S.C.R. 522 (SCC)
3. [Sherman Estate v. Donovan](#), 2021 SCC 25 (CanLII)
4. [Royal Bank of Canada v. Walker Hall Winery Ltd.](#), 2011 ONSC 638 (CanLII)
5. [Bank of Nova Scotia v. Diemer](#), 2014 ONCA 851(CanLII) (Ont. C.A.)
6. [Re Windsor Machine & Stamping Ltd.](#), 2009 CanLII 39772 (ON SC)
7. [Re Abitibiwater Inc.](#), 2009 QCCS 6461 (CanLII) (QC SC)
8. [Pinnacle v. Kraus](#), 2012 ONSC 6376 (CanLII)
9. [First Source Financial Management v. Chacon Strawberry Fields Inc.](#), 2024 ONSC 7229 (CanLII)

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

Date: February 19, 2026



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Vern W. DaRe

## **SCHEDULE “B”**

### **TEXT OF STATUTES**

#### ***Courts of Justice Act, R.S.0.1990, 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**

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, R.S.C. 1985, c B-3***

##### **Court may appoint receiver**

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

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

##### **Restriction on appointment of receiver**

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

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

##### **Definition of “receiver”**

- (2) Subject to subsections (3) and (4), in this Part, “receiver” means a person who
  - (a) is appointed under subsection (1); or

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

### **Definition of “receiver” — subsection 248(2)**

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

### **Trustee to be appointed**

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

### **Place of filing**

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

### **Orders respecting fees and disbursements**

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

### **Meaning of “disbursements”**

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

1992, c. 27, s. 89;  
 2005, c. 47, s. 115;  
 2007, c.36, s. 58.

**MERIDIAN CREDIT UNION LIMITED**  
Applicant

-and- **GARDEN VILLA RETIREMENT RESIDENCE INC.**  
Respondent

Court File No. CV-23-00093034-0000

***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT  
OTTAWA

**FACTUM OF THE RECEIVER**

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