Court File No. CV-24-00723897-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF Section 101 of the Courts of Justice Act, R.S.O. 1990 c.C.43, as amended, and in the matter of Section 243(1) of the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended

B E T W E E N :

NATIONAL BANK OF CANADA

Applicant

\- and -

COMMCACHE ASSET MANAGEMENT INC. and 52 LACROIX INC.

Respondents

FACTUM OF THE RECEIVER
(returnable September 3, 2026)

August 24, 2026

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as at August 14, 2026

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PART 1 – OVERVIEW

1. BDO Canada Limited ("**BDO**"), in its capacity as the court-appointed receiver (the "**Receiver**") of certain assets, undertakings and properties (the "**Property**") of Commcache Asset Management Inc. ('**Commcache**") and 52 Lacroix Inc. ("**52 Lacroix**", and together with Commcache, the "**Debtors**") submits this factum in support of its motion returnable September 3, 2026, for the following relief, among other things:

(a) an Approval and Vesting Order, among other things, approving the sale transaction ("**Transaction**") contemplated by the Agreement of Purchase and Sale, dated June 8, 2026 between the Receiver and 1000162469 Ontario Inc. ("**1000 Ontario**"), as assigned by 1000 Ontario to 581 Cataraqui Inc. (the "**Purchaser**"), and amended (the "**Sale Agreement**"), and vesting Commcache's right, title and interest to the Windsor Property (as defined below) in and to the Purchaser;

(b) approving the proposed interim distribution to the National Bank of Canada ("**National Bank**");

(c) approving the Receiver's Fourth Report to the Court dated August 14, 2026 (the "**Fourth Report**"), and the activities described therein;

(d) approving the fees and disbursements of the Receiver and its counsel; and

(e) sealing the Confidential Appendices to the Fourth Report.

PART II – THE FACTS

Background

2. Upon the application of National Bank, pursuant to the Order of the Honourable Justice Conway, dated August 14, 2024 (the "**Receivership Order**"), BDO was appointed as the Receiver of the Property.

Receivership Order, dated August 14, 2024, attached as Appendix "A" to the Fourth Report.

3. At the date of the Receivership Order, the Debtors owned five residential, multi-plex apartment buildings located in various cities in Ontario. Commcache owned four of the buildings, and is the owner of the real property municipally known as 800 Howard Avenue and 581 Cataraqui Street, Windsor, Ontario (the "**Windsor Property**"). The Windsor Property is a 3.5-story, eighteen (18) unit apartment building.

Fourth Report of the Receiver, dated August 16, 2026, para 8 [Fourth Report].

4. National Bank, the first mortgagee, holds a mortgage/charge in the principal amount of $3,240,000 (the "**National Bank Charge**") and general assignment of rents (the "**GAR**"), both of which were registered against the Windsor Property on August 4, 2023.

Fourth Report, para 29.

5. As of August 11, 2026, National Bank's indebtedness in respect of the Windsor Property totaled $3,235,747. It is expected that National Bank will suffer a shortfall in the repayment of its indebtedness.

Fourth Report, para 42.

Windsor Property

6. The Receiver engaged Royal Lepage North Heritage Brokerage as the sales agent for the Windsor Property (the "**Listing Agent**") on February 7, 2025. The marketing of the Windsor Property commenced on or about that same date and included listing the Windsor Property on MLS.

Fourth Report, paras 17-18.

7. During the marketing process, the Receiver received two (2) conditional offers for the Windsor Property, and one non-binding letter of intent.

Fourth Report, para 19.

8. On June 8, 2026, the Receiver entered into the Sale Agreement with the Purchaser, which contained a number of conditions, including the completion of the Purchaser's due diligence. The

Sale Agreement did not grant the Purchaser any right of exclusivity. Accordingly, the Receiver continued to market the Windsor Property while the Purchaser completed its due diligence.

Fourth Report, para 20.

9. On July 29, 2026, the Receiver and the Purchaser entered into an amending agreement, which amended the Sale Agreement to: i) remove certain conditions, and ii) reduce the purchase price.

Fourth Report, para 21.

10. The Receiver is seeking approval of the Sale Agreement and the Transaction contemplated therein.

11. The Receiver also requests approval of an interim distribution of the anticipated sale proceeds of the Windsor Property to National Bank. Additionally, the Receiver requests authority to make a further distribution of the remaining net sale proceeds from the sale of the King Street Property, and authority to make further distributions without further Court Order.

PART III – THE ISSUES

12. The issues before this Honourable Court are whether to:

(a) grant the Approval and Vesting Order in respect of the Windsor Property;

(b) approve the interim distribution of the sale proceeds of the Windsor Property;

(c) approve the Fourth Report and the activities of the Receiver;

(d) approve the fees of the Receiver and its counsel; and,

(e) grant a sealing order in respect of the confidential appendices to the Fourth Report.

PART IV – LAW & ARGUMENT

The Sale Agreement Should be Approved

13. The Receiver requests an Approval and Vesting Order pursuant to s. 243 of the *Bankruptcy and Insolvency Act* (Canada) and s. 100 of the *Courts of Justice Act* (Ontario), approving the Sale Agreement and vesting the Windsor Property in and to the Purchaser.

> ***Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s. 243.**
>
> ***Courts of Justice Act*, RSO 1990, c C.43, s. 100.**

14. Pursuant to the Receivership Order, among other things, the Receiver was authorized to:

(a) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may seem appropriate; and

(b) 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 the Property or any parts or parts thereof.

> **Receivership Order, dated August 14, 2024, attached as Appendix "A" to the Fourth Report.**

15. The Courts place a large degree of confidence in the actions taken and in the opinions formed by the receiver. They assume that the receiver is acting properly unless the contrary is clearly shown.

> ***Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA), para. 14 [*Soundair*].**
>
> ***Regal Constellation Hotel Ltd., Re*, 2004 CanLII 206 (ON CA), para 23.**

16. The Court will support a receiver's decision so long as it is within the bounds of reasonableness and it proceeds fairly. The Court will only intervene and proceed contrary to a receiver's recommendation in the most exceptional circumstances. It is important that prospective

purchasers know that if they act in good faith, bargain seriously and enter into an agreement with the receiver, the Court will not lightly interfere with the receiver's commercial judgment.

> ***Ravelston Corp. (Re)*, 2005 CanLII 63802 (ON CA), para 40;**
>
> ***Soundair*, paras. 21 & 46.**

The *Soundair* Principles are Met

17. The Courts consider the following principles to determine whether to approve a sale transaction in a receivership:

(a) whether the receiver 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 the offers are obtained; and,

(d) whether there has been unfairness in the working out of the process.

> ***Soundair*, para. 16.**

(A) The Receiver made a Sufficient Effort to get the Best Price and Has Not Acted Improvidently

18. With the assistance of the Listing Agent, the Receiver has made sufficient efforts to get the best price for the Windsor Property.

> **Fourth Report, paras 17-18.**

19. The Windsor Property was widely marketed by the Listing Agent for a period for approximately 18 months. It was listed on MLS and advertised for sale on local and national websites and also social media channels. In response to prospective purchaser feedback, market conditions, recommendations from the Listing Agent, and the appraised value of the Windsor Property, Receiver approved four (4) price reductions during the marketing process.

> **Fourth Report, para 24.**

20. All prospective purchasers had an opportunity to participate in the sale process. A total of fourteen (14) interested parties executed non-disclosure agreements, and two (2) offers (and one non-binding letter of intent) were received for the Windsor Property.

Fourth Report, paras 18-19.

21. The purchase price for the Transaction is superior to the only other offer received for the Windsor Property, is reasonable in these circumstances and is supported by the appraisal.

Fourth Report, para 26.

22. There is no indication that further exposure to the market will result in an offer superior to the Purchaser's offer.

Fourth Report, para 26.

23. There is no suggestion that in marketing the Windsor Property the Receiver in any way acted improvidently.

(B) The Sale Agreement is in the Interests of All Parties

24. The Sale Agreement and the Transaction contemplated therein is in the interests of the Debtors and their stakeholders for the following reasons:

(a) National Bank, the senior secured creditor with a mortgage registered against the Windsor Property, is expected to suffer a material shortfall and supports the approval of the Transaction and the Sale Agreement;

(b) Canadian Mortgage and Housing Corporation ("**CMHC**"), the guarantor of the National Bank Charge, also supports the Transaction;

(c) pursuant to the terms of the Sale Agreement, the Purchaser will assume all of the remaining leases/tenants of the Windsor Property; and,

(d) the Sale Agreement does not include any due diligence or other similar conditions that reduce the risk of the Transaction not being completed.

Fourth Report, para 23 & 26.

25. The Transaction is on an "as is, where is" basis, with standard closing conditions for a receivership sale.

Fourth Report, para 23.

(C) The Efficacy and Integrity of the Process

26. The sale process was undertaken by the Listing Agent with the supervision of the Receiver, and conducted in a commercially reasonable manner. It provided for a sufficient and fair opportunity for interested parties to participate in the process, and maximized recovery for creditors.

Fourth Report, paras 18, 24 & 26.

27. Both National Bank, the first mortgagee on the Windsor Property, and CMHC, were consulted during the marketing of the Windsor Property, and were consulted regarding consideration of offers.

Fourth Report, para 26.

28. The marketing efforts of the Listing Agent were sufficient and appropriate to attract the interest of prospective buyers and investors, based on the nature and condition of the Windsor Property and market conditions.

Fourth Report, para 26.

(D) No Unfairness in the Working Out of the Process

29. The Receiver, with the assistance of the Listing Agent, undertook the marketing process in good faith and commercially reasonable manner. The Windsor Property was broadly marketed for 18 months and all prospective purchasers had an equal opportunity to participate in the process.

Fourth Report, para 24.

30. Accordingly, for the reasons discussed herein, the principles of *Soundair* have been met, and the Receiver respectfully requests the Court's approval of the Sale Agreement.

Interim Distribution

31. The Receiver seeks approval of an interim distribution of the anticipated sale proceeds from the Transaction to National Bank, as the first mortgagee.

Fourth Report, para 42.

32. The Receiver expects to have enough cash on hand, less a reserve, to make an interim distribution of $1,120,000 to National Bank. It is expected that National Bank will suffer a shortfall on its indebtedness.

Fourth Report, para 42.

33. National Bank holds valid and enforceable security against the Windsor Property in the form of the National Bank Charge and GAR. The Receiver submits that the interim distribution is appropriate at this time.

Fourth Report, paras 29, 30 & 46.

34. The Receiver also seeks an Order declaring that the Receiver shall not incur any liability under any Tax Statutes and releasing and discharging the Receiver from any claims against it under or pursuant to the Tax Statutes or otherwise at law arising as a result of the payment of the Distributions.

35. The Receiver requests this protection as the Tax Statutes arguably include provisions that are broad enough to impose personal liability on the Receiver if the Receiver distributes property of the Debtors without first obtaining a clearance certificate from the CRA. This Court has recently recognized that obtaining a clearance certificate each time a Court officer is distributing money in accordance with a Court order is not a realistic solution to this problem in insolvency situations.

***One Bloor West Toronto Group (The One) Inc. (Re),* 2026 ONSC 1854, paras. 34, 35 and 37 [*One Bloor West*].**

36. In *One Bloor West,* this Court explained that:

> [43] There is no question that this court has the jurisdiction to protect its officers from liability. The Initial Order in this case - like virtually every order appointing a court officer - provides that the Monitor and the CRO cannot be personally liable except for gross negligence or wilful

> misconduct. This eliminates liability under any statute or common law principle that does not involve gross negligence or wilful misconduct.
>
> [44] The Court of Appeal noted (citing from the model receivership order), a court officer "is not a legitimate target" for dissatisfied creditors. This "limited liability shield" allows for the "proper and orderly conduct" of the insolvency proceeding and avoids "unnecessary and unjustified proceedings": see *Potentia Renewables Inc. v. Deltro Electric Ltd.*, 2019 ONCA 779, 73 C.B.R. (6th) 165, at para. 48. Providing a limited liability shield against the potential for court officers incurring personal liability for carrying out court-approved actions is the rationale for this type of relief having been granted in other cases and the same rationale applies in this case.

***One Bloor West,* paras. 43 and 44.**

37. The protection sought by the Receiver in the draft Order serves an important role of ensuring that the Receiver is not held personally liable for making the Distributions "in circumstances where there is a statutory framework under the Tax Statutes that creates a risk of such liability."

***One Bloor West,* para. 51.**

38. The relief sought by the Receiver does not ask the Court to extinguish the entitlement of any tax authorities to be paid taxes owing or to override either the provincial or federal Tax Statutes. Rather, the Receiver is simply asking the Court to shield the Receiver, a Court-appointed officer, from personal liability for not withholding tax when making a Court-authorized distribution.

***One Bloor West,* para. 53.**

39. It is expected that National Bank will suffer a shortfall on its indebtedness in relation to the Windsor Property. In order to avoid the necessity of further Court appearances, the Receiver requests authority to make further interim distributions at its discretion.

Professional Fees

40. The role of the Court on a motion to pass accounts is to evaluate them on the basis of the overriding principle of reasonableness. The following factors set out by the Court of Appeal in *Confectionately Yours Inc. (RE),* provide guidance on how to evaluate the quantum of fees:

(a) the nature, extent and value of the assets handled;

(b) the complications and difficulties encountered;

(c) the degree of assistance provided by the debtor company, its officers or its employees;

(d) the time spent, the receiver's knowledge, experience and skill;

(e) the diligence and thoroughness displayed;

(f) the responsibilities assumed;

(g) the results of the receiver's efforts; and

(h) the cost of comparable services when performed in a prudent and economical manner.

***Confectionately Yours Inc. (Re),* 2002 ONCA 45059 at para 45.**

41. Justice Osborne (as he then was) noted:

> While the above factors, including time spent, should be considered, value provided should predominate 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. The measurement of accomplishment may include consideration of complications and in difficulties encountered in the receivership (Diemer, at para. 45)

***Triple-I Capital Partners Limited v 12411300 Canada Inc.,* 2023 ONSC 3400 at para 26.**

42. The Court has also recognized a presumption that court-appointed officers will be entitled to recover their actual costs, absent evidence of extraordinary circumstances.

***Sub-Prime Mortgage Corp. v. Phoenix Apartments Ltd*., 2010 ONSC 6535 at para. 17.**

43. The activities of the Receiver described in the Fourth Report were necessary and undertaken in good faith pursuant to the Receiver’s duties and powers, and in each case, were in the best interests of the stakeholders generally. The Receiver has, at all times, carried out its duties with appropriate care, skill, and diligence.

44. The Receiver and its counsel have separately accounted for the fees and disbursements incurred in respect of Commcache and 52 Lacroix. The fees were incurred at the respective party's standard rates with certain counsel charging discounted rates, and are fair, reasonable and justified in the circumstances. Further, the fees and disbursements sought accurately reflect the work done by the Receiver and its counsel in connection with the receivership.

> **Affidavit of Adam Boettger, sworn August 10, 2026, Fourth Report, App. N.**
>
> **Affidavit of John Salmas, sworn August 13, 2026, Fourth Report, App. O.**

45. The Receiver respectfully submits that the Receiver's fees and disbursements and those of its legal counsel detailed in the Fourth Report should be approved.

Receiver's Activities

46. There are good policy and practical reasons for the Court to approve the activities of court officers, including receivers.

> ***Re Target Canada Co*., 2015 ONSC 7574, at paras 22 and 23.**
>
> ***Re Hangfen Evergreen Inc*., 2017 ONSC 7161, at para 15.**

47. The activities of the Receiver, as detailed in the Fourth Report, were necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order and were in the best interests of the Debtors' stakeholders generally.

48. The Receiver respectfully submits that the Fourth Report and the Receiver's activities described therein should be approved.

Sealing Order

49. The test for a sealing order, as set out in the Supreme Court of Canada decision of *Sierra Club of Canada v. Canada (Minister of Finance)*, and modified in the decision of *Sherman Estate v. Donovan,* has been met.

> ***Sierra Club of Canada v. Canada (Minister of Finance),* 2002 SCC 41 (CanLII), para 53 [*Sierra Club*]**
>
> ***Sherman Estate v. Donovan,* 2021 SCC 25 (CanLII), para 38.**

50. The information contained in the Confidential Appendices to the Fourth Report, including the appraised value of the Windsor Property and the summary of offers, is commercially sensitive and, if publicly disclosed, could materially and negatively impair the ability of the Receiver to market the Windsor Property to other interested parties and obtain the highest and best price if the Sale Agreement is not approved or the Transaction does not close. Granting a time-limited sealing order maintains public confidence in the efficacy of the insolvency regime, which is an important public interest that should be protected.

Fourth Report, para 61.

51. Protecting the commercially sensitive nature of the Confidential Appendices outweighs any deleterious effects of the sealing order, and no reasonable alternative measure is available. The benefits of a sealing order outweigh its negative effects.

***Sierra Club*, para 53.**

52. Accordingly, the Receiver requests an order that the Confidential Appendices to the Fourth Report be sealed and kept confidential and not form part of the public record until the closing of the Transaction in respect of the Windsor Property or further order of this Honourable Court.

PART V – ORDER SOUGHT

53. The Receiver requests Orders granting the relief sought in its Notice of Motion, dated August 14, 2026.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

August 24, 2026

Dentons Canada LLP

DENTONS CANADA LLP
Lawyers for BDO Canada Limited in its capacity as court-appointed receiver of Commcache Asset Management Inc. and 52 Lacroix Inc.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA)

2. *Regal Constellation Hotel Ltd., Re*, 2004 CanLII 206 (ON CA)

3. *Ravelston Corp. (Re)*, 2005 CanLII 63802 (ON CA)

4. *One Bloor West Toronto Group (The One) Inc. (Re),* 2026 ONSC 1854

5. *Confectionately Yours Inc. (Re),* 2002 CanLII 45059 (ON CA)

6. *Triple-I Capital Partners Limited v 12411300 Canada Inc*., 2023 ONSC 3400 (CanLII)

7. *Sub-Prime Mortgage Corporation v. Phoenix Apartments Ltd*., 2010 ONSC 6535 (CanLII)

8. *Re Target Canada Co.*, 2015 ONSC 7574

9. *Re Hangfen Evergreen Inc.*, 2017 ONSC 7161

10. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (CanLII)

11. *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII)

I certify that I am satisfied as to the authenticity of every authority and every quotation from an authority that appears in the factum accurately reproduces the text of the authority.

August 24, 2026

SCHEDULE "B"
STATUTES AND REGULATIONS

Bankruptcy and Insolvency Act, RSC 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.

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

Vesting orders

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

Court File No.: CV-24-00723897-00CL

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Applicant **Respondents**

ONTARIO

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDING COMMENCED AT TORONTO

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