

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**BANK OF MONTREAL**

Applicant

- and -

**11977636 CANADA INC.**

Respondent

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

**FACTUM OF THE RECEIVER  
(Motion returnable October 2, 2025)**

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**Lawyers for the Court-appointed Receiver,  
msi Spergel inc.**

**TO: THE SERVICE LIST**

## FACTUM OF THE RECEIVER

### PART I – OVERVIEW

1. msi Spergel inc. (“**Spergel**”), in its capacity as Court-appointed receiver (the “**Receiver**”) of the assets, undertakings and properties of 11977636 Canada Inc. (“**1197**” or the “**Debtor**”), including the real property known municipally as 5641 Nauvoo Road, Watford, Ontario (the “**Nauvoo Property**”), brings a motion for the following order:

- (a) an approval and vesting order (the “**AVO**”):
  - (i) if necessary, abridging the time for service and filing of the Notice of Motion and the Motion Record of the Receiver, and dispensing with service on any person other than those served;
  - (ii) approving the sale of the Nauvoo Property (the “**Transaction**”) contemplated by an agreement of purchase and sale dated July 30, 2025 (the “**Sale Agreement**”) between the Receiver and Lakeshore Rentals Ltd. (the “**Purchaser**”), and authorizing the Receiver to take all steps and execute all documentation necessary to complete the Transaction;
  - (iii) vesting in the Purchaser all right, title, and interest of 1197 in the Nauvoo Property, free and clear of encumbrances except as permitted by the Sale Agreement;
  - (iv) sealing Confidential Appendices “1”, “2”, “3” and “4” (the “**Confidential Appendices**”) of the Second Report of the Receiver dated September 18, 2025 (the “**Second Report**”) until the earlier of completion of the Transaction or further order of this Court; and

- (b) a distribution and discharge order (the “**Distribution and Discharge Order**”):
- (i) approving the Second Report and the Receiver’s activities described therein;
  - (ii) approving the fees and disbursements of the Receiver and of its counsel, Chaitons LLP (“**Chaitons**”), as set out in the Second Report;
  - (iii) approving an accrual of \$44,750 (excluding HST and disbursements) (the “**Fee Accrual**”) for professional fees incurred or to be incurred by the Receiver and Chaitons, in completing the remaining duties and administration of these receivership proceedings;
  - (iv) ordering that neither the Receiver nor Chaitons shall be required to pass their accounts for any further fees and disbursements, up to the amount of the Fee Accrual, incurred in connection with the completion of the Receiver’s remaining duties and administration of these receivership proceedings;
  - (v) approving the Receiver’s Interim Statement of Receipts and Disbursements as at September 15, 2025;
  - (vi) authorizing and directing the Receiver, subject to payment of the professional fees and disbursements of the Receiver and Chaitons, and subject to maintaining the Fee Accrual, to make the distributions recommended in the Second Report;
  - (vii) authorizing and directing the Receiver to pay any balance remaining in the Fee Accrual, to AKS Finance Inc.;

- (viii) effective upon the filing of a certificate (the “**Discharge Certificate**”) certifying that all matters to be attended to in connection with these receivership proceedings have been completed to the Receiver’s satisfaction, discharging Spergel as the Receiver; and
- (ix) upon the filing of the Discharge Certificate, releasing and discharging Spergel from all liability arising out of Spergel acting in its capacity as Receiver, except for any gross negligence or wilful misconduct.

2. Capitalized terms not defined in this Factum have the meaning defined in the Second Report.

## PART II – FACTS

### Background

3. 1197 is a federal corporation extra-provincially registered in Ontario, with its registered head office located at 18 Blossom Lane, Hamilton, Ontario.<sup>1</sup>

4. Pursuant to an order (the “**Appointment Order**”) of the Honourable Justice Valente of the Ontario Superior Court of Justice dated February 11, 2025, Spergel was appointed Receiver over all of the assets, property and undertakings of 1197.<sup>2</sup> At that time, 1197 was the registered owner of two real properties subject to these proceedings: (i) the Nauvoo Property; and (ii) 652 Parkdale Avenue North, Hamilton, Ontario (“**652 Parkdale**” and, together with the Nauvoo Property, the “**Real Properties**”).<sup>3</sup>

5. On July 9, 2025, the Court granted an Approval and Vesting Order in respect of 652 Parkdale, which, among other things, approved the Receiver’s first report to the Court and the sale transaction

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<sup>1</sup> Second Report of the Receiver dated September 18, 2025 (the “**Second Report**”) at para 2, MR Tab 2

<sup>2</sup> Second Report at para 4, MR Tab 2; Appendices “1” and “2” to the Second Report, MR, Tabs 2(1) and 2(2).

<sup>3</sup> Second Report at para. 2, MR Tab 2.

for 652 Parkdale.<sup>4</sup> The Court also granted an Ancillary Order (the “**Parkdale Ancillary Order**”), approving the distribution of the net sale proceeds as proposed by the Receiver.<sup>5</sup> The sale transaction for 652 Parkdale closed on August 15, 2025, and the Receiver distributed the proceeds in accordance with the Parkdale Ancillary Order.<sup>6</sup>

### **The Sale Process**

6. The Appointment Order authorized the Receiver to market 1197’s assets, including advertising and soliciting offers for the assets, and negotiating such terms and conditions of sale as the Receiver, in its discretion, considers appropriate.<sup>7</sup>

7. The Receiver obtained appraisals of the Nauvoo Property from: (i) Colliers International Realty Advisors Inc. on March 31, 2025; and (ii) Wagner Andrews Kovacs Real Estate Valuation on July 2, 2025.<sup>8</sup>

8. On March 31, 2025, the Receiver entered into an MLS listing agreement with Cushman & Wakefield (the “**Listing Agreement**”) to market the Nauvoo Property.<sup>9</sup>

9. The Receiver, together with Cushman, implemented a sale process for the Nauvoo Property (“**Sale Process**”) designed to be fair and reasonable, and to provide prospective purchasers a reasonable opportunity to submit offers.<sup>10</sup>

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<sup>4</sup> Second Report at para 8, MR, Tab 2; Appendices “5” and “7” to the Second Report, MR, Tabs 2(5) and 2(7).

<sup>5</sup> Second Report at para 8, MR, Tab 2; Appendices “6” and “7” to the Second Report, MR, Tabs 2(6) and 2(7).

<sup>6</sup> Second Report at para 15, MR, Tab 2.

<sup>7</sup> Second Report at para 16, MR, Tab 2.

<sup>8</sup> Second Report at para 17, MR, Tab 2; Confidential Appendices “2” and “3” to the Second Report.

<sup>9</sup> Second Report at para 18, MR, Tab 2; Appendix “9” to the Second Report, MR, Tab 2(9).

<sup>10</sup> Second Report at para 19, MR, Tab 2.

10. Cushman widely marketed the Nauvoo Property to generate maximum interest.<sup>11</sup> During the Sale Process: six (6) parties made inquiries; one (1) non-disclosure agreement was executed; two (2) property tours were conducted; and two (2) offers were received.<sup>12</sup> The Receiver then negotiated the purchase price and the terms of the Sale Agreement with the Purchaser, and ultimately accepted the Purchaser's offer.<sup>13</sup>

### **The Sale Agreement**

11. The salient terms of the Sale Agreement include:<sup>14</sup>

- (a) The Purchased Assets include all of the Debtor's right, title and interest in the Nauvoo Property, the Fixtures and Chattels, and the Assumed Contracts;
- (b) the Nauvoo Property is sold on an "as is, where is" basis, with limited representations and warranties;
- (c) the Sale Agreement is conditional on the issuance of the AVO, vesting title in the Purchaser free and clear of all claims and encumbrances, other than permitted encumbrances; and
- (d) closing is to occur: (i) eleven (11) days after the AVO is granted, or (ii) such other date as agreed in writing by the Receiver and the Purchaser.

12. The Sale Agreement became firm on August 11, 2025.<sup>15</sup>

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<sup>11</sup> Second Report at para 20, MR, Tab 2; Appendix "10" to the Second Report, MR, Tab 2(10).

<sup>12</sup> Second Report at para 21, MR, Tab 2; Confidential Appendix "4" to the Second Report.

<sup>13</sup> Second Report at para 22, MR, Tab 2; Appendix "11" to the Second Report, MR, Tab 2(11).

<sup>14</sup> Second Report at para 24, MR, Tab 2; Confidential Appendix "1" to the Second Report.

<sup>15</sup> Second Report at para 23, MR, Tab 2; Appendix "12" to the Second Report, MR, Tab 2(12).

13. The Nauvoo Property contains an affixed photovoltaic panel owned by Agris Solar Cooperative Inc. The parcel register for the Nauvoo Property discloses notices in favour of Agris Solar and Farm Credit Canada (the “**Notices**”). The Purchaser has agreed to accept title to the Nauvoo Property subject to the Notices as permitted encumbrances.<sup>16</sup>

14. The Bank of Montreal (“**BMO**”), the Debtor’s first-ranking mortgagee, supports the completion of the Transaction.<sup>17</sup>

### **Sealing of the Confidential Appendices**

15. The Receiver seeks an order sealing the unredacted Sale Agreement, appraisals and offer summary pending completion of the Transaction or further order of the Court.<sup>18</sup>

16. The Confidential Appendices contain commercially sensitive information which, if disclosed before closing, could impair the future marketability of the Nauvoo Property and jeopardize the sale value.<sup>19</sup>

17. A redacted copy of the Sale Agreement has been filed in the public record, limiting the sealing request to only what is necessary to preserve the integrity of the Receiver’s realization efforts for the Nauvoo Property.<sup>20</sup> No party will be prejudiced if the information is sealed at this time. Accordingly, the Receiver believes the proposed sealing order is appropriate.<sup>21</sup>

### **Professional Fees and Fee Accrual**

18. Between May 10, 2025 and September 9, 2025, the Receiver expended a total of 65.55 hours

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<sup>16</sup> Second Report at paras 25-26, MR, Tab 2.

<sup>17</sup> Second Report at para 29, MR, Tab 2.

<sup>18</sup> Second Report at para 31, MR, Tab 2.

<sup>19</sup> *Ibid.*

<sup>20</sup> Appendix “11” to the Second Report, MR, Tab 2(11).

<sup>21</sup> Second Report at para 32, MR, Tab 2.

in connection with this matter, resulting in fees totaling \$33,863.59, (inclusive HST and disbursements) as detailed in the affidavit of Trevor Pringle sworn September 12, 2025.<sup>22</sup>

19. Between May 5, 2025 and August 31, 2025, the Receiver's legal counsel, Chaitons, expended a total of 93.6 hours in connection with this matter, resulting in fees and disbursements totaling \$37,402.47 (inclusive of HST and disbursements), as detailed in the affidavit of Maleeha Anwar sworn September 8, 2025.<sup>23</sup>

20. The Receiver estimates that the additional professional fees (exclusive of HST and disbursements) required to complete these proceedings will be<sup>24</sup>:

(a) \$25,000 plus HST and disbursements for the Receiver; and

(b) \$19,750 plus HST and disbursements for Chaitons.

21. The Receiver seeks approval of the Fee Accrual and an order dispensing with the requirement for the Receiver and Chaitons to pass their accounts in respect of any fees and disbursements incurred in completing the administration of these proceedings, up to the amount of the Fee Accrual.<sup>25</sup>

22. The Receiver also seeks authorization to pay any balance remaining of the Fee Accrual, after payment of all fees and disbursements of the Receiver and Chaitons incurred in connection with completing the Receiver's remaining duties and administration of these receivership proceedings, to AKS Finance Inc.<sup>26</sup>

## **Proposed Distributions**

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<sup>22</sup> Second Report at para 34, MR, Tab 2; Appendix "14" to the Second Report, MR, Tab 2(14).

<sup>23</sup> Second Report at para 35, MR, Tab 2; Appendix "15" to the Second Report, MR, Tab 2(15).

<sup>24</sup> Second Report at para 37, MR, Tab 2.

<sup>25</sup> Second Report at para 38, MR, Tab 2.

<sup>26</sup> Second Report at para 46, MR, Tab 2.



23. A title search of the Nauvoo Property discloses the following charges:<sup>27</sup>

- (a) a first mortgage in the principal amount of \$1,325,000.00 in favour of BMO; and
- (b) a second mortgage in the principal amount of \$250,000 in favour of AKS Finance.

24. Chaitons has provided the Receiver with an opinion which, subject to the customary assumptions and qualifications, confirms that BMO's security interests are valid and enforceable in Ontario.<sup>28</sup>

25. The Town of Warwick has a priority lien for property tax arrears in respect of the Nauvoo Property (the "**Tax Lien**"). A property tax statement issued by the Town of Warwick on July 15, 2025 confirms arrears of \$26,022.05.<sup>29</sup>

26. Pursuant to Teraview Bulletin No. 2024-02 (the "**Ministry Bulletin**"), specific language is required in an approval and vesting order to expunge the Tax Lien from title.<sup>30</sup> Paragraph 6 of the draft AVO includes this prescribed language, vesting out the Tax Lien in the same manner as all other claims.<sup>31</sup>

27. The Receiver received notice that \$24,639.65 is owed to His Majesty the King in Right of Ontario as represented by the Minister of Finance in relation to land transfer tax arrears in respect of the Nauvoo Property. A lien was registered by the Ministry of Finance for the land transfer tax arrears against 652 Parkdale and not against the Nauvoo Property.<sup>32</sup>

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<sup>27</sup> Second Report at para. 40, MR, Tab 2; Appendices "17" to "19" to the Second Report, MR, Tabs 2(17), 2(18) and 2(19).

<sup>28</sup> Second Report at para. 42, MR, Tab 2.

<sup>29</sup> Second Report at para. 43, MR, Tab 2; Appendix "20" to the Second Report, MR, Tab 2(20).

<sup>30</sup> [Ministry of Public and Business Service Delivery, Court Orders, Bulletin No. 2024-02 \(Ontario: Land Registry Services Branch, May 15, 2024\) at para 3\(a\).](#)

<sup>31</sup> Approval and Vesting Order at para 6, MR, Tab 3.

<sup>32</sup> Second Report at para. 44, MR, Tab 2; Appendix "21" to the Second Report, MR, Tab 2(21).

28. Subject to payment of professional fees and disbursements of the Receiver and Chaitons and maintaining the Fee Accrual, the Receiver recommends the following distributions (the “**Distributions**”):<sup>33</sup>

- (a) to the Town of Warwick in the amount of \$26,022.05 or such amount accrued at the closing of the Transaction for outstanding property tax arrears;
- (b) to His Majesty the King in Right of Ontario as represented by the Minister of Finance in the amount of \$24,639.65 or such amount accrued at the closing of the Transaction for outstanding land transfer tax;
- (c) to BMO, or such party as BMO might direct, up to the amount owing by 1197 to BMO;  
and
- (d) to AKS Finance Inc. or such party as AKS Finance Inc. might direct, up to the amount owing by 1197 to AKS Finance Inc.

29. Canada Revenue Agency (“**CRA**”) has a claim of \$15,302.61 for HST covering the period January 1, 2022 to February 11, 2025 (the “**CRA Claim**”). The CRA has not asserted any deemed trust in respect of this amount, and the CRA Claim therefore ranks behind all prescribed security interests.<sup>34</sup>

### **Discharge and Release**

30. Following closing of the Transaction, the Receiver will have monetized the Real Properties subject to these proceedings pursuant to the Appointment Order.<sup>35</sup>

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<sup>33</sup> Second Report at para. 45, MR, Tab 2.

<sup>34</sup> Second Report at para. 33, MR, Tab 2; Appendix “13” to the Second Report, MR, Tab 2(13).

<sup>35</sup> Second Report, para. 48, MR, Tab 2.

31. Upon completing its remaining duties and the filing of a certificate of discharge with the Court, the Receiver seeks an order discharging Spergel as Receiver of the Debtor's property, assets and undertakings.<sup>36</sup>

### **PART III – ISSUES**

32. The Receiver's motion raises the following issues:

- (a) Should the Court approve the Transaction and grant the AVO?
- (b) Should the Court seal the Confidential Appendices pending closing of the Transaction?
- (c) Should the Court approve the proposed Distributions?
- (d) Should the Court approve the Receiver's Second Report and the activities described therein?
- (e) Should the Court approve the fees and disbursements of the Receiver and its counsel?
- (f) Should the Court discharge and release of Spergel as Receiver?

### **PART IV – LAW AND ARGUMENT**

#### **The Transaction Should Be Approved and the AVO Should Be Granted**

33. The Appointment Order authorizes the Receiver to sell, convey, transfer, lease or assign the Debtor's property with the approval of the Court in respect of any transaction exceeding \$100,000.<sup>37</sup>

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<sup>36</sup> Second Report, para. 49, MR, Tab 2.

<sup>37</sup> Order of Justice Valente dated February 11, 2025 (the "**Appointment Order**"), Appendix "1" to the Second Report, MR, Tab 2(1) at para 3(k).

Section 100 of the CJA, as amended, authorizes this Court to grant an order vesting “in any person an interest in real or personal property that the Court has authority to order be conveyed”.<sup>38</sup> Accordingly, this Court has jurisdiction to grant the proposed AVO.

34. The following criteria are to be considered by the Court when asked to approve a sale of assets in a receivership context, as articulated by the Court of Appeal for Ontario in *Royal Bank of Canada v. Soundair Corp.* (“*Soundair*”):<sup>39</sup>

- (a) whether the party made a sufficient effort to obtain the best price and to not act improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which the party obtained offers; and
- (d) whether the working out of the process was unfair.

35. Deference is to be afforded to a receiver respecting its proposed sales process. Absent a violation of the *Soundair* principles or other exceptional circumstances, the court should uphold the business judgment of the receiver, as its court officer.<sup>40</sup>

36. It is respectfully submitted that the *Soundair* test is readily met on the facts of this case and that the AVO should be granted for the following reasons:<sup>41</sup>

- (a) the Sale Process was robust, transparent and conducted in a commercially reasonable manner, and sufficient efforts were made to maximize value of the Nauvoo Property;

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<sup>38</sup> *Courts of Justice Act*, RSO 1990, c. C.43, s. 100.

<sup>39</sup> *Royal Bank of Canada v Soundair Corp* (1991), 4 OR (3d) 1 at para 16; *Elleway Acquisitions Limited v 4358376 Canada Inc.*, 2013 ONSC 7009 at para 31.

<sup>40</sup> *Crown Trust Co et al v Rosenberg et al* (1986), 60 OR (2d) 87 at paras 83-84 (Sup Ct J).

<sup>41</sup> Second Report at paras. 27 to 30, MR, Tab 2.

- (b) the Nauvoo Property was sufficiently exposed to the market and widely marketed through Cushman's marketing efforts, including the MLS listing and outreach to Cushman's internal and external networks;
- (c) the terms and conditions of the Sale Agreement are commercially reasonable;
- (d) the purchase price falls within the appraised range of market value, as evidenced by the appraisals that were provided to the Court;
- (e) the Transaction provides for the greatest recovery available for stakeholders in the circumstances; and
- (f) the Transaction is supported by BMO, the Debtor's first- ranking mortgagee.

37. The Ministry of Finance has filed a writ of execution against the Debtor within the electronic database maintained by the County of Lambton (Sarnia). An execution search must be conducted against the Debtor before registering an Application for Vesting Order. Unless the writ of execution is addressed, the Nauvoo Property would vest in the Purchaser subject to any existing executions against the Debtor. To address the writ of execution, paragraph 6 of the AVO explicitly states that the Land Registrar shall vest title free and clear of, and without regard to, any relevant writs of executions that may have been filed against each and every registered owner of the Nauvoo Property either before or after the date of the AVO.<sup>42</sup> Paragraph 6 of the AVO is consistent with similar provisions found in numerous approval and vesting orders routinely granted by Ontario courts in receivership proceedings.<sup>43</sup>

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<sup>42</sup> Approval and Vesting Order at para 6, MR, Tab 3.

<sup>43</sup> [\*Royal Bank of Canada v. Unique Restoration Ltd., John Kennedy, Monica Kennedy, Steven Leblanc and Linda Leblanc\*, Court File No. CV-21-00655331-00-CL \[Order \(Approval and Vesting Order\)\] \(ODCJ\) \(Commercial List\) May 14, 2021. \*In The Matter of the Administration Proceedings of Carriage Hills Vacation Owners Association\*, Court File No. CV-20-00640265-00CL \[Order \(Approval and Vesting Order\)\] \(OSCJ\) \(Commercial List\) May 27, 2021; \*Dorr Capital Corporation\*](#)

## The Sealing Order Should Be Granted

38. The Supreme Court of Canada has held that a sealing order may be granted:

- (a) where it is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- (b) where the salutary effects of the confidentiality outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.<sup>44</sup>

39. In *Sherman Estate v. Donovan*, the Supreme Court of Canada held that a person asking a court to exercise discretion in limiting the ‘open court’ presumption must establish that:<sup>45</sup>

- (a) court openness poses a serious risk to public interest;
- (b) the order sought is necessary to prevent the 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.

40. This Court has applied the *Sierra* test in court-supervised sale proceedings to ensure that competitors or potential bidders do not gain an advantage if a proposed sale transaction does not close.

In *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, this Court held

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[v. Stateview Homes \(BEA Towns\) Inc., Court File No. CV-23-00698637-00CL\[Order \(Approval and Vesting Order\)\] \(OSCJ\) \(Commercial List\) January 17, 2025](#)

<sup>44</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41, [2002] 2 SCR 522 at para 45.

<sup>45</sup> *Sherman Estate v. Donovan*, 2021 SCC 25, [2021] 2 SCR 75 at para 38.

that the “integrity of the sales process necessitates keeping all bids confidential until a final sale of the assets has taken place.”<sup>46</sup>

41. The Confidential Appendices to the Second Report consist of the unredacted Sale Agreement, the appraisals obtained by the Receiver and the Offer Summary.<sup>47</sup> A redacted version of the Sale Agreement was attached to the Second Report and the only redactions contained therein relate to the purchase price and the deposit.<sup>48</sup>

42. The Confidential Appendices contain confidential and commercially sensitive information, including the purchase price information and other critical commercial information, the disclosure of which prior to the closing of the Transaction could adversely impact the future marketability of the Nauvoo Property should the Transaction not close.<sup>49</sup>

43. The Receiver is not aware of any party that will be prejudiced if the Confidential Appendices are sealed.<sup>50</sup> The proposed sealing order is limited in scope and is temporally limited to the closing of the Transaction. Accordingly, the Receiver submits that the sealing order is proportional in the circumstances and the benefits of preserving the confidential information pending closing of the Transaction outweigh any negative effects.

### **The Proposed Distributions Should Be Approved**

44. The Appointment Order provides that all funds received or collected by the Receiver, including without limitation, from the sale of all or any of the Property (as defined in the Appointment

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<sup>46</sup> [\*GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.\*, 2014 ONSC 1173](#) at para 34.

<sup>47</sup> Confidential Appendices “1”, “2”, “3” and “4” to the Second Report.

<sup>48</sup> Appendix “11” to the Second Report.

<sup>49</sup> Second Report at para. 31, MR, Tab 2.

<sup>50</sup> Second Report at para. 32, MR, Tab 2.

Order), shall be held by the Receiver to be paid in accordance with the terms of the Appointment Order or any further order of the Court.<sup>51</sup>

45. Orders granting distributions, including interim distributions, are routinely granted in insolvency proceedings, including receiverships.<sup>52</sup>

46. The Receiver obtained an opinion from its counsel regarding the validity of the BMO's security. The legal opinion stated that subject to the customary qualifications and assumptions set out therein, the security held by BMO is valid.<sup>53</sup>

47. As described in the Second Report, the Fee Accrual is sufficient to fund the fees and disbursements of the Receiver and Chaitons required to complete the administration of these proceedings.<sup>54</sup>

48. The Receiver recommends approval of the Distributions proposed in the Second Report for the reasons set out above in paragraphs 28 to 32.

### **The Second Report and the Activities of the Receiver Should Be Approved**

49. The Court has the inherent jurisdiction to review and approve the activities of a court-appointed receiver as set out in the receiver's reports.<sup>55</sup>

50. It is common practice for court officers to bring motions to seek approval of their reports and the activities set out therein. Court approval, among other things, allows the court officer to bring its

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<sup>51</sup> Appointment Order, Appendix "1" to the Second Report, MR, Tab 2(1) at para. 13.

<sup>52</sup> [\*Ontario Securities Commission v Bridging Income Fund LP\*, 2022 ONSC 4472](#) at paras 8-10; [\*AbitibiBowater inc \(Arrangement relatif à\)\*, 2009 QCCS 6461](#) at para 71 [\*GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.\*, supra note 46 at para 53.](#)

<sup>53</sup> Second Report at para. 42, MR, Tab 2.

<sup>54</sup> Second Report at para. 37, MR, Tab 2.

<sup>55</sup> [\*Bank of America Canada v Willann Investments Ltd\*, 1996 CanLII 2782 \(ONCA\).](#)



activities before the court and presents an opportunity to address concerns of stakeholders, while enabling the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner.<sup>56</sup>

51. The activities of the Receiver have been reported to the court and stakeholders in the Second Report. The Receiver's activities were all necessary and undertaken in good faith in accordance with the Appointment Order and were in the best interests of the stakeholders. The Receiver has acted reasonably, prudently and not arbitrarily.

52. The Receiver therefore respectfully submits that the Second Report and the activities described therein should be approved.

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

53. The Appointment Order provides that the Receiver and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.<sup>57</sup>

54. In determining whether to approve the accounts of a Court-appointed receiver and its counsel, the Court will consider the overall value contributed, taking into account the following factors: a) the nature, extent and value of the assets; b) the complications encountered; c) the degree of assistance provided by the debtor; d) the time spent; e) the receiver's knowledge, experience and skill; f) the diligence and thoroughness displayed; g) the responsibilities assumed; h) the results of the receiver's efforts; and i) the cost of comparable services when performed in a prudent and economical manner.<sup>58</sup>

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<sup>56</sup> [\*Target Canada Co \(Re\)\*, 2015 ONSC 7574](#) at para 2 and 23; [\*Triple-I Capital Partners Limited v 12411300 Canada Inc.\*, 2023 ONSC 3400](#) at para 65 and 66.

<sup>57</sup> Appointment Order, Appendix "1" to the Second Report, MR, Tab 2(1) at paras. 18 to 20.

<sup>58</sup> [\*Bank of Nova Scotia v Diemer\*, 2014 ONCA 851](#) at para 33

55. The Receiver's and Chaitons' fee affidavits are appended to the Second Report.<sup>59</sup> The Receiver has reviewed Chaitons' accounts and is of the view that all of the work set out in Chaitons' accounts was carried out and was necessary. The hourly rates of the lawyers who worked on this matter were reasonable in light of the services required, and the services were carried out by lawyers with the appropriate level of experience. The Receiver respectfully submits that it is appropriate to approve the fees and disbursements of the Receiver and its counsel in the circumstances.<sup>60</sup>

56. The Receiver also believes that the Fee Accrual, in the amount of \$44,750, is sufficient and necessary to cover its fees and the fees of Chaitons to the completion of these proceedings.<sup>61</sup>

### **The Receiver's Discharge and Release Should be Approved**

57. A court-appointed receiver is an officer and instrument of the Court. Typically, a court-appointed receiver is discharged by the court once it has completed the substance of its mandate. Creditors typically support the requested discharge at that time as they do not wish additional receivership expenses to be incurred which would reduce their recoveries.<sup>62</sup>

58. A receiver will typically seek a full release upon discharge because of the receiver's concern that, if it is discharged without a full release, it may be required to spend time and money defending unmeritorious actions commenced after its discharge. Once discharged, a receiver is unable to recover costs in defending such actions from the estate.<sup>63</sup> The purpose of the release provisions in the Distribution and Discharge Order is to remove the necessity for the holding back of post-receivership

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<sup>59</sup> Appendices "14" and "15" to the Second Report, MR, Tab 2(14) and 2(15).

<sup>60</sup> Second Report at para. 36, MR, Tab 2.

<sup>61</sup> Second Report at para. 37, MR, Tab 2.

<sup>62</sup> *Ed Mirvish Enterprises Limited v Stinson Hospitality Inc* (2009), [2009 CanLII 55113](#) at para 8 (Ont Sup Ct J)

<sup>63</sup> *Ibid*

funds and/or conducting of a “claims bar” process, both of which add time and cost to the receivership.<sup>64</sup>

59. Once the Receiver has completed its remaining activities described in the Second Report, the Receiver will have completed its mandate.<sup>65</sup> The Receiver therefore respectfully submits that the Receiver should be discharged and released following the filing of a discharge certificate with the Court, certifying that it has completed any remaining activities.<sup>66</sup>

60. The order contains standard provisions providing for the Receiver’s release from liability upon its discharge (subject to the usual exceptions for gross negligence and wilful misconduct) and permitting the Receiver to continue to perform any incidental and necessary duties.

## **PART V – RELIEF SOUGHT**

61. The Receiver respectfully recommends and requests that the Court grant the relief sought on this motion.

62. I certify the authenticity of every authority cited in the factum.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 24<sup>th</sup> day of September, 2025.




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**CHAITONS LLP**

*Lawyers for the Court-appointed Receiver, msi  
Spergel inc.*

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<sup>64</sup> [\*Ogopogo Beach Resort Ltd v Happy Valley Resort Ltd\*, 2010 BCSC 996](#) at para 39; [\*Ed Mirvish Enterprises Limited v Stinson Hospitality Inc.\*](#), *supra* note 62 at para 13

<sup>65</sup> Second Report at para. 48, MR, Tab 2.

<sup>66</sup> Second Report at para. 49, MR, Tab 2.

## SCHEDULE “A”

### LIST OF AUTHORITIES

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| 1   | <a href="#"><u>Royal Bank of Canada v Soundair Corp (1991), 4 OR (3d) 1</u></a>   | 16        |
| 2   | <a href="#"><u>Elleway Acquisitions Limited v 4358376 Canada Inc, 2013 ONSC 7009</u></a>  | 31        |
| 3   | <a href="#"><u>Crown Trust Co et al v Rosenberg et al (1986), 60 OR (2d) 87 (Sup Ct J)</u></a>  | 83-84     |
| 4   | <a href="#"><u>Royal Bank of Canada v. Unique Restoration Ltd., John Kennedy, Monica Kennedy, Steven Leblanc and Linda Leblanc, Court File No. CV-21-00655331-00-CL [Order (Approval and Vesting Order)] (ODCJ) (Commercial List) May 14, 2021.</u></a> |           |
| 5   | <a href="#"><u>In The Matter of the Administration Proceedings of Carriage Hills Vacation Owners Association, Court File No. CV-20-00640265-00CL [Order (Approval and Vesting Order)] (OSCJ) (Commercial List) May 27, 2021</u></a>                     |           |
| 6   | <a href="#"><u>Dorr Capital Corporation v. Stateview Homes (BEA Towns) Inc., Court File No. CV-23-00698637-00CL[Order (Approval and Vesting Order)] (OSCJ) (Commercial List) January 17, 2025</u></a>   |           |
| 7   | <a href="#"><u>Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41, [2002] 2 SCR 522</u></a>  | 45        |
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| 10  | <a href="#"><u>Ontario Securities Commission v Bridging Income Fund LP, 2022 ONSC 4472</u></a>  | 8-10      |
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| 12  | <a href="#"><u>Bank of America Canada v Willann Investments Ltd, 1996 CanLII 2782 (ONCA)</u></a>  |           |
| 13  | <a href="#"><u>Target Canada Co (Re), 2015 ONSC 7574</u></a>  | 2, 23     |
| 14  | <a href="#"><u>Triple-I Capital Partners Limited v 12411300 Canada Inc, 2023 ONSC 3400</u></a>  | 65,66     |
| 15  | <a href="#"><u>Bank of Nova Scotia v Diemer, 2014 ONCA 851</u></a>  | 33        |

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| 16  | <a href="#"><i>Ed Mirvish Enterprises Limited v Stinson Hospitality Inc</i> (2009), 2009 CanLII 55113 (Ont Sup Ct J)</a>  | 8, 13     |
| 17  | <a href="#"><i>Ogopogo Beach Resort Ltd v Happy Valley Resort Ltd</i>, 2010 BCSC 996</a>  | 39        |
| Tab | Secondary Sources   | Pinpoints |
| 1   | <a href="#"><i>Ministry of Public and Business Service Delivery, Court Orders, Bulletin No. 2024-02</i> (Ontario: Land Registry Services Branch, May 15, 2024).</a> | 3(a)      |

**SCHEDULE “B”**  
**STATUTORY AUTHORITIES**

***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. R.S.O. 1990, c. C.43, s. 100.

**BANK OF MONTREAL**  
Applicant

- and -

**11977636 CANADA INC.**  
Respondent

Court File No. CV-24-00088321-0000

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

PROCEEDING COMMENCED AT  
HAMILTON

**FACTUM OF THE RECEIVER**

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