Court File No. CV-24-00086229-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ROYAL BANK OF CANADA

Applicant

and

SMART SUPER MART LTD.

Respondent

RECEIVER'S FACTUM
(Receiver's Motion for Approval of Amending Sale Agreement)

August 20, 2025

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as of August 4, 2026

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PART I – OVERVIEW

1. This motion is brought by msi Spergel Inc. ("**Spergel**") in its capacity as court-appointed receiver (the "**Receiver**") of the Debtor, Smart Super Mart Ltd. (the "**Debtor**"), to obtain further approval of the activities and conduct of the Receiver since obtaining the January 19, 2026 Endorsement of Justice Bordin and the Approval and Vesting Order of Justice Bordin dated January 15, 2026 (the **"AVO"**) in connection with the Receiver's activities detailed in the First Report. The primary reason for the return to Court is the Receiver having negotiated the Amending Agreement due to Damage (as defined below) sustained to the Real Property on January 30, 2026.

2. The Receiver seeks the following relief on this motion:

a) approving the Second Report, and the actions and activities of the Receiver described in the Second Report, and that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way the approval of the Second Report;

b) approving the Receiver's Interim Statement of Receipts and Disbursements as at August 14, 2026;

c) approving the Amending Agreement to the Ahmed APS dated July 14, 2026 (the **"Amending Agreement"**) and authorizing the Receiver to complete the transaction contemplated by the Ahmed APS as modified by the Amending Agreement (the **"Amended Transaction"**);

d) vesting in the Purchaser all of the Debtor's right, title and interest in and to the Purchased Assets (as defined in the Ahmed APS) free and clear of any claims and encumbrances (other than permitted encumbrances identified in the Ahmed APS);

e) sealing Confidential Appendices 1 and 2 of the Second Report until the earlier of the closing of the Amended Transaction or further Order of this Court;

f) approving the fees and disbursements of the Receiver to and including, June 30, 2026 and payment of those fees;

g) approving the fees and disbursements of the Receiver's Counsel to and including August 17, 2026 and payment of those fees;

h) approving the Revised Fee Accrual (as defined in the Second Report);

i) approving the Proposed Distribution (as defined in the Second Report);

j) effective upon filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, Spergel is discharged as Receiver and granting certain ancillary relief in relation to such discharge; and

k) Such further and other relief as counsel may advise and this Honourable Court permits.

PART II - FACTS

3. The Debtor is the owner of real property located at 179-185 St. Paul Street West, St. Catharines, Ontario (the "**Real Property**"), which consists of a formerly operating gas bar, convenience store and self-serve car wash bays, none of which have been operating for approximately one year.

4. On January 30, 2025, an order was obtained by the Royal Bank of Canada ("**RBC**" or the "**Bank**"), a secured creditor of the Debtor, by way of application brought in the Ontario Superior Court of Justice (the "**Court**"), appointing Spergel as Receiver of all assets, undertakings, and properties, including the Real Property (collectively, the "**Property**",) of the Debtor (the "**Receivership Order**")[1].

[1] Motion Record of the Receiver, msi Spergel, dated August 18, 2026 (the "**Receiver's Motion Record**"), Tab 2, Second Report of msi Spergel Inc. dated August 18, 2026 (the "**Second Report**"), para. 7, Appendix 1 to the First Report and Appendix 2 to the First Report.

5. On January 15, 2026, Justice Bordin granted the AVO approving the transaction contemplated by the Ahmed APS[2] and ordering that all of the Debtor's right, title, and interest in and to the Purchased Assets vest in the Purchaser free and clear of encumbrances except for Permitted Encumbrances (as defined in the Ahmed APS) upon satisfaction by the Purchaser of its obligations under the Ahmed APS.[3]

6. The time to appeal the AVO expired without any appeal filed.[4]

7. Pursuant to Section 12 of the Ahmed APS, the Closing Date was to be the first Business Day following the date upon which the time to appeal the AVO expired.[5]

8. The parties previously agreed to extend the Closing Date to February 27, 2026 (the **"First Extension"**) in exchange for which the Purchaser delivered a second non-refundable deposit of $100,000.00 to the Receiver on January 29, 2026 (the **"Second Deposit"** and, together with the Initial Deposit, the **"Deposit"**).[6]

9. On January 30, 2026, during a site visit to the Real Property by the Purchaser, it was discovered that the Real Property had sustained damage (the **"Damage"**). The Receiver's Listing Broker, Avison Young, attended the Real Property and took detailed photographs and video of the Damage to document its nature and extent.[7]

[2] The Ahmed APS is defined in the Second Report at para. 9.
[3] Receiver's Motion Record, Tab 2, Second Report, paras. 9-10, and 20, Appendices 1 and 2.
[4] Receiver's Motion Record, Tab 2, Second Report, para. 21.
[5] Receiver's Motion Record, Tab 2, Second Report, para. 22.
[6] Receiver's Motion Record, Tab 2, Second Report, para. 23.
[7] Receiver's Motion Record, Tab 2, Second Report, para. 24, Appendix 3.

10. The police investigated the Damage and the Receiver filed an Incident Report with the local police. The Receiver also filed an insurance claim with its insurer in respect of the Damage and an insurance adjuster was appointed to assess the extent and value of the Damage.[8]

11. The Receiver retained 24/7 private security at the Real Property to ensure that no further unauthorized entry was possible.[9]

12. The Receiver provided its Damage assessment to the Purchaser on June 12, 2026, along with all supporting documentation.[10]

13. It took a significant amount of time for the Receiver to obtain the estimates to assess the Damage from the various third parties given the nature and scope of the Damage.[11]

14. Following the Receiver's delivery of the Damage assessment documents on June 12, 2026, the Receiver began extensive negotiations with the Purchaser and its counsel. The parties were able to negotiate a reduction to the purchase price as reflected in the Amending Agreement for which court approval is sought.[12]

15. In the Approval, Distribution and Discharge Order of Justice Bordin dated January 15, 2026 (the **"First Approval & Distribution Order"**), the Court approved the

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[8] Receiver's Motion Record, Tab 2, Second Report, para. 25.
[9] Receiver's Motion Record, Tab 2, Second Report, para. 26.
[10] Receiver's Motion Record, Tab 2, Second Report, para. 28, Appendix 4.
[11] Receiver's Motion Record, Tab 2, Second Report, para. 29.
[12] Receiver's Motion Record, Tab 2, Second Report, para. 31, Appendix 5; Confidential Appendix 1.

Receiver's activities as set out in the First Report and the proposed distribution that was in effect at that time and which has now become stale in light of the Amending Agreement.[13]

16. Since the Receiver derives its powers exclusively from the Court order appointing it and any subsequent Court orders, and because the AVO is no longer applicable as it relates solely to the approval of the Ahmed APS, the Receiver brings this motion for, among other things, approval of its activities since the First Report and approval of the Amending Agreement.[14]

17. The Amending Agreement is not a "minor amendment" as contemplated by paragraph 5 of the AVO given the price reduction in the Amending Agreement so this necessitates a fresh AVO from the Court.[15] Paragraph 5 of the AVO states the following:[16]

> 5. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Ahmed APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

[13] Receiver's Motion Record, Tab 2, Second Report, Appendix 12.
[14] Receiver's Motion Record, Tab 2, Second Report, para. 11.
[15] Receiver's Motion Record, Tab 2, Second Report, para. 12.
[16] Receiver's Motion Record, Tab 2, Second Report, Appendix 2.

PART III - ISSUES

18. The following are the issues on this motion:

a) This Court approval motion is necessary;

b) The Amending Agreement satisfies the *Soundair* test, the Receiver's activities detailed in the Second Report should be approved, and the Court should grant the new AVO and the Second Approval, Distribution and Discharge Order;

c) The Confidential Appendices to the Second Report should be sealed until the completion of the Amended Transaction of the Real Property, or until a further Order of this Court; and

d) The Receiver's fees and the fees of its counsel should be approved.

PART IV - LAW & ANALYSIS

(a) This Court Approval Motion is Necessary

19. The Receiver's powers are granted by Court order and any material changes in the circumstances that fall outside of the scope of an existing Court order require the Receiver to return to Court and seek further approval. This is exactly why this motion is necessary.

20. Paragraph 5 of the AVO states the following:[17]

> 5. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Ahmed APS by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

[17] Receiver's Motion Record, Tab 2, Second Report, Appendix 2.

21. The Amending Agreement is not a "minor amendment" as contemplated by paragraph 5 of the AVO given the value of the price reduction[18] so this necessitates a fresh AVO from the Court and the application of the *Soundair* test.

22. A court appointed receiver derives its powers exclusively from the court order appointing it and any subsequent court orders; it is an officer of the Court and administrator accountable to the Court and all stakeholders in the receivership. The receiver does not obtain the debtor's proprietary interest in assets; rather, it acts pursuant to powers granted by the Court, and any sale or disposition is effected by Court order, specifically a vesting order.[19] And receivers are consistently granted the power to market and sell property belonging to a debtor.[20]

23. Although there is no direct reported case in Ontario on the matter, in *Naeem v. Grant Thornton Ltd*.,[21] the Court considered successive AVOs to the same purchaser at progressively reduced sale prices including an AVO consequent to a fire on site that destroyed a machine shop. Although the Court does not comment on the test to be applied for the approval of a subsequent AVO, the inference is clear that a court appointed receiver must seek further court approval for material changes to a sale transaction and cannot rely on an existing AVO where there are material changes to the sale price.

[18] Receiver's Motion Record, Tab 2, Second Report, para. 12.
[19] *Romspen Investment Corporation v 6176666 Canada Ltee*, 2009 CanLII 65364 at paras. 12-14.
[20] *Integrated Building Corp. v. Bank of Nova Scotia,* 1989 ABCA 114 (Alta CA); *Battery Plus Inc., Re,* 2002 CanLII 49569 at paras 2-3, 19, 22-23, 34-35.
[21] *Naeem v Grant Thornton Ltd*., 2024 NBKB 105 at paras. 3-4, 4 (sub 7), 4 (sub 11) and 4 (sub 19) **["*Naeem*"]**.

24. In *Naeem*, the receiver was appointed over the assets of two companies.[22] The assets included both personal and real property.[23] The receiver marketed the property and received an offer from a numbered company. On October 9, 2018, the Court issued the first AVO approving the sale of the property to the numbered company.[24] A series of AVOs then followed for the same purchaser at progressively reduced prices due to deterioration of the property after the original AVO was granted.[25] One of the AVOs followed a fire on site that destroyed a machine shop . On May 29, 2019, the Court issued a third AVO approving the sale to the same numbered company at a reduced purchase price.[26] A subsequent AVO issued a sales process AVO authorizing the sale by public auction, and a subsequent one for the agreement between the receiver and the purchaser at the auction.[27]

(b) The Amending Agreement Satisfies the *Soundair* Test, the Receiver's Activities Detailed in the Second Report Should be Approved, and the Court Should Grant the New AVO and the Second Approval, Distribution and Discharge Order

(i) The Amending Agreement Satisfies the *Soundair* Test

25. In the June 5, 2026 case *Caisse Desjardins Ontario Credit Union Inc. v GC King Bond Limited Partnership*,[28] Justice Steele of the Commercial List references the following applicable legal principles when determining whether to approve a proposed

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[22] *Naeem* at para. 3.
[23] *Naeem* at para. 4.
[24] *Naeem* at para. 4.
[25] *Naeem* at para. 4 (sub 7).
[26] *Naeem* at para. 4 (sub 11).
[27] *Naeem* at para. 4 (sub 19).
[28] *Caisse Desjardins Ontario Credit Union Inc. v GC King Bond Limited Partnership*, 2026 ONSC 3286 at paras. 29, 39-41 (Commercial List); *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 at para. 6.

sale:

> [29] In *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA), at p. 6, the Court of Appeal set out the factors for the court to consider when determining whether to approve a proposed sale:
>
> a. Whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
>
> b. The efficacy and integrity of the process by which offers are obtained;
>
> c. Whether there has been unfairness in the working out of the process; and
>
> d. The interests of all parties.
>
> [39] As noted by the Receiver, the commercial decisions of a receiver regarding a sale process are afforded broad deference by the courts: *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375, at para. 19.
>
> [40] The Court of Appeal in *Ravelston Corp (Re)*, (2005) 2005 CanLII 63802 (ON CA) at para. 40, leave to appeal refused, (2005) 24 C.B.R. (5th) 256, noted that receivers are often faced with "difficult business choices that require a careful cost/benefit analysis and the weighing of competing, if not irreconcilable, interests." The Court of Appeal elaborated that the receiver "must consider all of the available information" and "the interests of all legitimate stakeholders," however considering the interests of all "does not mean that all stakeholders must be equally satisfied with the course of conduct chosen by the receiver." The Court of Appeal indicated that:
>
> > If the receiver's decision is within the broad bounds of reasonableness, and if it proceeds fairly, having considered the interests of all stakeholders, the court will support the receiver's decision.
>
> [41] Chief Justice Morawetz (as he then was) in *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857, noted, at para. 45: "it is only in 'exceptional' circumstances will a court intervene and proceed contrary to the recommendation of its officer, the Receiver."

26. In reviewing a receiver's decisions and recommendations, the Court exercises caution and grants considerable deference to the receiver. As confirmed by the Ontario Court of Appeal in *Regal Constellation Hotel Limited*:

> [23] Although the courts will carefully scrutinize the procedure followed by a receiver, they rely upon the expertise of their appointed receivers, and are reluctant to second-guess the considered business decisions made by the receiver in arriving at its recommendations. The court will assume that the receiver is acting properly unless the contrary is clearly shown.[29]

27. In *Marchant Realty Partners Inc. v. 2407553 Ontario Inc*., the Ontario Court of Appeal confirms that the test for the approval of a sale by a receiver continues to be the *Soundair* test.[30]

28. The Receiver has made a sufficient effort to get the best possible price in the circumstances and has not acted improvidently. Furthermore, at all times, the efficacy and integrity of the process by which the negotiations took place between the Receiver and the Purchaser were maintained. Finally, there was no unfairness in the working out of the process.

29. The Receiver is holding two deposits pending the closing of the Amended Transaction. The Receiver obtained the Second Deposit from the Purchaser on January 29, 2026 in exchange for agreeing to extend closing to the First Extension (February 27,

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[29] *Regal Constellation Hotel Ltd., Re,* 2004 CanLII 206 at para. 23 (Ont CA).

[30] *Marchant Realty Partners Inc. v 2407553 Ontario Inc*., 2021 ONCA 375 at paras. 21 and 23. See *Royal Bank of Canada v. Soundair Corp.,* 1991 CanLII 2727 at para. 16 (Ont CA).

2026)[31] before the Damage to the Real Property occurred.

30. When the Receiver discovered the Damage on January 30, 2026, it immediately took steps to document it through, among other sources, its Listing Broker (Avison Young) by taking detailed photographs and video to document the nature and extent of the Damage.[32] The Receiver also filed an Incident Report with the local police and an insurance claim.[33]

31. The Receiver complied with its obligations under the Ahmed APS through the Damage assessment by securing estimates to assess the Damage from various third parties[34] and negotiations ensued with the Purchaser about the quantification of the Damage.

32. Section 14 of the Ahmed APS governs the allocation of risk for damage occurring prior to closing. The Purchased Assets remain at the Receiver's risk until closing. Under the Ahmed APS, "Material Damage" is defined as damage to the Purchased Assets in excess of $500,000.00, as determined by an independent third-party expert appointed by the Receiver. The Receiver is required to use its best efforts to advise the Purchaser in writing within twenty-four (24) hours of learning of any Material Damage.[35]

[31] Receiver's Motion Record, Tab 2, Second Report, para. 23.
[32] Receiver's Motion Record, Tab 2, Second Report, para. 24, Appendix 3.
[33] Receiver's Motion Record, Tab 2, Second Report, para. 25.
[34] Receiver's Motion Record, Tab 2, Second Report, para. 28, Appendix 4.
[35] Receiver's Motion Record, Tab 2, Second Report, para. 27.

33. Pursuant to Section 14 of the APS, if Material Damage is determined to have occurred, the Purchaser has five (5) days (or such longer period as the Receiver may agree to in writing in its sole and absolute discretion) to elect either: (a) to complete the transaction without reduction of the Purchase Price, in which case all insurance proceeds are payable to the Purchaser; or (b) to rescind the Ahmed APS, with the Deposit returned to the Purchaser forthwith without interest, set-off, or deduction.[36]

34. Given that the Receiver's Damage assessment valued the Damage as under the $500,000 threshold, the "Material Damage" clause in Section 14 of the Ahmed APS was not applicable but the Receiver still had to negotiate with the Purchaser the value of the reduction to the purchase price under the Ahmed APS.

35. Following the Receiver's delivery of the Damage assessment documents, the Receiver began extensive negotiations with the Purchaser and its counsel. The parties were able to negotiate a reduction to the purchase price as reflected in the Amending Agreement.[37]

36. The following table summarizes the key terms of the Amending Agreement[38]:

Term	**Description**
Parties	msi Spergel Inc., in its capacity as Court-appointed receiver of Smart Super Mart Ltd. (Vendor) and Ahmed Petroleum Services Inc. (Purchaser)
Date of Amending Agreement	July 14, 2026

[36] Receiver's Motion Record, Tab 2, Second Report, para. 30.
[37] Receiver's Motion Record, Tab 2, Second Report, para. 31, Appendix 5, Confidential Appendix 1.
[38] Receiver's Motion Record, Tab 2, Second Report, para. 34.

Original agreement	Agreement of Purchase and Sale dated October 21, 2025, as amended on December 11, 2025 to add the name of the Purchaser
Basis for amendment	Damage sustained by the Real Property on January 30, 2026
Extension of Closing Date	Tenth (10th) Business Day following the date upon which the court approval motion authorizing the amendment is stamped by the Court
Deposit confirmation	Initial Deposit of $195,000.00 and Second Deposit of $100,000.00 continue to be held by the Vendor in trust pending Closing; Second Deposit is non-refundable
Assignment reaffirmation	Original Purchaser and Purchaser reaffirm and confirm the assignment of the APS to Ahmed Petroleum Services Inc.
Purchaser's acknowledgment	Damage Cost is in full and final settlement of all claims with respect to the Damage; no further claims will be raised
Conditions of Closing	All conditions of Closing set forth in Sections 17 and 18 of the APS remain in full force and effect
Time of the essence	Time remains of the essence in all respects
APS continuation	All terms of the APS not expressly varied by the Amending Agreement remain in full force and effect
Court approval required	Amending Agreement is conditional upon approval of the Court
Governing law	Province of Ontario, Canada

37. Regarding the interests of all parties, the Receiver obtained from its Listing Broker an updated assessment of comparable property sales as of July 12, 2026. The Listing Broker's opinion is that, based on its marketing efforts to date and its overall experience with distressed gas station sales and listings, the gas station sale market remains depressed and volatile, that re-marketing the Real Property will not achieve better pricing and would likely be more detrimental given continued carrying costs, ongoing risks of vandalism, and market volatility, and the renegotiated price represents the best available price in the current marketplace given the extensive capital and repair costs required to

restore the Real Property to full operation.[39]

38. The terms and conditions contained in the Amending Agreement are commercially reasonable in all respects and the purchase price as arrived at in the Amending Agreement is fair and reasonable given the Damage and its assessment by the Receiver. The Amending Agreement is the best outcome to the receivership estate in the circumstances such that a further re-marketing will not likely result in a higher sale price given the Damage.[40]

39. RBC has been consulted with respect to the Amended Transaction and supports the completion of it as well as the relief sought by the Receiver on this motion.[41]

40. There is no factual basis to conclude that re-listing the Real Property and not approving the Amending Agreement will result in a better price. The current reality of the Real Property with the Damage means that it has a lower value and additional carrying costs have to be paid by the Receiver during the re-list period.

41. The Receiver entered into an MLS Listing Agreement with Avison Young as the commission structure was commercially reasonable and the skillset of the brokerage would garner optimum recovery.[42] Avison widely marketed the Real Property to garner maximum interest and several offers to purchase. This included listing the Real Property on MLS and reaching out to over 4,800 contacts. This resulted in 32 interested parties

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[39] Receiver's Motion Record, Tab 2, Second Report, para. 33, Confidential Appendix 2.
[40] Receiver's Motion Record, Tab 2, Second Report, para. 35.
[41] Receiver's Motion Record, Tab 2, Second Report, para. 36.
[42] Receiver's Motion Record, Tab 3, First Report, para. 22.

executing Confidentiality Agreements, 27 people accessing the data room for the property and a number of interested parties touring the Real Property.[43]

42. As a result of the marketing efforts described above, 3 offers were received.[44] The Receiver accepted the Ahmed APS.[45] The sales process was one that resulted in the best price in these circumstances, considered the interests of all parties, was a fair and public process and was conducted in a commercially reasonable manner.[46] The market was extensively canvassed pursuant to Avison's professional, and industry standard marketing efforts as provided for in the Avison sales and marketing proposal. The efforts of Avison through the listing of the Property on MLS and Avison's internal and external network have provided sufficient exposure of the Property to the market.[47] On these grounds, the Ahmed APS was approved by Justice Bordin under the AVO.

(ii) The Receiver's Activities as Detailed in the Second Report Should be Approved, and the Court Should Grant the New AVO and the Second Approval, Distribution and Discharge Order

43. The Receiver's activities have been carried out pursuant to its duties and in accordance with the Receiver's powers derived from the Receivership Order. The Receiver has acted reasonably and in the best interests of the Debtor's stakeholders, and this Court has the inherent jurisdiction to approve such activities.[48]

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[43] Receiver's Motion Record, Tab 3, First Report, para. 23, Confidential Appendix 5.
[44] Receiver's Motion Record, Tab 3, First Report, para. 24, Confidential Appendix 6.
[45] Receiver's Motion Record, Tab 3, First Report, para. 25.
[46] Receiver's Motion Record, Tab 3, First Report, para. 27.
[47] Receiver's Motion Record, Tab 3, First Report, para. 28.
[48] *Bank of America Canada v. Willann Investments Ltd.*, [1993] OJ No. 1647 at paras. 3 and 4 (Ont SCJ); Book of Authorities, Tab 1.

44. All of the Receiver's activities were conducted within the scope of its powers granted by the Receivership Order and each of the activities were necessary to ensure that the proceedings were as orderly, effective and fair to all stakeholders as possible.

45. The activities of the Receiver set out in the Second Report at subparagraphs 17(a)-(e) should be approved.[49]

46. The following items detailed in the Second Report should also be approved:

a) the Receiver's Interim Statement of Receipts and Disbursements as of August 10, 2026;[50]

b) the Revised Fee Accrual;[51]

c) the Proposed Distribution;[52]

d) upon the filing of a certificate by the Receiver certifying that all outstanding matters to be attended to in connection with the receivership have been completed to the satisfaction of the Receiver, that the Receiver is discharged including the granting of any ancillary relief to the discharge.[53]

47. The Receiver estimates that the costs to complete the Amended Transaction, if approved, and complete the administration of the estate should not exceed an additional sum of $100,000.00 plus disbursements and HST. The Receiver is seeking approval to

[49] Receiver's Motion Record, Tab 2, Second Report, para. 17(a)-(g).
[50] Receiver's Motion Record, Tab 2, Second Report, para. 49, Appendix 10.
[51] Receiver's Motion Record, Tab 2, Second Report, para. 47.
[52] Receiver's Motion Record, Tab 2, Second Report, paras. 51-58, Appendix 11 (First Report), Appendix 11 (Second Report), Appendix 13 (First Report).
[53] Receiver's Motion Record, Tab 2, Second Report, paras. 59-60.

hold back this sum pending completion of all matters and the Receiver's discharge (the **"Revised Fee Accrual"**).[54]

48. The Revised Fee Accrual is sought because the Fee Accrual referenced in the First Report at paragraph 35 (and approved pursuant to the first AVO) has been used as part of the extensive negotiations following the January 30, 2026 Damage to the Real Property and the negotiations that resulted in the Amending Agreement.[55]

49. After the closing of the Amended Transaction, the Receiver seeks approval to make the Proposed Distribution on the basis of the security opinion of the Receiver's counsel:[56]

a) to RBC for repayment of the Receiver's Borrowing in the amount of $70,000.00 plus interest in accordance with the Receiver's Borrowing Certificate;

b) to The Corporation of the City of St. Catharines for all property tax arrears; and

c) balance of any and all funds in the Debtor's estate to RBC on account of the Debtor's secured indebtedness to RBC.[57]

50. RBC will suffer a shortfall, and there will be no funds available for distribution to any other stakeholders.[58]

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[54] Receiver's Motion Record, Tab 2, Second Report, para. 57.
[55] Receiver's Motion Record, Tab 2, Second Report, para. 48.
[56] Receiver's Motion Record, Tab 23, First Report, Appendix 13.
[57] Receiver's Motion Record, Tab 2, Second Report, paras. 57-58.
[58] Receiver's Motion Record, Tab 2, Second Report, para. 58.

(c) The Confidential Appendices to the Second Report Should be Sealed Until the Completion of the Amended Transaction of the Real Property, or until a Further Order of This Court

51. It is necessary to the integrity of the receivership proceeding that Confidential Appendices 1-2 of the Second Report be sealed. All of these appendices contain sensitive information, the release of which prior to the completion of the Transaction would be prejudicial to the stakeholders of the Debtor. Confidential Appendices 1-7 of the First Report are sealed pursuant to Justice Bordin's AVO at para. 3.[59]

52. The Court's jurisdiction to seal documents is in s. 137(2) of the *Courts of Justice Act*:

> 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.[60]

53. In addition to statutory jurisdiction, the Court also has inherent jurisdiction to issue sealing orders as confirmed by the court in *Fairview Donut Inc. v. The TDL Group Corp*.: "there is no doubt that the court has inherent jurisdiction, and jurisdiction under s. 137(2) of the *Courts of Justice Act*, to seal a portion of the court file.[61]

54. Sealing Orders are granted regularly in the context of court-appointed receiverships where court openness may pose a risk to the public interest in enabling stakeholders in an insolvency to maximize the realization of a debtor's assets. In this context, such an order is necessary to prevent a serious risk to an important commercial

[59] Receiver's Motion Record, Tab 2, Second Report, Appendix 2.
[60] *Courts of Justice Act* (Ontario), s. 137(2).
[61] *Fairview Donut Inc. v. The TDL Group Corp.,* 2010 ONSC 789 at para. 34 (Ont SCJ).

interest. The salutary effects of the sealing order outweigh its deleterious effects, which in this context includes the public interest in open and accessible court proceedings.[62]

55. There are no reasonable alternative measures to a sealing order which would fulfill the twin purposes of (i) allowing this Court to review the reasonableness of the proposed Sales Process; and (ii) ensuring that the commercially-sensitive information contained within the identified appendices to the Second Report is not available to the public prior to the completion of the Transaction.[63]

56. Ontario Courts have recognized the customary practice of seeking a sealing order in the context of a sale approval motion. In *B&M Handelman Investments Ltd. v. Mass Properties Inc*., the Court states:

> [26] [a]s is customary in sale approval motions, the Receiver seeks an order sealing the appraisal until the transaction is completed. This ensures the integrity of the process and avoids any prejudice to stakeholders in the event that the transaction does not close and a new purchaser must be sought.[64]

57. The identified appendices contain sensitive commercial information. Should the Amended Transaction not proceed, such information may cause a reduction in any future sale price of the Real Property, and harm the creditors of the Debtor if made available to the public. Protecting the information contained in those appendices is an important commercial interest that should be protected. There is no other reasonable alternative to

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[62] *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at paras. 53-57 (SCC); *Sherman Estate v. Donovan,* 2021 SCC 25 at para 38 (SCC).
[63] *Sherman Estate*, at para. 38.
[64] *B&M Handelman Investments Limited v. Mass Properties Inc.,* 2009 CanLII 37930 at para. 26 (Ont SCJ); *Maxtech Manufacturing Inc. (Re),* 2010 ONSC 1161 at paras. 29 and 30 (Ont SCJ).

sealing that will prevent those appendices from becoming public.

58. Confidential Appendices 1-2 of the Second Report should remain sealed until the earlier of the completion of the Amended Transaction, or by further Order of this Court.

(d) The Receiver's Fees and the Fees of its Counsel Should be Approved.

59. The professional fees of the Receiver and the Receiver's counsel, as detailed in the Second Report, should be approved.

60. 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 mandate are fair and reasonable, and take into consideration the following factors, which constitute a useful guideline, but are not exhaustive:

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

b) the complications and difficulties 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.[65]

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[65] *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at paras. 33 and 45 (Ont. CA).

61. Appendix 8 to the Second Report contains the affidavit of Philip Gennis and incorporates the Receiver's time dockets totaling $77,007.14 inclusive of fees and disbursements up to and including June 30, 2026. This represents a total of 130.45 hours at an average hourly rate of $468.15.[66]

62. Appendix 9 to the Second Report contains the affidavit of Rachel Moses and includes the invoices of the Receiver's counsel up to August 17, 2026 in the amount of $65,843.32 inclusive of disbursements and taxes. This represents a total of 128.4 hours at an average hourly rate of $447.85.[67]

63. All of the work set out in these accounts was carried out and was necessary, the hourly rates of the lawyers who worked on this matter are reasonable in light of the services required and the services were carried out by lawyers with the appropriate level of experience.[68]

PART V – ORDER SOUGHT

64. The Receiver seeks the relief specified in the Notice of Motion.

[66] Receiver's Motion Record, Tab 2, Second Report, para. 43, Appendix 8.
[67] Receiver's Motion Record, Tab 2, Second Report, para. 44, Appendix 9.
[68] Receiver's Motion Record, Tab 2, Second Report, para. 46.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 20th day of August, 2026.

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Lawyers for the Receiver, msi Spergel Inc.

SCHEDULE "A"

1. *Romspen Investment Corporation v 6176666 Canada Ltee*, 2009 CanLII 65364

2. *Integrated Building Corp. v. Bank of Nova Scotia,* 1989 ABCA 114 (Alta CA)

3. *Battery Plus Inc.*, Re, 2002 CanLII 49569

4. *Naeem v Grant Thornton Ltd*., 2024 NBKB 105

5. *Caisse Desjardins Ontario Credit Union Inc. v GC King Bond Limited Partnership*, 2026 ONSC 3286

6. *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750

7. *Regal Constellation Hotel Ltd., Re,* 2004 CanLII 206 (Ont CA)

8. *Marchant Realty Partners Inc. v 2407553 Ontario Inc*., 2021 ONCA 375

9. *Royal Bank of Canada v. Soundair Corp.,* 1991 CanLII 2727 at para. 16 (Ont CA)

10. *Bank of America Canada v. Willann Investments Ltd.*, [1993] OJ No. 1647 (Ont SCJ) **Book of Authorities, Tab 1**

11. *Fairview Donut Inc. v. The TDL Group Corp.,* 2010 ONSC 789 at para. 34 (Ont SCJ)

12. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 at paras. 53-57 (SCC)

13. *Sherman Estate v. Donovan,* 2021 SCC 25 at para 38 (SCC)

14. *B&M Handelman Investments Limited v. Mass Properties Inc.,* 2009 CanLII 37930 (Ont SCJ)

15. *Maxtech Manufacturing Inc. (Re),* 2010 ONSC 1161(Ont SCJ)

16. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 (Ont CA)

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 20, 2026

Signature

Court File No. CV-24-00086229-0000

ROYAL BANK OF CANADA - and - SMART SUPER MART LTD.

Applicant | Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
HAMILTON

RECEIVER'S FACTUM
(Receiver's Motion for Approval of Amending Sale Agreement)

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File No. G10047010