

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

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

**BANK OF MONTREAL**

Applicant

- and -

**HAPPY TOWN HOUSING INC.**

Respondent

**FACTUM OF THE RECEIVER**

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capacity as Court-Appointed Receiver**

**TO: THE SERVICE LIST**

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**PART I – OVERVIEW**

1. This factum is filed by msi Spergel Inc. (“**Spergel**”), in its capacity as Court-appointed receiver and manager (in such capacities, the “**Receiver**”) of the real properties municipally known as 34 Rykert Street, St. Catharines, Ontario (the “**Rykert Street Property**”) and 43 Centre Street, St. Catharines, Ontario (the “**Centre Street Property**”, and together with the Rykert Street Property, the “**Real Properties**”), which are owned by Happy Town Housing Inc. (the “**Debtor**”), in support of its motion for the following relief:

- (a) an order (the “**Rykert Street AVO**”), among other things,
  - (i) approving the agreement of purchase and sale dated December 17, 2025 (the “**Rykert Street APS**”) between the Receiver and 1000964515 Ontario Inc.

(the “**Purchaser**”), and the transaction contemplated therein (the “**Rykert Street Transaction**”); and

(ii) vesting title in and to the Purchased Assets described in the Rykert Street APS in the Purchaser, free and clear of all encumbrances other than permitted encumbrances, upon the Receiver filing a certificate confirming, among other things, the completion of the Rykert Street Transaction;

(b) an order (the “**Centre Street AVO**”, and together with the Rykert Street AVO, the “**AVOs**”), among other things,

(i) approving the agreement of purchase and sale dated December 17, 2025 (the “**Centre Street APS**” and together with the Rykert Street APS, the “**APSs**”) between the Receiver and the Purchaser, and the transaction contemplated therein (the “**Centre Street Transaction**”); and

(ii) vesting title in and to the Purchased Assets described in the Centre Street APS in the Purchaser, free and clear of all encumbrances other than permitted encumbrances, upon the Receiver filing a certificate confirming, among other things, the completion of the Centre Street Transaction;

(c) an order (the “**Distribution and Discharge Order**”), among other things,

(i) approving the First Report of the Receiver dated February 9, 2026 (the “**First Report**”) and the activities of the Receiver described therein;

(ii) approving the fees and disbursements of the Receiver and its counsel, Chaitons LLP (“**Chaitons**”), as described in the First Report;

- (iii) approving an accrual of \$75,000 in respect of fees incurred or to be incurred by the Receiver and Chaitons to the completion of these proceedings, excluding HST and disbursements (the “**Fee Accrual**”);
- (iv) approving the Receiver’s Interim Statement of Receipts and Disbursements as at December 31, 2025 (the “**Interim R&D**”);
- (v) authorizing and directing the Receiver, subject to the Receiver maintaining the Fee Accrual and payment of the fees and disbursements of the Receiver and Chaitons, to distribute the net proceeds of the Rykert Street Transaction and the Centre Street Transaction (together the “**Transactions**”) described in the First Report;
- (vi) ordering that neither the Receiver nor Chaitons shall be required to pass their accounts in respect of any further fees and disbursements, up to the amount of the Fee Accrual;
- (vii) authorizing and directing the Receiver to pay to Bank of Montreal (“**BMO**”) any balance remaining in 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;
- (viii) sealing the Confidential Appendices to the First Report pending closing of the Transactions, as applicable, or further order of the Court; and
- (ix) discharging Spergel as Receiver, effective upon the filing of a discharge certificate, and releasing the Receiver from any liability while acting in its capacity as Receiver, except for any gross negligence or willful misconduct.

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

## PART II – FACTS

### Background

3. Pursuant to an order of the Ontario Superior Court of Justice (the “**Court**”) dated June 19, 2025 (the “**Receivership Order**”), Spergel was appointed Receiver of the Real Properties.<sup>1</sup>

4. The Debtor is the registered owner of the Real Properties. Thomas Dylan Suitor (“**Suitor**”) is the sole director and officer of the Debtor.<sup>2</sup>

5. The Rykert Street Property is a vacant single-family residential dwelling. The Centre Street Property is a triplex residential building, two of the three residential units of which are currently occupied.<sup>3</sup>

### Sale Process

6. The Receiver obtained full narrative appraisals of the Real Properties.<sup>4</sup>

7. After considering sales and marketing proposals from multiple brokerages, the Receiver entered into MLS listing agreements with REMAX Escarpment Realty Inc., Brokerage (“**RM Escarpment**” or the “**Listing Broker**”). The Listing Broker’s commission structure was commercially reasonable, and the Receiver was satisfied that its experience and market presence would assist in maximizing value.<sup>5</sup>

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<sup>1</sup> First Report at para. 5; Appendix “1” to the First Report.

<sup>2</sup> First Report at para. 2.

<sup>3</sup> First Report at para. 3.

<sup>4</sup> First Report at para. 15; Appendices” 1” and “2” to the First Report.

<sup>5</sup> First Report at para. 17.

8. The Listing Broker conducted a comprehensive marketing campaign over approximately four months. The marketing efforts included MLS listings, targeted outreach to brokers, and digital and social media advertising aimed at generating broad market exposure and interest.<sup>6</sup>

9. The Listing Broker's marketing report contained the following information which indicates that the Real Properties were properly exposed to the market:<sup>7</sup>

	<b>Rykert Street Property</b>	<b>Centre Street Property</b>
Realtor.ca listing views:	4168	2606
Broker MLS system agent & client views	1543	1389
Social Media & Website Banner Ad Views:	4740	4304
Virtual Tour Website Views:	113	72
Agent E-Blast sent to Realtors	1150	1150
Showing Appointments Booked	22	19

10. As a result of the marketing efforts, the Receiver received one offer for the Rykert Street Property and two offers for the Centre Street Property.<sup>8</sup>

11. After independently reviewing the offers, and in consultation with BMO – the first-ranking secured creditor – the Receiver entered into the Rykert Street APS and the Centre Street APS.<sup>9</sup>

12. The Centre Street APS represents the highest and best offer received for the Centre Street Property. The Rykert Street APS was the only offer received for the Rykert Street Property.<sup>10</sup>

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<sup>6</sup> First Report at para. 18.

<sup>7</sup> First Report at para. 18.

<sup>8</sup> First Report at para. 19; Confidential Appendices “7” and “8” to the First Report.

<sup>9</sup> First Report at para. 21.

<sup>10</sup> First Report at para. 22; Appendices “5” and “6” to the First Report; Confidential Appendices “9” and “10” to the First Report.

## The APSs

13. The directors and officers of the Purchaser are Susan Danychuk and William Danychuk, who are the parents of Suitor, the sole director and officer of the Debtor.<sup>11</sup>

14. Key aspects of the APSs are summarized in the following table (capitalized terms have the meanings ascribed to them in their respective APSs):<sup>12</sup>

<b>Purchase Price</b>	As set out in the Confidential Appendices to the First Report, which the Receiver recommends be sealed pending completion of the Transactions. In each case, the Purchase Price shall be satisfied by: (a) payment of the Deposit by the Purchaser; and (b) the balance of the Purchase Price (net of the Deposit), shall be paid at Closing.	
<b>Deposit</b>	An amount equal to ten (10%) percent of the Purchase Price.	
<b>Purchased Assets</b>	<u>Rykert Street APS</u> The Rykert Street Property	<u>Centre Street APS</u> <ul style="list-style-type: none"> <li>• The Centre Street Property; and</li> <li>• 4 stoves, 4 refrigerators and 2 stacked washer/dryer sets (the “Appliances”)</li> </ul>
<b>Representations and Warranties</b>	Consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” basis, with limited representations and warranties.	
<b>Closing Date</b>	15 Business Days after issuance of the Approval and Vesting Order, or such other date as the parties may agree to in writing.	
<b>Material Conditions</b>	Issuance of the Approval and Vesting Order.	

15. The “Purchased Assets” under the Centre Street APS include the Appliances located at the Centre Street Property. The Receiver understands that the Appliances are owned by the Debtor and that no competing claims have been made against them. The Appliances were included in the Centre Street APS for no additional consideration in order to facilitate the sale of the Centre Street Property, and their inclusion is not expected to prejudice any creditors.<sup>13</sup>

<sup>11</sup> First Report at para. 20.

<sup>12</sup> Appendices “5” and “6” to the First Report.

<sup>13</sup> First Report at para. 23.

16. The Centre Street Property consists of a triplex residential building, two of the three residential units of which are currently occupied.<sup>14</sup> Under the Centre Street APS, the Purchaser has agreed to assume all existing leases and occupancy agreements relating to the Centre Street Property on closing.<sup>15</sup> The tenants of the Centre Street Property have been provided with notice of the Receiver's motion and a copy of the Receiver's Motion Record.

### **Activities of the Receiver**

17. The Receiver's activities since the date of the Receivership Order are summarized at paragraph 12 of the First Report.<sup>16</sup>

### **Receiver's Interim R&D**

18. The Interim R&D, appended to the First Report, reflects net receipts of \$13,817.69 after necessary disbursements, including for insurance, maintenance, and general upkeep of the Real Properties.<sup>17</sup>

### **Fees and Disbursements of the Receiver and Chaitons**

19. The Receiver seeks approval of its fees and disbursements totaling \$41,381.04 (inclusive of HST and disbursements) for services rendered to November 30, 2025, as set out in the Affidavit of Philip Gennis sworn January 5, 2026.<sup>18</sup>

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<sup>14</sup> First Report at para. 3.

<sup>15</sup> See Appendix "6" to the First Report, section 5(c).

<sup>16</sup> First Report at para. 12.

<sup>17</sup> First Report at para. 41; Appendix "11" to the First Report.

<sup>18</sup> First Report at para. 37; Appendix "9" to the First Report.

20. The Receiver also seeks approval of Chaitons' legal fees and disbursements totaling \$14,521.36 (inclusive of HST and disbursements) to December 31, 2025, as set out in the Affidavit of David Im sworn January 14, 2026.<sup>19</sup>

21. The Fee Accrual of \$75,000 represents a reasonable estimate of the professional fees and disbursements to be incurred in completing the Transactions and the remaining tasks in these receivership proceedings.<sup>20</sup>

### **Proposed Distributions**

22. As described in the First Report, the Receiver seeks Court approval to distribute the net proceeds of the Transactions, after payment of the Receiver's and Chaitons' approved fees and disbursements and maintaining the Fee Accrual, as follows (the "**Proposed Distributions**"): <sup>21</sup>

- (a) to BMO, in the amount of \$25,000, in repayment of the Receiver's Borrowing (as defined in the First Report), together with interest thereon;
- (b) to The Corporation of the City of St. Catharines, in respect of all outstanding realty tax arrears; and
- (c) the balance of any remaining funds to BMO on account of the Debtor's secured indebtedness to the Bank.

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<sup>19</sup> First Report at para. 38; Appendix "10" to the First Report.

<sup>20</sup> First Report at para. 40.

<sup>21</sup> First Report at para. 49.

23. The Receiver further seeks authorization to pay to BMO any remaining balance in the Fee Accrual following payment of all professional fees and disbursements incurred in connection with the completion of the Receiver's remaining duties.<sup>22</sup>

24. BMO is expected to suffer a shortfall on its secured indebtedness. Accordingly, there will be no funds available for distribution to any other secured creditors or mortgagees.<sup>23</sup>

### **Discharge and Release**

25. Following closing of the Transactions, the Receiver will have monetized all of the Property subject to these receivership proceedings.

26. The Receiver seeks an order, effective upon the filing of a certificate confirming the completion of the receivership administration (the "**Discharge Certificate**"), discharging Spergel as Receiver and releasing any claims against it, other than by virtue of gross negligence or wilful misconduct, in order to avoid the costs of motion brought solely for this purpose.<sup>24</sup>

### **PART III – ISSUES**

27. The main issues on this motion are whether:

- (a) the Transactions should be approved and the AVOs granted;
- (b) the Receiver's activities and the First Report should be approved;
- (c) the Confidential Appendices should be sealed;

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<sup>22</sup> First Report at para. 51.

<sup>23</sup> First Report. At para. 49.

<sup>24</sup> First Report at para 53.

- (d) the Receiver's and Chaitons' fees, disbursements, and the Fee Accrual should be approved;
- (e) the Proposed Distributions should be authorized; and
- (f) the Receiver should be discharged and released upon the filing of the Discharge Certificate.

## PART IV – LAW AND ARGUMENT

### The Transactions Should Be Approved and the AVOs Should Be Granted

28. This Court has the jurisdiction to grant the AVOs. The Receivership Order authorizes the Receiver to sell, convey, transfer, lease or assign the Debtor's Property (as defined in the Receivership Order) with the approval of the Court, and to seek a vesting order or any other order necessary to convey the Debtor's Property to a purchaser, free and clear of liens or encumbrances.<sup>25</sup> Section 100 of the CJA, as amended, similarly authorizes the 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>26</sup>

29. 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>27</sup>

- (a) whether the party made a sufficient effort to obtain the best price and did not act improvidently;

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<sup>25</sup> *Bank of Montreal v. Happy Town Housing Inc.* (June 19, 2025), Hamilton, Court File No. CV-25-00090173-0000, [Order (Appointing Receiver)] (ONSC), (Goodman J) (the "**Receivership Order**") at paras. 3(g) and 3(h).

<sup>26</sup> *Courts of Justice Act*, RSO 1990, c. C.43, s. 100.

<sup>27</sup> *Royal Bank of Canada v Soundair Corp* (1991), 4 OR (3d) 1 at para 16 (ONCA); *Elleway Acquisitions Limited v 4358376 Canada Inc*, 2013 ONSC 7009 at para 31.

- (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.

30. As disclosed in the First Report, the directors and officers of the Purchaser are related to the sole officer and director of the Debtor. Where a proposed purchaser is a related party, the Receiver is expected to adhere to the *Soundair* principles. The sale process must be transparent and must enable the Court and interested parties to make an informed decision as to whether the sale transaction is fair and reasonable in the circumstances.<sup>28</sup> The Receiver must also provide sufficient detail to satisfy the Court that the best result is being achieved.<sup>29</sup>

31. In addition, the 2009 amendments to the BIA relating to sales to related persons in a proposal proceedings are instructive. Section 65.13(5) of the BIA provides:<sup>30</sup>

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

- (a) good faith efforts were made to sell or otherwise dispose of the assets to persons who are not related to the insolvent person; and
- (b) the consideration to be received is superior to the consideration that would be received under any other offer made in accordance with the process leading to the proposed sale or disposition.

32. Deference is to be afforded to a receiver in respect of 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>31</sup>

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<sup>28</sup> [The Toronto Dominion Bank v Canadian Starter Drives Inc](#), 2011 ONSC 8004 at paras 3, 5.

<sup>29</sup> [Ibid](#) at paras 7-8.

<sup>30</sup> [Elleway Acquisitions Limited v 4358376 Canada Inc](#), *supra* note 25 at para 44.

<sup>31</sup> [Crown Trust Co et al v Rosenberg et al](#) (1986), 60 OR (2d) 87 at paras 83-84 (ONSC).

33. It is respectfully submitted that the *Soundair* test is readily met on the facts of this case and that the Court should grant the AVOs for the following reasons:<sup>32</sup>

- (a) the Real Properties were extensively marketed over a four-month period, by an experienced brokerage, through, among other things, MLS listings, targeted outreach to brokers, and digital and social media advertising;
- (b) the Receiver is of the view that: (i) sufficient efforts were made to maximize value of the Real Properties; (ii) the sale process was robust, open, transparent, and commercially reasonable, appropriately considered the interests of all stakeholders; and (iii) the market was sufficiently canvassed;
- (c) the consideration to be received under the APSs is superior to the consideration that would be received under any other offer received during the sale process;
- (d) the terms of the APSs are commercially reasonable, the purchase prices reflect fair market value, and the Receiver is satisfied that the Transactions represent the best available outcome in the circumstances;
- (e) the Receiver does not believe that any continued sale process would yield a more favourable outcome than the outcome provided by the APSs;
- (f) BMO, the Debtor's first ranking secured creditor, supports the Transactions;
- (g) the identity of the Purchaser and its relationship to the Debtor were fully disclosed in the First Report;

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<sup>32</sup> First Report at paras. 18, 22, 24, 26, 27, 28.

- (h) the Receiver independently assessed the Purchaser’s offers on their merits without input from the Debtor, and its recommendation reflects its independent business judgment based on the results of a fair and open process; and
- (i) sufficient evidence has been placed before the Court to enable it to determine whether the best result is being achieved in the circumstances.

34. Notwithstanding that the Receiver was appointed solely in respect of the Real Properties, in the case of the Centre Street APS, the Receiver seeks to convey — and the Purchaser seeks to acquire — the Appliances identified as part of the “Purchased Assets” under Centre Street APS. Where necessary, Ontario courts have previously authorized receivers to convey on-site personal property through an Approval and Vesting Order, even where the scope of appointment was limited to the underlying real property.<sup>33</sup>

### **The Court Should Approve the First Report**

35. The Court has the inherent jurisdiction to review and approve the activities of a court appointed receiver as set out in its reports.<sup>34</sup>

36. Court approval allows the court officer to bring its activities before the court and present an opportunity to address stakeholders’ concerns, while enabling the court to satisfy itself that the activities have been conducted in a prudent and diligent manner.<sup>35</sup>

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<sup>33</sup> [Foremost Mortgage Holding Corporation v. Barakaa Developer Inc. et al.](#), (December 1, 2025), Toronto, Court File No. CV-24-00725076-00CL, [Approval and Vesting Order (377 Porte Rd.)] (ONSC Commercial List), (Cavanagh J.); [Foremost Mortgage Holding Corporation v. Barakaa Developer Inc. et al.](#), (December 1, 2025), Toronto, Court File No. CV-24-00725076-00CL, [Approval and Vesting Order (23 Madison Avenue)] (ONSC Commercial List), (Cavanagh J.); [Foremost Mortgage Holding Corporation v. Barakaa Developer Inc. et al.](#), (March 25, 2025), Toronto, Court File No. CV-24-00725076-00CL, [Approval and Vesting Order (25 Madison Avenue)] (ONSC Commercial List), (Cavanagh J).

<sup>34</sup> [Bank of America Canada v Willann Investments Ltd](#) (1996), 1996 CanLII 2782 (ONCA).

<sup>35</sup> [Target Canada Co \(Re\)](#), 2015 ONSC 7574 at para 23; [Triple-I Capital Partners Limited v 12411300 Canada Inc](#), 2023 ONSC 3400 at paras 65-66.

37. The activities set out in the First Report were all necessary and undertaken in good faith pursuant to Receiver's duties and powers set out in the Receivership Order, and were in each case in the best interest of the Debtors' stakeholders.

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

### **The Court Should Approve the Interim R&D**

39. The Interim R&D summarizes the receipts and disbursements in these receivership proceedings to December 31, 2025. The disbursements were necessary, reasonable, and incurred in the ordinary course of administering these receivership proceedings.

40. The Receiver submits that the Interim R&D should be approved.

### **The Sealing Order Should be Granted**

41. The Supreme Court of Canada has held that a sealing order may be granted when:<sup>36</sup>

- (a) an order is needed to prevent a serious risk to an important interest because reasonable alternative measures will not prevent the risk; and
- (b) the salutary effects of the order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

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<sup>36</sup> [Sierra Club of Canada v Canada \(Minister of Finance\), 2002 SCC 41](#) at para 45.

42. In *Sherman Estate v. Donovan* (“*Sherman Estate*”), 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>37</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 reasonable alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

43. The Confidential Appendices contain commercially sensitive information, including appraised values, the purchase price and deposit under each APS, and information regarding competing bids. Public disclosure of such information prior to closing of the Transactions poses a serious risk to the sale process if either Transaction fails to close as it could jeopardize dealings with any future prospective purchasers of the Real Properties.<sup>38</sup>

44. The salutary effects of sealing the Confidential Appendices from the public record outweigh the deleterious effects of doing so in the circumstances.<sup>39</sup> There is no other reasonable alternative to preventing such information from becoming publicly available.

45. The Receiver is not aware of any party that would be prejudiced by the temporary sealing of the Confidential Appendices, nor of any public interest that would be served by their disclosure prior to completion of the Transactions.<sup>40</sup>

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<sup>37</sup> [Sherman Estate v Donovan](#), 2021 SCC 25 at para 38.

<sup>38</sup> First Report at para. 34.

<sup>39</sup> First Report at para. 35.

<sup>40</sup> First Report at para. 35.

46. The Receiver is further of the view that the requested sealing order is narrowly tailored and consistent with the principles articulated by the Supreme Court of Canada in *Sherman Estate*.<sup>41</sup>

**The Court Should Approve the Fees and Disbursements of the Receiver and Chaitons, Including the Fee Accrual**

47. The Receivership Order provides that the Receiver and its counsel are to be paid their reasonable fees and disbursements, at their standard rates and charges, unless otherwise ordered by the Court on the passing of accounts.<sup>42</sup>

48. In determining whether to approve the accounts of a Court-appointed receiver and its counsel, the Court must 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 economic manner.<sup>43</sup>

49. The fees and disbursements of the Receiver and Chaitons are reasonable in the circumstances and were properly incurred. Chaitons' hourly rates are appropriate given the nature of the services provided and the experience of the professionals involved.<sup>44</sup>

50. The Fee Accrual is intended to cover fees and disbursements incurred or to be incurred in connection with the activities set out in the First Report, including closing the Transactions and

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<sup>41</sup> First Report at para. 35.

<sup>42</sup> [Receivership Order](#), *supra* note 25, at para 19.

<sup>43</sup> [Bank of Nova Scotia v Diemer](#), 2014 ONCA 851 at para 33.

<sup>44</sup> First Report at para. 39.

completing the remaining administrative matters. The Receiver believes that the Fee Accrual is sufficient and reasonable in the circumstances.<sup>45</sup>

51. To the extent any portion of the Fee Accrual remains unused following payment in full of all outstanding professional fees and disbursements, the Receiver proposes that such remaining balance be distributed to BMO.<sup>46</sup>

### **Proposed Distributions**

52. The Receivership Order provides that all funds received or collected by the Receiver, including from any sale of assets, shall be paid out in accordance with the terms of the Receivership Order or any further Order of the Court.<sup>47</sup> The Receivership Order also provides for a first charge on the Property (as defined in the Receivership Order) in favour of the Receiver and its counsel for their fees and disbursements (the “**Receiver’s Charge**”).<sup>48</sup>

53. Since its appointment, the Receiver has borrowed \$25,000 from BMO (the “**Receiver’s Borrowing**”) to fund disbursements incurred in connection with these receivership proceedings.<sup>49</sup>

54. BMO holds first-ranking mortgages (collectively, the “**BMO Mortgages**”) over the Rykert Street Property and the Centre Street Property, having principal balances in the amounts of \$334,000 and \$396,000, respectively.<sup>50</sup> Furthermore, a search of registrations under the *Personal Property Security Act* (Ontario) (“**PPSA**”) against the Debtor indicates that BMO is the sole PPSA registrant.<sup>51</sup>

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<sup>45</sup> First Report at para. 40.

<sup>46</sup> First Report at para. 50.

<sup>47</sup> [Receivership Order](#), *supra* note 25, at para 12.

<sup>48</sup> [Receivership Order](#), *supra* note 25, at para 17.

<sup>49</sup> First Report at para. 42; Appendix “12” to the First Report.

<sup>50</sup> First Report at para. 30.

<sup>51</sup> First Report at para 32; Appendix “8” to the First Report.

55. The Receiver has obtained an opinion from Chaitons confirming that the BMO Mortgages are valid and enforceable, subject to certain assumptions and qualifications typically included in opinions provided to trustees or receivers in insolvency proceedings.<sup>52</sup>

56. The Receiver is not aware of any priority or deemed trust claims, including those asserted by the Canada Revenue Agency (“**CRA**”) or under the *Wage Earner Protection Program Act*.<sup>53</sup>

57. As BMO will suffer a shortfall, no funds will be available for distribution to any other secured creditors.<sup>54</sup>

58. Accordingly, the Receiver respectfully requests that this Court approve the Proposed Distributions for the reasons set out in the First Report.

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

59. 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>55</sup>

60. 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 discharged. Once discharged, a receiver is unable to recover costs in defending such actions from the estate.<sup>56</sup> The purpose of the release provisions in the

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<sup>52</sup> First Report at para. 46; Appendix “15” to the First Report.

<sup>53</sup> First Report at para. 48.

<sup>54</sup> First Report at para. 49(c).

<sup>55</sup> [Ed Mirvish Enterprises Limited v Stinson Hospitality Inc](#) (2009), [2009 CanLII 55113](#) at para 8 (ONSC).

<sup>56</sup> [Ibid.](#)

Model Discharge Order is to remove the necessity for the holding back of post-receivership funds and/or conducting of a “claims bar” process, both of which add time and cost to the receivership.<sup>57</sup>

61. The Receiver submits that it is appropriate for it to be discharged and released on the terms proposed in the Distribution and Discharge Order for the following reasons:

- (a) following closing of the Transactions, the Receiver will have completed the substance of its mandate;
- (b) addressing the Receiver’s discharge in the manner proposed avoids the need for, and cost of, a separate motion for that purpose;
- (c) the proposed release includes the usual carve-out for any gross negligence or willful misconduct; and
- (d) the Receiver is not aware of any party asserting any claim against it.

62. The Receiver therefore respectfully requests that it be discharged and released following the filing of the Discharge Certificate certifying that it has completed any remaining activities in these receivership proceedings.

## **PART V – RELIEF SOUGHT**

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

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

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<sup>57</sup> [Ed Mirvish Enterprises Limited v Stinson Hospitality Inc](#), *supra* note 53 at para 13; [Oqopogo Beach Resort Ltd v Happy Valley Resort Ltd](#), 2010 BCSC 996 at para 39.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 12<sup>th</sup> day of February, 2026.



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**CHAITONS LLP**

*Lawyers for the Court-Appointed Receiver, msi  
Spergel Inc.*

## SCHEDULE “A”

### LIST OF AUTHORITIES

<b>Tab</b>	<b>Title</b>	<b>Pinpoints</b>
Case law		
1	<a href="#"><u><i>Bank of America Canada v Willann Investments Ltd</i>, 1996 CanLII 2782</u></a>	
2	<a href="#"><u><i>Bank of Nova Scotia v Diemer</i>, 2014 ONCA 851</u></a>	33
3	<a href="#"><u><i>Crown Trust Co et al v Rosenberg et al</i>, 60 OR (2d) 87</u></a>	83-84
4	<a href="#"><u><i>Ed Mirvish Enterprises Limited v Stinson Hospitality Inc</i>, 2009 CanLII 55113</u></a>	8, 13
5	<a href="#"><u><i>Elleway Acquisitions Limited v 4358376 Canada Inc</i>, 2013 ONSC 7009</u></a>	31, 44
6	<a href="#"><u><i>Foremost Mortgage Holding Corporation v. Barakaa Developer Inc. et al.</i>, (December 1, 2025), Toronto, Court File No. CV-24-00725076-00CL, [Approval and Vesting Order (23 Madison Avenue)] (ONSC Commercial List), (Cavanagh J).</u></a>	
7	<a href="#"><u><i>Foremost Mortgage Holding Corporation v. Barakaa Developer Inc. et al.</i>, (December 1, 2025), Toronto, Court File No. CV-24-00725076-00CL, [Approval and Vesting Order (377 Porte Rd.)] (ONSC Commercial List), (Cavanagh J).</u></a>	
8	<a href="#"><u><i>Foremost Mortgage Holding Corporation v. Barakaa Developer Inc. et al.</i>, (March 25, 2025), Toronto, Court File No. CV-24-00725076-00CL, [Approval and Vesting Order (25 Madison Avenue)] (ONSC Commercial List), (Cavanagh J).</u></a>	
9	<a href="#"><u><i>Ogopogo Beach Resort Ltd v Happy Valley Resort Ltd</i>, 2010 BCSC 996</u></a>	39
10	<a href="#"><u><i>Royal Bank of Canada v Soundair Corp</i>, 4 OR (3d) 1</u></a>	16
11	<a href="#"><u><i>Sherman Estate v Donovan</i>, 2021 SCC 25</u></a>	38
12	<a href="#"><u><i>Sierra Club of Canada v Canada (Minister of Finance)</i>, 2002 SCC 41</u></a>	45
13	<a href="#"><u><i>Target Canada Co (Re)</i>, 2015 ONSC 7574</u></a>	23
14	<a href="#"><u><i>The Toronto Dominion Bank v Canadian Starter Drives Inc</i>, 2011 ONSC 8004</u></a>	3, 5, 7-8
15	<a href="#"><u><i>Triple-I Capital Partners Limited v 12411300 Canada Inc</i>, 2023 ONSC 3400</u></a>	65-66

## **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-**

**HAPPY TOWN HOUSING INC.**  
**Respondent**

Court File No. CV-25-00090173-0000

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

Proceeding Commenced in Hamilton

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**FACTUM OF THE RECEIVER**

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