

**ONTARIO
SUPERIOR COURT OF JUSTICE**

**IN THE MATTER OF SECTION 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**

B E T W E E N:

1000688136 ONTARIO INC.

Applicant

and

20 CALDARI DEVELOPMENT INC.

Respondent

**FACTUM OF THE RECEIVER, MSI SPERGEL INC.
(Sale Process Motion, March 10, 2026)**

March 5, 2026

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PART I – OVERVIEW

1. msi Spergel inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") of all the assets, undertakings, and property of 20 Caldari Development Inc. (the "**Debtor**") is bringing a motion for, among other things:
 - (a) approving the proposed sale and investment solicitation process (the "**Sale Process**") in respect of the sale of the Debtor's real property located at 20 Caldari Road, Vaughan, Ontario (the "**Real Property**");
 - (b) authorizing and directing the Receiver to implement the Sale Process pursuant to the terms thereof;

- (c) approving an agreement of purchase and sale dated March 4, 2026 (the "**Stalking Horse APS**") between the Receiver and 1000688136 Ontario Inc. and J.I.S. Contract Furniture Inc. (in trust for a company to be incorporated), as purchaser (the "**Purchaser**" or "**Stalking Horse Bidder**"), solely for the purpose of constituting the "stalking horse bid" in the Sale Process;
 - (d) approving the Break Fee of \$400,000 in favour of the Stalking Horse Bidder;
and
 - (e) sealing certain documents in the Supplemental Report of the Receiver dated March 5, 2026 (the "**Supplemental Report**").
2. Spergel was appointed as Receiver of the Debtor pursuant to the order of Justice Wilkinson dated June 3, 2025 (the "**Receivership Order**"), which came into effect on or about July 3, 2025. Since its appointment, the Receiver has assessed the assets of the Debtor and has concluded that a sale of the Real Property, which is essentially the only or primary asset of the Debtor, is the best way to maximize value for the creditors and stakeholders of the Debtor.
3. To achieve those ends, the Receiver has negotiated the Stalking Horse APS with the Purchaser to set the floor for the value of the sale of the Real Property. The proposed Sale Process aims to market the Real Property to any interested parties and solicit superior bids from those interested parties. If there are no superior bids that come out of the Sale Process, the Receiver will subsequently seek this court's approval to close on the terms of the Stalking Horse APS, including approval of a vesting order in favour of the Purchaser.

4. The Receiver submits that the Sale Process and Stalking Horse APS represent the best opportunity to identify interested parties in a sale of the Debtor's assets and the best potential to maximize value for the benefit of stakeholders. The proposed draft order, therefore, should be approved in the circumstances.

PART II – FACTS

5. The Debtor's primary asset is the Real Property. The first mortgagee of the Real Property is 1000688136 Ontario Inc. (the "**First Mortgagee**") and the second mortgagee is J.I.S. Contract Furniture Inc. (the "**Second Mortgagee**"). The two mortgages secure indebtedness of approximately \$16 million including principal, accrued interest, enforcement costs, receiver fees, legals and property taxes, with costs and interest continuing to accrue.

Second Report of the Receiver dated January 15, 2026 (the "Second Report"), at paras. 2, 3, 6,13;

Supplemental Report, at para. 4.

6. The Debtor was put into receivership as a result of non-compliance with the June 3, 2025 Order of Justice Wilkinson (the "**June 3rd Order**"), in which the Receivership Order, annexed as Schedule "A" to the June 3rd Order, became effective on or about July 3, 2025. The application for the Receivership Order was brought by the First Mortgagee of the Real Property.

Second Report, at paras. 3,4;

June 3rd Order, Second Report, Appendix 1.

7. Upon its appointment, the Receiver discharged its normal obligations of information-seeking and preservation of the Debtor's assets. Regarding the Real

Property, the Receiver has attended to the general operation of the Real Property; confirmed that the insurance policy on the Real Property is effective; monitored the mortgage payments due or outstanding to the First Mortgagee and Second Mortgagee; reviewed the refinancing efforts of the Debtor; received and reviewed listing proposals from various brokerages; and considered the termination of the tenancy or occupancy rights of certain tenants or occupants on the premises.

Second Report, at paras. 6, 13.

8. On December 22, 2025, the Receiver issued certain conditions for continued occupancy and access to the Real Property, which was acknowledged and agreed upon by the Debtor and other parties on December 23, 2025 (the "**Occupancy Conditions**").
9. One of the Occupancy Conditions agreed upon by the Debtor acknowledged that the Receiver's mandate under the Order continued as follows:

"The Receiver's full mandate under the Order continues, including preserving, protecting, marketing, and preparing the Property for realization of it as security for the stakeholders, whether sold by public advertised sale, private advertised sale, outright sale, credit bid, stalking horse sale process, or any other sale process the Receiver may determine appropriate, in the exercise of its discretion."
10. One of the Occupancy Conditions agreed upon by the Debtor concerned the Debtor's last chance to complete the Toronto-Dominion Bank ("**TD**") refinancing in

order to pay out the First Mortgagee and Second Mortgagee. In particular, Occupancy Conditions 10, 11 and 12 provide as follows:

- (i) **Off-Ramp – Vacate Receiver if Successful:** *If by January 30, 2026 both the TD refinancing and the cash buyout are completed, the parties will cooperate to support an application to Vacate the Receiver by the Aurora parties.*
- (ii) **Unopposed Sale and Vacant Possession if Not Successful:** *If the refinancing is not completed by **January 30, 2026**, the Receiver will continue to proceed with court acknowledgement and/or approval of a sale process or sale, and the Aurora parties will **not oppose** the Receiver's application, and will **deliver vacant possession** as directed, without contest, delay, or asserting any right of occupancy or tenancy past January 30, 2026.*
- (iii) **Court Backstop:** *Counsel for the Receiver will seek the earliest available court date following January 30, 2026, as a backstop for either sale approval under Item #i [sic Item #ii] above, or discharge of the Receiver under Item #ii [sic Item #i] above.*

Second Report, at paras. 47-51, Appendix 2;

Supplemental Report, at paras. 5-7.

11. The TD refinancing was not completed by January 30, 2026 and this lack of refinancing continues to date. Based on the above Occupancy Conditions, the Receiver is seeking this Court's approval of, among other things, a stalking horse sale process, and is relying on the Debtor's acknowledgement and agreement not to oppose the motion and to deliver vacant possession of the Real Property on direction from the Receiver without contest, delay, or asserting any right of occupancy or tenancy.

Supplemental Report, at para. 8.

Stalking Horse Agreement of Purchase and Sale

12. The Receiver has determined that the sale of the Real Property is the best way to maximize value of the Debtor's assets for creditors and stakeholders. As a result, it has negotiated the Stalking Horse APS with the Purchaser and seeks to use that agreement as the keystone, "floor" value or basis to the proposed Sale Process.

Supplemental Report, at para. 19;

Stalking Horse APS, Supplemental Report, Appendix B.

13. The key terms and conditions of the Stalking Horse APS are:

- (i) **Purchaser:** 1000688136 Ontario Inc. and J.I.S. Contract Furniture Inc. (in trust for a company to be incorporated);
- (ii) **Vendor:** the Receiver;
- (iii) **Purchased Assets:** primarily the Real Property and any other Purchased Assets listed in the Stalking Horse APS;
- (iv) **Excluded Assets:** the Vendor shall not sell to the Purchaser and the Purchaser shall not purchase from the Vendor any assets other than the Purchased Assets;
- (v) **Purchase Price:** set in the Stalking Horse APS; as of the date of signing the Stalking Horse APS, approximately \$16 million, to be satisfied by way of a credit bid in that amount;
- (vi) **Deposit:** \$500,000, to be paid on acceptance of the Stalking Horse APS and to be credited against the Purchase Price upon completion of the sale;
- (vii) **Break Fee:** \$400,000, approximately 2.5% of the Purchase Price, in the event that the Stalking Horse APS is not ultimately the winning or successful bid for the Purchased Assets. The reasonableness of the Break Fee is set out in submissions below.
- (viii) **Material Conditions:** the Stalking Horse APS is subject to standard conditions;
- (ix) **Closing Date:** immediately after the expiry of the appeal period for the anticipated approval and vesting order;

Supplemental Report, at para. 19;

Stalking Horse APS, Supplemental Report, Appendix B.

Proposed Sale Process

14. The Sale Process, if approved, contemplates that the Receiver will:
- (a) prepare appropriate marketing materials including a teaser, form of confidentiality agreement and confidential information memorandum – notifying prospective purchasers of the existence of the Sale Process and inviting them to express their interest in making an offer in respect of the Real Property;
 - (b) bidders will be given an opportunity to conduct diligence and submit bids on or by April 14, 2026;
 - (c) any bids must adhere to the criteria set out in the Sale Process including, without limitation, a purchase price of at least \$400,000 higher than the Stalking Horse Bid, a Break Fee of \$400,000 and a cash bid participation deposit of \$100,000;
 - (d) if there are superior bids to the Stalking Horse APS, the Receiver shall notify each of the bidders who submitted a superior bid and the stalking horse bidder that one or more superior bids were received and shall invite each of them to submit a final offer which shall meet all of the bid criteria of a Superior Bid by 5:00pm (Eastern Time) on April 21, 2026; and

- (e) if the winning bid is not the Stalking Horse Bid, the Stalking Horse Bidder shall be entitled to the Break Fee and the return of its Deposit (plus any actual accrued interest on the Deposit) in accordance with the Stalking Horse APS and the winning bidder shall forthwith pay the Receiver the winning bid deposit in the amount of \$400,000 upon being notified of its winning bid in accordance with the Sale Process.

Supplemental Report, at para. 11.

Terms of the Sale Process

15. The Sale Process is designed to ensure that the marketing process is fair and reasonable, and prospective interested parties have the ability to make an offer to purchase the Real Property.

Supplemental Report, at para. 12.

16. As noted above, with respect to developing a marketing and solicitation strategy for the Real Property, the Receiver sought and obtained assessments of potential value and listing proposals from various real estate brokers, namely Cushman and Wakefield, Avison Young, CBRE, Colliers and Rentex Realty (the "**Brokers**"). After discussions with these Brokers, the Receiver determined that the most reasonable and commercially efficient approach to market and solicit interest in the Real Property would be to enter into a stalking horse agreement with the Stalking Horse Bidder and to conduct a stalking horse sale process. In particular, the Receiver received five listing proposals, one from each of the Brokers to assist in determining the value of the Real Property. While the listing proposals from the Brokers or a summary of their proposals is confidential, and subject to being

sealed, the valuations of the Real Property provided in the listing proposals suggest that the Stalking Horse APS and any superior bids will represent fair value to creditors and stakeholders of the Debtor. Similarly, the Receiver has appraisals of the Real Property that indicate that the Stalking Horse APS and any superior bids will provide fair value to the creditors and stakeholders of the Debtor.

Supplemental Report, at para. 13;

Appraisals of the Real Property, Supplemental Report, Confidential Appendices 2 & 3;

Summary of listing proposals from the Brokers, Supplemental Report, Confidential Appendix 1.

PART III – ISSUES AND THE LAW

17. The primary issues before this Court for determination are as follows:

- (a) Whether the Sale Process should be approved;
- (b) Whether the Stalking Horse APS, including the Break Fee and credit bid, should be approved for the purpose of serving as a stalking horse bid under the Sale Process; and
- (c) Whether Confidential Appendices 1, 2 and 3 to the Supplemental Report should be sealed.

In the Receiver's respectful submission, the answer to these questions is yes.

The Sale Process Should be Approved

18. The Sale Process was proposed by the Receiver and contemplates a comprehensive, fair, and transparent process for selling the Real Property. The

Receiver understands that the Applicant (also the First Mortgagee) and Second Mortgagee support the proposed Sale Process.

19. Court-appointed receivers have the powers set out in the Orders appointing them. In this case, the Receivership Order authorizes and grants the Receiver the powers to market and sell the Real Property.

20. Pursuant to subsection 243(1)(c) of the *Bankruptcy and Insolvency Act* (the "**BIA**"), this Court has jurisdiction to approve the proposed Sale Process. Although the decision to approve a sale process is distinct from the approval of a proposed sale transaction, what they have in common is that courts have held that the reasonableness and adequacy of any sale process proposed by a court-appointed receiver are to be assessed in light of the factors that a court will take into account when considering the approval of a proposed sale. The Court of Appeal summarized those factors in *Soundair* as follows:
 - (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
 - (b) whether the interests of all parties have been considered;
 - (c) the efficacy and integrity of the process by which offers are to be obtained;
and
 - (d) whether there has been unfairness in the working out of the process.

***Choice Properties Limited Partnership v Penady (Barrie) Ltd*, 2020 ONSC 3517, at para 15 [Choice Properties];**

***CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750, at para 6 [CCM Master];**

***Royal Bank of Canada v Soundair Corp* (1991), 4 OR (3d) 1 (CA), at p 9 [Soundair].**

21. In addition to considering the Soundair factors, the Court must also consider: (a) the fairness, transparency and integrity of the proposed process; (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and (c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale. In considering the proposed sale process, substantial deference should be given to the business judgement and recommendations of a receiver as an officer of the Court with significant expertise in insolvency proceedings.

***Ontario Securities Commission v Bridging Finance Inc*, 2021 ONSC 5338, at paras 7–8;**

***Choice Properties*, at para 16;**

***CCM Master*, at para 6;**

***Marchant Realty Partners Inc v 2407553 Ontario Inc*, 2021 ONCA 375, at paras 10, 15 and 19.**

22. As noted above, the Sale Process was developed in order to maximize value of the Debtor's property, including the Real Property, for the benefit of its creditors and stakeholders. The Receiver determined that the sale of the Real Property was the best way to achieve this maximization of value. Also, by negotiating the Stalking Horse APS with the Purchaser, the Receiver has set a floor for value that will return fair value.
23. However, it is only by exposing the Real Property to the market that the Receiver can ensure that there are no superior bids to the Stalking Horse APS. The Sale

Process is designed so that the Real Property is adequately exposed to the market. The Sale Process also establishes a protocol through which there is an opportunity for a transaction with greater value than the Stalking Horse APS and optimizes the chances of securing the best possible price for the Purchased Assets including the Real Property. In addition, the Sale Process is consistent with sale procedures used in other court-supervised stalking horse sale processes. The Receiver recommends that the Sale Process be approved, and that the Stalking Horse APS be approved as a stalking horse in the Sale Process.

24. In summary, among other considerations, the Receiver has determined that proceeding with the Stalking Horse APS and the Sale Process was the preferred approach for the following reasons: (a) the Stalking Horse APS creates an unconditional bid and establishes a floor value for the Real Property while providing an opportunity to market the Real Property for superior realization; (b) the Purchase Price set out in the Stalking Horse APS is within the range of potential values for the Real Property given to the Receiver by the Brokers; and (c) the Stalking Horse Bidder has agreed that the Sale Process will govern the conduct of the sale of the Real Property in all respects.

Supplemental Report, at paras. 12, 13, 16, 17, 19, 20.

Approval of the Stalking Horse APS including Credit Bid and Break Fee

25. Courts have routinely approved "stalking horse" bids, including credit bid stalking horses, in receivership proceedings, BIA proposals and *Companies' Creditors Arrangement Act* proceedings.

CCM Master, at para. 7.

26. As noted, the Stalking Horse APS provides a floor price for the Purchased Assets including the Real Property, and is satisfactory to the First Mortgagee and Second Mortgagee. Additionally, the proposed Stalking Horse APS provides the certainty of closing a transaction on a timely basis, which is a meaningful benefit for stakeholders of the receivership.
27. The Break Fee in the Stalking Horse APS is also reasonable. In reported decisions on motions to approve stalking horse sale processes, the courts have considered and approved break fees between 1.8% and 5%. The Break Fee in the Stalking Horse APS is approximately 2.5% of the Purchase Price, which is the low to middle range of comparable approved stalking horse agreements.

Re Danier Leather Inc., 2016 ONSC 1044 [Danier Leather], at paras. 42-43;

CCM Master, at para. 13.

28. The proposed Break Fee will not discourage other bidders from submitting offers. Break fees are frequently approved in insolvency proceedings and are designed not only to compensate the cost and risk incurred by a stalking horse purchaser in putting together a stalking horse bid, but also to reflect the value of the stability which a stalking horse bid provides.

Danier Leather, at para. 41.

29. Another development related to stalking horse procedures is the advent of credit bidding. In *White Birch Paper Holding Co.*, the Court recognized the use of credit

bidding as part of the sale process under the *Companies' Creditors Arrangement Act* and confirmed that a credit bid has the same value as a cash bid.

White Birch Paper Holding Co. (Arrangement relatif a), 2010 QCCS 4915, at paras. 34, 35.

30. In the circumstances, the Stalking Horse APS, including the credit bid and Break Fee, as recommended by the Receiver, is appropriate and should be approved by the Court.

The Confidential Appendices to the Supplemental Report Should be Sealed

31. The Receiver requests an order sealing the Confidential Appendices to the Supplemental Report pending the closing of the Sale Process.
32. The *Courts of Justice Act* grants this Court the discretion to order that any document filed in a civil proceeding be treated as confidential and sealed and not form part of the public record.

Courts of Justice Act, R.S.O., 1990 c. C. 43, s. 137(2).

33. The test to determine if a sealing order should be granted is set out in *Sierra Club* as recast in *Sherman Estate*:
 - (a) court openness poses a serious risk to an important public interest;
 - (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk;and

- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

***Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41 (CanLII), at para. 53. [Sierra Club];**

***Sherman Estate v. Donovan*, 2021 SCC 25, at paras. 38 and 43 [Sherman Estate].**

34. The courts in *Sierra Club* and *Sherman Estate* explicitly recognized that commercial interests such as preserving confidential information or avoiding a breach of a confidentiality agreement are an "important public interest" for purposes of this test.

***Sierra Club*, at para. 55;**

***Sherman Estate*, at paras. 41-43.**

35. The Confidential Appendices contain highly sensitive commercial information including estimates of value for the Real Property, which, if made public, would detrimentally affect the price that could be obtained on a subsequent sale of the Real Property should the transaction proposed by the Sale Process not close.
36. Courts have recognized that disclosure of this type of information in the context of a sales process could be harmful to stakeholders by undermining the integrity of the sales process.

***Re SkyPower Corp.*, 2009 CarswellOnt 9415, at para. 14 (Sup. Ct. J. [Commercial List]).**

37. The disclosure of the Confidential Appendices prior to the closing of the Sale Process would pose a serious risk to creditors and stakeholders in the event the transaction contemplated by the Sale Process does not close. Specifically,

disclosure could jeopardize dealings with any future prospective purchasers of the Real Property. There is no other reasonable alternative to preventing this information from becoming publicly available, and the sealing request may be removed upon further order of the Court or on completion of the Sale process. All other material terms of the Sale Process are disclosed in the Supplemental Report. Therefore, the salutary effects of maintaining the confidential nature of the Confidential Appendices until the closing of the transaction contemplated by the Sales Process greatly outweighs the deleterious effects.

PART IV – ORDER SOUGHT

38. The Receiver seeks an order:

- (a) if necessary, abridging the time for service and filing of this notice of motion and motion record;
- (b) approving the Sale Process for the sale of the Real Property;
- (c) approving the Stalking Horse APS including the credit bid and Break Fee;
and
- (d) sealing the Confidential Appendices to the Supplemental Report of the Receiver.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of March, 2026



FOGLER, RUBINOFF LLP

Charles Skipper

Lawyers for the Receiver, MSI Spergel Inc.

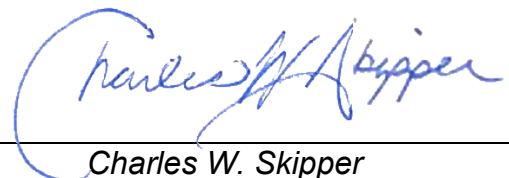
**SCHEDULE A
LIST OF AUTHORITIES**

1. *Choice Properties Limited Partnership v Penady (Barrie) Ltd*, [2020 ONSC 3517](#)
2. *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#)
3. *Royal Bank of Canada v Soundair Corp* (1991), 4 OR (3d) 1 (CA)
4. *Ontario Securities Commission v Bridging Finance Inc*, [2021 ONSC 5338](#)
5. *Marchant Realty Partners Inc v 2407553 Ontario Inc*, [2021 ONCA 375](#)
6. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41 \(CanLII\)](#)
7. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
8. *Re SkyPower Corp.*, 2009 CarswellOnt 9415, at para. 14 (Sup. Ct. J. [Commercial List])
9. *Re Danier Leather Inc.*, 2016 ONSC 1044
10. *White Birch Paper Holding Co. (Arrangement relatif a)* 2010 QCCS 4915

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 March 5, 2026



Charles W. Skipper

**SCHEDULE B
TEXT OF STATUTES, REGULATIONS & BY-LAWS**

Courts of Justice Act

R.S.O. 1990, CHAPTER C.43

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

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

Bankruptcy and Insolvency Act, R.S.C. 1985, c B-3

Court may appoint receiver

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

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

1000688136 ONTARIO INC.
Applicant

-and- 20 CALDARI DEVELOPMENT INC.
Respondent

Court File No. CV-25-00001199-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
BRAMPTON

**FACTUM OF THE RECEIVER
(SALE PROCESS MOTION)**

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