

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

- and -

3803DSW TAS LP, 3803 DSW MR LP, 3803 DSW URBAN PROPERTIES INC. and TAS  
DESIGNBUILD LP

Respondents

**FACTUM OF THE RECEIVER**  
**(Returnable March 20, 2026)**

March 18, 2026

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TO: **THE SERVICE LIST**

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## PART I – OVERVIEW

1. On March 6, 2025 (the “**Appointment Date**”), the Ontario Superior Court of Justice (the “**Court**”) granted the application of Cameron Stephens Mortgage Capital Ltd. (“**Cameron Stephens**” or the “**Lender**”) for an order appointing TDB Restructuring Limited (“**TDB**”) as the Court-appointed receiver (the “**Receiver**”) of the undertakings, property and assets of 3803 DSW Urban Properties Inc., 3803DSW TAS LP and 3803 DSW MR LP (collectively the “**Debtor**”), including the real property municipally known as 3775 – 4005 Dundas Street West, Toronto, Ontario (the “**Real Property**”), pursuant to the order of Justice Cavanagh (the “**Appointment Order**”).
2. The principal purpose of the receivership proceeding was to create a stabilized environment to enable the Receiver to conduct a sale process for the Real Property that maximized value for the Debtor’s stakeholders.
3. Since the Appointment Date, the Receiver has engaged Colliers Macaulay Nicolls Inc., Brokerage (“**Colliers**”) to list and market the Real Property for sale (the “**Sale Process**”).
4. After listing the Real Property for approximately fifteen (15) weeks, four prospective purchasers submitted an offer to purchase the Real Property. The Receiver, in consultation with Cameron Stephens, selected the Real Property Purchaser’s (defined below) bid as the successful bid on the basis that, *inter alia*, the Real Property Purchaser is known to Colliers as a large, multi-faceted real estate company with experience in construction and property development, and accordingly has the ability to close the Transaction.
5. The transaction contemplated by the Real Property APS provides for the greatest recovery available for the benefit of creditors in the circumstances, and the Receiver understands that Cameron Stephens, as first mortgagee of the Real Property, supports the completion of the Transaction.

6. The Receiver now returns before the Court to seek the following relief:
- (a) an approval and vesting order (the “**AVO**”), substantially in the form included at tab 3 of the Receiver’s motion record that, among other things:
    - (i) approving the transaction contemplated by the agreement of purchase and sale dated October 22, 2025 and amendment thereto dated February 20, 2026 (together, the “**Real Property APS**”) between the Receiver and 10361968 Canada Inc. (or any entity linked to Cogir Real Estate, Limited Partnership, currently in existence or to be constituted, alone or with partners) (the “**Real Property Purchaser**”), pursuant to which the Receiver shall sell and the Real Property Purchaser shall purchase the Real Property (the “**Transaction**”) and authorizing the Receiver to complete the Transaction;
    - (ii) vesting in Dundas West Project Limited Partnership (“**Dundas LP**”) all rights, title and interest in the Real Property subject to certain encumbrances, upon delivery of a certificate by the Receiver containing confirmation of the closing of the Transaction; and
    - (iii) sealing Confidential Appendices “1”, “2”, and “3” (collectively, the “**Confidential Appendices**”) to the First Report of the Receiver (the “**First Report**”) until the earlier of the closing of the Transaction or further Order of the Court.
  - (b) an ancillary order (the “**Ancillary Order**”), substantially in the form appended at tab 5 to the Receiver’s motion record that, among other things:
    - (i) authorizing and directing the Receiver to carry out an interim distribution from the net proceeds of the sale of the Real Property (as described below);
    - (ii) approves the First Report and the activities of the Receiver described therein; and
    - (iii) approves the fees, costs and expenses of the Receiver for the period of December 4, 2024, to February 28, 2026, and those of its independent legal counsel, Reconstruct LLP (“**RECON**”) for the period from May 1, 2025

to February 23, 2026 (collectively, the “**Professional Fees**”), as set out in the fee affidavits appended to the First Report.

7. The Receiver is not presently aware of any opposition to the relief sought.

## **PART II – FACTS**

### **A. Overview of the Debtor and the Receivership**

8. The Debtor is in the business of real estate investment and development. The Debtor held title to the Real Property, which is an approximately 1.28-acre vacant land site in the west end of Toronto, via 3803 DSW Urban Properties Inc.<sup>1</sup>

9. The Real Property is the Debtor’s principal asset. The Debtor had planned for the redevelopment of the Real Property into a 13-storey mixed-use rental building.<sup>2</sup>

10. However, after the first loan advance from the Lender on April 29, 2021, the Debtor decided to halt redevelopment work at the Real Property and to instead sell the Real Property. The Debtor was ultimately unable to sell the Real Property, which is presently vacant land.<sup>3</sup>

11. Cameron Stephens is the sole secured mortgage creditor of the Debtor. Cameron Stephens holds, among other security interests, a mortgage registered on title to the Real Property (the “**Mortgage**”).<sup>4</sup>

12. The Debtor ultimately defaulted on their loan to Cameron Stephens.<sup>5</sup> As a result, on March 6, 2025, this Court granted Cameron Stephens’ application for an Appointment Order.

### **B. Sale Process for the Property**

13. Following the Receiver’s appointment, the Receiver received listing proposals from several brokerages and ultimately selected Colliers based on its significant experience in marketing undeveloped residential property.<sup>6</sup>

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<sup>1</sup> Motion Record of the Receiver [“**MR**”], Tab 2, First Report of the Receiver dated March 11, 2026 [“**First Report**”], [para 2.9](#).

<sup>2</sup> First Report, para [2.12](#).

<sup>3</sup> First Report, paras [2.14-16](#).

<sup>4</sup> First Report, para [6.32](#).

<sup>5</sup> First Report, para [2.17](#).

<sup>6</sup> First Report, para [4.11](#).

14. Pursuant to subsection 3(h) of the Appointment Order, the Receiver was authorized to market the Real Property, including advertising and soliciting offers in respect of the Real Property or any part thereof and negotiating such terms and conditions of sale as the Receiver deems appropriate.<sup>7</sup>

15. After discussion with Colliers, on the basis that the prevailing real estate market was slow-moving, the Receiver set a “bid not before” date of June 24, 2025, as Colliers indicated that it would need time to work with potential purchasers to obtain the highest and best price for the Real Property.<sup>8</sup>

16. As part of its marketing efforts, Colliers, among other things:

- (a) launched the listing on MLS and commenced a marketing campaign for the sale of the Real Property on May 6, 2025;
- (b) circulated marketing materials by email to Colliers’ targeted distribution list of 9,534 parties; and
- (c) established and maintained an electronic data room to facilitate due diligence by prospective purchasers. Colliers received thirty-one (31) executed confidentiality agreements from prospective purchasers or their brokers, all of whom were granted access to the electronic data room.<sup>9</sup>

17. An initial bid date of June 26, 2025 (the “**First Bid Date**”) was set in order to gauge potential purchaser interest with a follow up, or second round, bid date of August 15, 2025 (the “**Second Bid Date**”).<sup>10</sup>

18. After the First Bid Date, Colliers received 4 offers, one of which was verbal. The Receiver reviewed the offers with Colliers and Cameron Stephens. After some discussion, the Receiver directed Colliers to continue working with potential purchasers through to the Second Bid Date with a view to having them improve their offers. After the Second Bid Date, the Receiver reviewed the second round of offers with Colliers and Cameron Stephens.<sup>11</sup>

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<sup>7</sup> First Report, Appendix “A”, Appointment Order, [para. 3\(h\)](#).

<sup>8</sup> First Report, para [4. 14](#).

<sup>9</sup> First Report, paras [4. 15-18](#).

<sup>10</sup> First Report, para [4. 17](#).

<sup>11</sup> First Report, para [4. 20](#).

19. The Receiver, with the concurrence of Cameron Stephens, decided to pursue the offer from the Real Property Purchaser on the basis that it is a large, multi-faceted real estate company with experience in construction, property development, property management and seniors housing in Canada and the USA. In addition to this, Colliers advised the Receiver that the Real Property Purchaser is known to Colliers and has the ability to close the Transaction.<sup>12</sup>

20. On October 22, 2025, after a period of negotiations with the Real Property Purchaser regarding the purchase price and conditions in the Real Property APS, the Receiver and the Real Property Purchaser entered into the Real Property APS which is now subject to the approval of the Court.<sup>13</sup>

### **C. Key Terms of the Agreement of Purchase and Sale**

21. Salient terms of the Real Property APS and matters relating to same include:

- (a) the purchased assets include the Real Property;
- (b) the deposits to be provided under the Real Property APS have been received from the Real Property Purchaser;
- (c) the offer is firm as the Real Property Purchaser has waived all conditions to closing except the issuance of the AVO (as defined below);
- (d) the Real Property APS is conditional on Court approval and the issuance of an order vesting title to the Real Property in the Real Property Purchaser free and clear of claims and encumbrances, other than those specifically itemized in the Real Property APS;
- (e) the Real Property Purchaser is buying the Real Property on an “as is, where is” basis;
- (f) closing of the sale provided for in the Real Property APS is scheduled to occur within eleven days following the date on which the AVO is granted, or such other date as agreed between the Real Property Purchaser and the Receiver;

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<sup>12</sup> First Report, para [4.21](#).

<sup>13</sup> First Report, para [4.22](#).

- (g) the Real Property Purchaser covenanted to deliver to the Receiver a direction re title to confirm the name in which title to the Real Property will be taken; and
- (h) The Transaction is to be completed not later than ten (10) days immediately following the date on which the Approval and Vesting Order is granted (the “**Closing Date**” or “**Closing**”) or such other date as the Real Property Purchaser and the Receiver may agree in writing.<sup>14</sup>

22. On March 5, 2026, the Real Property Purchaser delivered a direction re title to the Receiver, confirming that title to the Real Property is to be vested in Dundas LP (the “**Direction**”).<sup>15</sup>

#### **D. Proposed Interim Distribution**

23. Subject to the granting of the AVO and the closing of the Transaction contemplated therein, the Receiver is seeking authorization to distribute the proceeds of sale (the “**Interim Distribution**”) upon closing the Transaction for the Real Property as follows:

- (a) payment to the City of Toronto for the property taxes owing on the Real Property of approximately \$260,000, plus any further interest or fees at the time of closing;
- (b) pay the remaining unpaid fees and disbursements of the Receiver and RECON;
- (c) pay to Colliers its commission on the sale price of the Real Property pursuant to the listing agreement entered into between Colliers and the Receiver;
- (d) repayment to Cameron Stephens of the Receiver’s borrowings of \$200,000 plus interest thereon to the date of payment in respect of the Receiver’s Borrowing Charge;
- (e) retention of \$100,000 as a holdback for the further fees and disbursements of the Receiver and its counsel to close the sale of the Real Property and do all things necessary to wind up the receivership administration; and

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<sup>14</sup> First Report, para [4.23](#).

<sup>15</sup> First Report, para [4.25](#).

- (f) on the basis that Cameron Stephens is owed in excess of \$19,000,000 as at March 10, 2026, pay to Cameron Stephens the funds remaining from the proceeds of sale of the Real Property.<sup>16</sup>

24. The Receiver's legal counsel, RECON, has undertaken an independent security review regarding the security held by Cameron Stephens. The security review, subject to standard assumptions and qualifications, provided that the security held by Cameron Stephens is valid and enforceable against the Real Property but does not opine on the priority of such security as against other creditors.<sup>17</sup>

### **E. Approval of the Receiver's Professional Fees**

25. The Receiver is seeking approval of the Professional Fees of TDB, in its capacity as Receiver, during the period of December 4, 2024 to February 28, 2026,<sup>18</sup> and approval of the fees and disbursements of its counsel, RECON, incurred during the period of May 1, 2025 to February 23, 2026.<sup>19</sup>

26. In support of this motion, the Receiver delivered its First Report, which attaches affidavits from representatives of the Receiver and its legal counsel that provides a comprehensive listing of the accounts sought to be passed and summary tables identifying the individual professionals that have worked on this matter, their hourly billing rates and total numbers of hours worked, among other information.

27. The Receiver's accounts for the period from December 4, 2024 to February 28, 2026 total \$112,895.06 in fees and disbursements, plus HST of \$14,676.39, for a total amount of \$127,571.45.

28. The accounts of the Receiver's counsel, RECON, for the period from May 1, 2025, to February 23, 2026, total \$7,485.20 in fees and disbursements, plus HST of \$973.08 for a total amount of \$8,458.28.

### **PART III – ISSUES**

29. The issues to be determined on this motion are whether to:

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<sup>16</sup> First Report, para [7.37](#).

<sup>17</sup> First Report, para [6.33](#).

<sup>18</sup> First Report, [Appendix "K"](#), Affidavit of Arif Dhanani sworn March 10, 2025.

<sup>19</sup> First Report, [Appendix "L"](#), Affidavit of Alina Stoica sworn March 10, 2025.

- (a) approve the Real Property APS and vest the Real Property in Dundas LP free and clear of encumbrances;
- (b) grant a temporary sealing order sealing the Confidential Appendices;
- (c) approve the Interim Distribution;
- (d) approve the First Report and the activities of the Receiver described therein; and
- (e) approve and authorize payment of the Professional Fees.

#### **PART IV – LAW & ARGUMENT**

### **A. The Court Should Approve the Transaction and Vest the Real Property in Dundas LP**

30. The Court has jurisdiction to approve a sale of assets by the Receiver and to vest assets free and clear of encumbrances pursuant to section 243 of the BIA and section 100 of the CJA.<sup>20</sup>

31. In determining whether to approve a transaction proposed by a receiver, it is well established that the Court will consider the factors enunciated by *Royal Bank v Soundair Corp.*, namely:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process which offers were obtained; and
- (d) whether there has been unfairness in working out of the process (collectively, the “**Soundair Factors**”).<sup>21</sup>

32. Unless a proposed transaction clearly offends the Soundair Factors, courts generally uphold the business judgement of the court-appointed receiver overseeing the sale.<sup>22</sup>

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<sup>20</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended [“**BIA**”], [s. 243](#); *Courts of Justice Act*, RSO 1990, c C.43 [“**CJA**”], [s. 100](#).

<sup>21</sup> *Royal Bank of Canada v. Soundair Corp.* [“**Soundair**”], [1991 CanLII 2727 \(ON CA\)](#).

<sup>22</sup> *Soundair*, [para. 21](#); *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375, [para. 19](#);

33. The Soundair Factors are satisfied in respect of the proposed Transaction:

- (a) **The Receiver made sufficient effort to get the best price and has not acted improvidently.** Colliers, with the assistance of the Receiver, extensively canvassed the market for the Real Property, receiving thirty-one (31) signed Confidentiality Agreements from prospective purchasers or brokers, and four (4) offers to purchase the Real Property. Notice of the sale was sent to over 9,500 parties during the marketing process. The Real Property was on the market for approximately fifteen (15) weeks. The Receiver submits that the market was widely canvassed and that it is unlikely that exposing the Real Property to the market for additional time will result in a superior transaction than the one contemplated by the Real Property APS. The Transaction provides the most certainty and the greatest recovery available for the Lender and other creditors.<sup>23</sup>
- (b) **The Receiver has acted fairly, efficiently, and with integrity in considering the interests of all stakeholders.** In conducting the Sale Process, the Receiver considered the interests of all parties. The Receiver's primary intention in conducting the Sale Process was to maximize the realization of the Real Property for the benefit of all stakeholders. Colliers has informed the Receiver that it believes the Real Property Purchaser has the ability to close the Transaction.<sup>24</sup> The Transaction maximizes value for the Lender, being the sole security creditor in respect to the Real Property. In addition, the terms of the Transaction are fair, reasonable and typical for real estate asset sales in insolvency proceedings.
- (c) **The Sale Process undertaken by the Receiver was commercially reasonable, efficient and conducted with integrity.** The Receiver engaged Colliers, who is regularly involved in real estate sale processes across Canada. The Receiver and Colliers cooperated to implement a transparent, fair, competitive and efficient Sale Process by, among other things:
- (i) prepared a professional marketing package that described the opportunity to acquire the Real Property;
  - (ii) distributed notice of the sale to over 9,500 parties during the marketing

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<sup>23</sup> First Report, paras [4.26-28](#).

<sup>24</sup> First Report, para [4.21](#).

process and listed the Real Property on MLS and Colliers' website during the Sales Process;

- (iii) ensured that all parties were granted fair and equal access to due diligence materials relating to the Real Property and virtual data room; and
- (iv) conducted two rounds of bidding in order to secure the best offer for the Real Property.<sup>25</sup>

- (d) **There has been no unfairness in the working out of the process.** The Receiver does not believe there was any unfairness in the working out of the Sale Process. The Receiver is not aware of any opposition to the proposed Transaction.

34. The AVO is based on and does not substantively depart from the Commercial List's Model Approval and Vesting Order.<sup>26</sup>

35. Based on the foregoing, the Receiver respectfully submits that this Court should approve the Transaction.

## **B. The Court Should Grant a Sealing Order for the Confidential Appendices**

36. The Receiver seeks an order sealing the Confidential Appendices to the First Report, being a summary of the offers received after the First Bid Date, a summary of the offers received after the Second Bid Date, and an unredacted copy of the Real Property APS.

37. Pursuant to subsection 137(2) of the *Courts of Justice Act*, this Court has the jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.<sup>27</sup>

38. The test for a sealing order was established by the Supreme Court of Canada in *Sierra Club*<sup>28</sup> and subsequently in *Sherman Estate*.<sup>29</sup> The test involves three prerequisites which must be satisfied:

- (a) whether court openness poses a serious risk to an important public interest;

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<sup>25</sup> First Report, paras 4.17 and 26.

<sup>26</sup> MR, [Tab 4](#), Redline of Approval and Vesting Order to Commercial List's Model Approval and Vesting Order.

<sup>27</sup> CJA, *supra*, s. 137(2).

<sup>28</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41](#).

<sup>29</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#).

- (b) whether the order sought is necessary to prevent this serious risk to the identified interest because reasonable alternative measures will not prevent the risk; and
- (c) whether, as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>30</sup>

39. The requirements set forth in *Sherman Estate* are satisfied:

- (a) Public disclosure of the Confidential Appendices poses a serious and immediate risk. Disclosure of the interested parties' bids offers and valuations of the Real Property would be highly prejudicial to any additional marketing efforts that may be required in the event that the proposed Transaction does not close. In such instance, disclosure would undermine the integrity of the process and prevent the maximization of value, to the detriment of all stakeholders.
- (b) The sealing order sought is necessary to mitigate this risk. No reasonable alternative measures exist that would adequately protect the commercially sensitive information contained in the Confidential Appendices. The scope of the sealing provision is appropriately limited and remains subject to further order of this Court.
- (c) The benefits of granting the sealing provision outweigh any potential negative effects. The sealing of the Confidential Appendices until the Transaction has closed or further order of the Court is limited in duration. The proposed relief protects the confidentiality of commercially sensitive information during a critical stage of the receivership process, while preserving the transparency of the proceedings to the greatest extent possible under the circumstances.

### **C. The Court Should Approve the Interim Distribution**

40. The Receiver seeks authorization to make the proposed Interim Distribution. Courts routinely grant orders permitting distributions in insolvency proceedings, including receiverships.<sup>31</sup>

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<sup>30</sup> *Ibid*, [para. 38](#).

<sup>31</sup> See, among other cases, *GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.*, 2014 ONSC 1173 [Brown J. (as he then was)] ("**GE Canada**"); *Harbert Distressed Investment Fund, L.P. v General Chemical Canada Ltd.*, 2007 ONCA 600 ("**Harbert**"); *Runco v. Engenheiro*, 2023 ONSC 7231 ("**Runco**"), [para. 32](#).

41. In determining whether to approve a distribution in an insolvency proceeding, courts have considered, among other things:

- (a) whether the proposed distribution is in accordance with the applicable order of priorities, including whether the payee holds a valid and enforceable security interest;
- (b) whether an interim distribution increases the efficiency of the receivership process and the timeliness of creditor recovery in the circumstances;
- (c) whether any reserves or holdbacks are appropriate, such as in respect of the completion of the administration of the estate, professional fees, receiver's borrowings and certain statutory deemed trust claims;
- (d) whether the debtor's indebtedness to the payee exceeds the amount of the proposed distribution; and
- (e) generally, whether an interim distribution is just or convenient in the circumstances.<sup>32</sup>

42. As this Court held in *Runco*, "It is appropriate to authorize a receiver to make distributions of sale proceeds concurrently with the approval of such sale to maximize efficiency and avoid the need for additional motions."<sup>33</sup>

43. The proposed Interim Distribution meets the above-noted criteria and should be approved for the following reasons, among others:

- (a) the Receiver has obtained a security opinion, subject to the standard assumptions and qualifications, confirming that Cameron Stephens' security is valid and enforceable against the Real Property;
- (b) the proposed Interim Distribution is consistent with the applicable order of priorities, including payment of municipal property taxes, satisfaction of the Receiver's and its counsel's fees and disbursements, payment of the real estate commission, and repayment of the Receiver's borrowings pursuant to the Court-approved Receiver's Borrowing Charge;

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<sup>32</sup> *GE Canada*, [para. 53](#); and *Harbert*, [para. 47](#).

<sup>33</sup> *Runco*, [para. 32](#), citing *GE Canada*.

- (c) the Receiver has provided for an appropriate holdback in the amount of \$100,000 to fund the completion of the receivership and any remaining professional fees and disbursements;
- (d) the indebtedness owing to Cameron Stephens exceeds the anticipated net sale proceeds, such that all remaining proceeds are properly payable to it as the sole secured creditor;
- (e) the proposed Interim Distribution will enhance the efficiency of the receivership and avoid the unnecessary cost and delay associated with holding funds pending a further motion; and
- (f) the Receiver is not aware of any opposition to the proposed Interim Distribution, nor of any material prejudice or other compelling reason not to proceed with the Interim Distribution.

44. Based on the foregoing, the Receiver submits that the proposed Interim Distribution should be approved.

#### **D. The Court Should Approve the First Report and the Activities of the Receiver**

45. The Receiver seeks approval of its activities since the Appointment Order as set out in the First Report which includes, among other things, dealing with operational matters, selection of the successful bidder from the Sale Process, negotiating the Real Property APS, coordinating with the secured lender and RECON, and preparing materials to seek the approval of the AVO, and Ancillary Order.

46. The Court has inherent jurisdiction to review and approve the activities of a court appointed receiver as set out in a receiver's reports.<sup>34</sup> Courts frequently provide such approval where the court is satisfied that the court officer's activities have been conducted in a prudent and diligent matter.<sup>35</sup>

47. The Receiver submits that the activities described in the First Report are appropriate, timely, and in the interest of stakeholders. The activities were all necessary and efficiently undertaken pursuant to the Receiver's duties and powers set out in the Appointment Order.

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<sup>34</sup> *Bank of America Canada v Willann Investments Ltd.*, 1996 CanLII 2782 (ON CA).

<sup>35</sup> See *Target Canada Co. (Re)*, 2015 ONSC 7574 [Morawetz R.S.J. (as he then was)], paras. 2, and 23; and *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400 [Osborne J.], paras. 65 and 66.

48. Therefore, the Receiver submits that the First Report and the activities of the Receiver described therein should be approved.

### **E. The Court Should Authorize and Approve the Payment of Professional Fees**

49. The Receiver seeks authorization and approval to pay the Professional Fees.

50. The Appointment Order provides, among other things, that: (a) the Receiver and its legal counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges; and (b) the Receiver and its legal counsel shall pass their accounts from time to time by motion to a judge of the Southwest Region of the Ontario Superior Court of Justice.<sup>36</sup>

51. The test on a motion to pass accounts is on the basis of an “overriding principle of reasonableness.”<sup>37</sup> The overall value contributed by the Receiver and its counsel is the predominant consideration in assessing the reasonableness of the accounts.<sup>38</sup>

52. As the Court of Appeal for Ontario held in *Bank of Nova Scotia v Diemer*, the Court will not undertake a line-by-line analysis of the invoices. Rather, the guiding principles on fee approvals of this nature are whether the fees are fair, reasonable, and proportionate given the value of the Debtor’s assets and liabilities, as well as the complexity of the Debtor’s business and the insolvency proceeding.<sup>39</sup>

53. The Receiver, with the assistance of RECON, carried out extensive activities during the times subject to the Fee Affidavits, as detailed in the First Report. The material responsibilities that the Receiver discharged include, among other things: (a) monitoring the Real Property; (b) conducting the Sale Process which successfully resulted in the Transaction; and (c) communicating with stakeholders on the status of the receivership proceeding.

54. The time spent, and thus the fees and disbursements of the Receiver and its legal counsel, RECON, resulting from their activities are commensurate with the significant role and responsibilities and activities undertaken. The work has been undertaken with a view to advancing the interests of the Debtor and their stakeholders.

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<sup>36</sup> First Report, Appendix “A”, Appointment Order, paras. [17 and 18](#).

<sup>37</sup> *Nortel Networks Inc.*, 2022 ONSC 6680, [para. 10](#).

<sup>38</sup> *Re Nortel Networks Corporation et al*, 2017 ONSC 673, [paras. 15 and 21](#).

<sup>39</sup> *Bank of Nova Scotia v Diemer*, 2014 ONCA 851, [para. 33](#).

55. Accordingly, it is respectfully submitted the remuneration of the Receiver and its legal counsel are fair and reasonable, and their fees and disbursements should be approved.

**PART V – RELIEF REQUESTED**

56. The Receiver respectfully requests that the AVO and the Ancillary Order, substantially in the forms appended at tabs 3 and 5 to the Receiver’s motion record, be granted.

**PURSUANT TO RULE 4.06.1(2.1), THE UNDERSIGNED** certifies that they are satisfied as to the authenticity of every authority cited in this factum.



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**Colin Hunt (LSO No. 87267D)**

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 18th DAY OF MARCH, 2026**



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**RECONSTRUCT LLP**

## SCHEDULE "A"

### List of Authorities

1	<i>Royal Bank of Canada v. Soundair Corp.</i> , <a href="#">1991 CanLII 2727 (ON CA)</a>
2	<i>Marchant Realty Partners Inc. v. 2407553 Ontario Inc.</i> , <a href="#">2021 ONCA 375</a>
3	<i>Sierra Club of Canada v. Canada (Minister of Finance)</i> , <a href="#">2002 SCC 41</a>
4	<i>Sherman Estate v. Donovan</i> , <a href="#">2021 SCC 25</a>
5	<i>GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.</i> , <a href="#">2014 ONSC 1173</a> [Brown J. (as he then was)]
6	<i>Harbert Distressed Investment Fund, L.P. v General Chemical Canada Ltd.</i> , <a href="#">2007 ONCA 600</a>
7	<i>Runco v. Engenheiro</i> , <a href="#">2023 ONSC 7231</a>
8	<i>Bank of America Canada v Willann Investments Ltd.</i> , <a href="#">1996 CanLII 2782 (ON CA)</a>
9	<i>Target Canada Co. (Re)</i> , <a href="#">2015 ONSC 7574</a> [Morawetz R.S.J. (as he then was)]
10	<i>Triple-I Capital Partners Limited v 12411300 Canada Inc.</i> , <a href="#">2023 ONSC 3400</a> [Osborne J.]
11	<i>Nortel Networks Inc.</i> , <a href="#">2022 ONSC 6680</a>
12	<i>Re Nortel Networks Corporation et al</i> , <a href="#">2017 ONSC 673</a>
13	<i>Bank of Nova Scotia v. Diemer</i> , <a href="#">2014 ONCA 851</a>

## SCHEDULE “B”

### Statutory Authorities

#### Bankruptcy and Insolvency Act, RSC 1985, c B-3

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

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

#### **Restriction on appointment of receiver**

**(1.1)** In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

#### **Definition of *receiver***

**(2)** Subject to subsections (3) and (4), in this Part, ***receiver*** means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt — under
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
  - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

### **Definition of *receiver* — subsection 248(2)**

(3) For the purposes of subsection 248(2), the definition ***receiver*** in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

### **Trustee to be appointed**

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

### **Place of filing**

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

### **Orders respecting fees and disbursements**

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

### **Meaning of *disbursements***

(7) In subsection (6), ***disbursements*** does not include payments made in the operation of a business of the insolvent person or bankrupt.

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

### **Vesting orders**

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

### **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.

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

and

Court File No. CV-24-00732901-00CL  
3803DSW TAS LP, 3803 DSW MR LP, 3803 DSW URBAN  
PROPERTIES INC. and TAS DESIGNBUILD LP  
Respondents

Applicants

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceedings commenced at Toronto

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**FACTUM OF THE RECEIVER  
(Returnable March 20, 2026)**

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