

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**BETWEEN:**

**MARSHALLZEHR GROUP INC.**

Applicant

- and -

**2301402 ONTARIO LIMITED and JAKE'S HOUSE COMMUNITY RESIDENCES**

Respondents

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

**FACTUM OF THE RECEIVER  
(Motion returnable February 19, 2026)**

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**Lawyers for TDB Restructuring Limited,  
in its capacity as Court-Appointed  
Receiver**

**TO: SERVICE LIST**

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**FACTUM OF THE RECEIVER**

**PART I – OVERVIEW<sup>1</sup>**

1. This factum is filed by TDB Restructuring Limited (“**TDB**”), in its capacity as court-appointed receiver (the “**Receiver**”) without security, of all of the assets, undertakings and properties of 2301402 Ontario Limited and Jake’s House Community Residences (collectively, the “**Debtors**”), for:

- a) an approval and reverse vesting order (the “**ARVO**”), among other things:
  - i. approving the subscription agreement dated February 10, 2026 (the “**Subscription Agreement**”) among the Receiver and Dementia Care Holdings Inc. (the “**Purchaser**”), and the transactions contemplated thereby (the “**Transaction**”);

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<sup>1</sup> Capitalized terms not defined herein have the meaning defined in the Second Report of the Receiver dated February 10, 2026 (the “**Second Report**”), Tab 2, Motion Record of the Receiver.

- ii. upon closing of the Transaction and effective upon the Receiver delivering a certificate (the “**Closing Certificate**”) to 2301402 Ontario Limited (the “**Company**”) and the Purchaser:
- a. vesting all of the Company’s rights, title and interest in and to the Excluded Assets and Excluded Liabilities (each as defined in the Subscription Agreement) in a company to be incorporated (“**Residual Co.**”);
  - b. authorizing and directing the Receiver to cause the Company to issue the Purchased Shares (as defined in the Subscription Agreement) to the Purchaser;
  - c. vesting all of the rights, title and interest in and to the Purchased Shares in the Purchaser free and clear of all Claims and/or Encumbrances (as defined in the Subscription Agreement), other than Permitted Encumbrances (as defined in the Subscription Agreement);
  - d. terminating and cancelling all Equity Interests (as defined in the Subscription Agreement) without consideration;
  - e. removing the Company as a Respondent in these proceedings (the “**Receivership Proceedings**”); and
  - f. adding Residual Co. as a Respondent to these Receivership Proceedings;

- iii. sealing the Confidential Appendices to the Second Report pending completion of the Transaction or further order of the Court;
  - iv. authorizing, but not obligating, the Receiver to file an assignment in bankruptcy pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (“**BIA**”), for and on behalf of Residual Co.; and
  - v. granting the protection to the first director and officer of Residual Co. (the “**First Director**”) as provided for in the ARVO;
- b) A discharge and ancillary relief order (the “**Discharge and Ancillary Relief Order**”) substantially in the form attached to the Motion Record, among other things:
- i. approving the Second Report of the Receiver dated February 10, 2026 and the appendices thereto (the “**Second Report**”) and the conduct and activities of the Receiver described therein;
  - ii. approving the fees and disbursements of the Receiver and its legal counsel, Chaitons LLP (“**Chaitons**”);
  - iii. approving the Fee Accrual (as defined below);
  - iv. authorizing and directing the Receiver to pay any balance remaining in the Fee Accrual to MarshallZehr Group Inc. after payment of all fees and disbursements of the Receiver and Chaitons;
  - v. approving the Receiver’s interim statement of receipts and disbursements for the period from May 14, 2025 to January 31, 2026;

- vi. authorizing and directing the Receiver to make certain distributions, as recommended in the Second Report; and
  - vii. releasing and discharging TDB from any and all liability upon completion of the Remaining Duties (as defined in the Second Report); and
- c) such further and other relief that the Receiver may request and this Honourable Court may consider just.

## **PART II – FACTS**

2. The Company is the legal and beneficial owner of the real properties municipally known as 133, 135, 139, 141 and 143 Main Street, Lucan, Ontario (collectively, the “**Real Properties**”).<sup>2</sup>

3. A 54-unit rehabilitative healthcare and seniors’ residential facility supporting seniors and individuals on the autism spectrum through various services (the “**Lucan Facility**”) was located on certain of the Real Properties.<sup>3</sup> The Lucan Facility was closed, and the residents of the Lucan Facility had been relocated, prior to the Receiver’s appointment.

4. The applicant in this matter, MarshallZehr Group Inc. (“**MarshallZehr**”), is the senior secured creditor of the Debtors and the sole mortgagee of the Real Properties.<sup>4</sup>

5. MarshallZehr advanced credit facilities to the Company pursuant to multiple loan agreements (the “**Loans**”). The Debtors defaulted on their obligations under the Loans.<sup>5</sup>

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<sup>2</sup> First Report of the Receiver dated September 19, 2025 (the “**First Report**”) at para 10.

<sup>3</sup> First Report at para 10.

<sup>4</sup> First Report at para 12.

<sup>5</sup> First Report at para 13.

6. Pursuant to an Order of this Court made on May 14, 2025, TDB was appointed Receiver of all of the assets, undertaking and properties, including the Real Properties, of the Debtors (the “**Appointment Order**”).<sup>6</sup>

### **The Sale Process**

7. The Receiver conducted a robust and comprehensive sale process which was designed to maximize value for the Company’s stakeholders by canvassing the market for both an outright asset sale and alternative transaction structures, including a share transaction implemented through a reverse vesting order.<sup>7</sup>

8. The Receiver received listing proposals from three brokerages and ultimately selected Colliers Macaulay Nicolls Inc. (“**Colliers**”), in consultation with MarshallZehr.<sup>8</sup> Colliers’ familiarity with, and access to, market participants active in the seniors’ living and healthcare sector was viewed as supportive of attracting qualified purchasers capable of potentially realizing the full value of the Company’s tax losses in the approximate amount of \$22.5 million.<sup>9</sup>

9. Colliers received four (4) offers for the Real Properties, and one (1) offer for the shares of the Company. The offer for the purchase of the Company’s shares was significantly superior to the offers received for only the Real Properties.<sup>10</sup>

10. The Receiver reviewed the offers with Colliers and MarshallZehr and determined that the offer from the Purchaser is the highest and best available offer.<sup>11</sup>

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<sup>6</sup> Second Report of the Receiver dated February 10, 2026 (the “**Second Report**”) at para 1; Appointment Order appended to the Second Report as Appendix “A”.

<sup>7</sup> Second Report at paras 14 and 30.

<sup>8</sup> Second Report at para 18.

<sup>9</sup> Second Report at paras 17 and 34.

<sup>10</sup> Second Report at para 25.

<sup>11</sup> Second Report at para 25.

## **The Subscription Agreement and the Transaction**

11. The Receiver and the Purchaser have entered into the Subscription Agreement, subject to Court approval, which contemplates a reverse vesting order transaction.<sup>12</sup> The salient terms of the Subscription Agreement are set out in the Second Report.<sup>13</sup>

12. The aggregate purchase price for the Purchased Shares of the Company is payable as follows:

- a) by payment of cash consideration, sufficient to pay all priority payables including professional fees, property tax arrears, HST (if any), source deductions (if any), and administrative costs; and
- b) the retained portion of the secured indebtedness owing to MarshallZehr.<sup>14</sup>

13. Closing of the Transaction is to occur no later than five (5) business days following satisfaction or waiver of the closing conditions and in any event no later than March 31, 2026, unless otherwise agreed by the parties in writing.<sup>15</sup>

14. The Transaction is subject to customary closing conditions, including, without limitation, the issuance of an ARVO.<sup>16</sup>

## **Sealing Order**

15. The Receiver requests a sealing order to seal the Confidential Appendices appended to the Second Report, being the offer summary and an unredacted copy of the Subscription Agreement

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<sup>12</sup> Second Report at paras 28 and 29.

<sup>13</sup> Second Report at para 27.

<sup>14</sup> Second Report at para 27(c).

<sup>15</sup> Second Report at para 27(g).

<sup>16</sup> Second Report at para 27(h).

(collectively, the “**Confidential Information**”).<sup>17</sup>

16. The Confidential Information contains sensitive information including the purchase price and the amount of the deposit. The disclosure of the Confidential Information prior to closing could prejudice the integrity of the sale process and additional marketing efforts that may be needed for the Company and/or Real Properties, should the Transaction fail to close.<sup>18</sup>

17. The sealing order sought is limited in time and will automatically expire upon the closing of the Transaction contemplated in the Subscription Agreement or further order of the Court.<sup>19</sup>

### **First Director for Residual Co.**

18. A representative of MarshallZehr has agreed to act as the First Director in order to close the Transaction, conditional on the Court granting of the ARVO on terms which include the protections in favour of the First Director reflected in the proposed ARVO.<sup>20</sup>

### **Activities of the Receiver**

19. The Receiver’s activities since its appointment are described in paragraph 13 of the Second Report.<sup>21</sup> The Receiver respectfully requests approval of its activities.

### **Professional Fees**

20. The Receiver seeks approval of the fees and disbursements of the Receiver and Chaitons, as set out in the Fee Affidavits, appended to the Second Report as **Appendix “F”** and **Appendix “G”**, and submits that the fees are reasonable in the circumstances and have been validly incurred

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<sup>17</sup> Second Report at para 51.

<sup>18</sup> Second Report at para 52.

<sup>19</sup> Second Report at para 53.

<sup>20</sup> Second Report at para 60.

<sup>21</sup> Second Report at para 13.

in accordance with the provisions of the Appointment Order.<sup>22</sup>

21. The Receiver also seeks approval of the holdback amount specified in the Second Report, for estimated fees and disbursements of the Receiver and its counsel, required to close the Transaction and do all things necessary to complete the receivership administration and any bankruptcy proceeding of Residual Co. (the “**Fee Accrual**”).<sup>23</sup>

22. Any balance remaining in the Fee Accrual is to be paid to MarshallZehr after payment of all fees and disbursements of the Receiver and Chaitons.

### **Interim Statement of Receipts and Disbursements**

23. The Receiver’s interim statement of receipts and disbursements for the period from May 14, 2025 to January 31, 2026 are summarized in the Second Report and detailed in **Appendix “E”** thereto.<sup>24</sup>

24. The Receiver respectfully requests approval of the Receiver’s statement of receipts and disbursements.

### **Proposed Distributions**

25. The Receiver has obtained a legal opinion from RAR Litigation Lawyers (“**RAR**”) in its capacity as independent legal counsel to the Receiver, opining that, subject to usual assumptions and qualifications, MarshallZehr’s first mortgages constitute valid and enforceable charges against the Real Properties.<sup>25</sup>

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<sup>22</sup> Second Report at paras 56 to 58; Appendix “F” and Appendix “G” to the Second Report.

<sup>23</sup> Second Report at paras 49(e), 56 and 57.

<sup>24</sup> Second Report at para 50; Appendix “E” to the Second Report.

<sup>25</sup> Second Report at para 48.

26. Following completion of the Transaction and subject to Court approval, the Receiver is proposing that it be authorized to make the Proposed Interim Distribution (as defined in the Second Report).<sup>26</sup>

### **Discharge and Release**

27. Subject to this Court granting the relief sought herein, the Receiver will be required to complete certain remaining duties described in the Second Report.<sup>27</sup>

28. The Receiver seeks an order that, upon the filing of the Discharge Certificate, TDB be discharged as Receiver over the Debtors' property, assets and undertakings, and released from all liability except of gross negligence and wilful misconduct on the Receiver's part.<sup>28</sup>

### **PART III – ISSUES**

29. The issues before the Court are:

- a) Should the Court approve the Subscription Agreement and the Transaction?
- b) Should the Court grant the ARVO?
- c) Should the Court seal the Confidential Information pending the closing of the Transaction?
- d) Should Residual Co. be added as an Applicant to these Receivership Proceedings?
- e) Should the Court approve the protections for the First Director contemplated in the ARVO?
- f) Should the Court approve the Second Report and the conduct and activities of the Receiver described therein?

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<sup>26</sup> Second Report at para 49.

<sup>27</sup> Second Report at para 59.

<sup>28</sup> Second Report at para 62.

- g) Should the Court approve the fees and disbursements of the Receiver and its counsel, as well as the Fee Accrual?
- h) Should the Court approve the proposed Distributions?
- i) Should the Court discharge and release TDB as Receiver?

## **PART IV - LAW AND ARGUMENT**

### **A. The Subscription Agreement and the Transaction Should be Approved**

30. The following criteria established by the Ontario Court of Appeal in *Royal Bank of Canada v Soundair Corp.* is to be applied in reviewing a proposed sale by a receiver: (a) whether the Court-appointed officer made sufficient efforts to obtain the best price and did not act improvidently; (b) the interests of all parties; (c) the efficacy and integrity of the process by which offers were obtained; and (d) whether there has been unfairness in the working out of the process.<sup>29</sup>

31. Significant deference is owed to the recommendations of a court-officer so long as the recommendations are within the broad bounds of reasonableness and the court officer proceeded fairly.<sup>30</sup> Absent a violation of the *Soundair* principles or other exceptional circumstances, the Court should uphold the business judgment of its court officer.<sup>31</sup>

32. The marketing process undertaken by Colliers and the Receiver to generate the proposed Transaction meets the *Soundair* principles as:<sup>32</sup>

- (a) sufficient effort was made to obtain the best price and maximize value for the Company's stakeholders for, among other things, the following reasons: (i) the sale

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<sup>29</sup> [Royal Bank of Canada v Soundair Corp](#) (1991), 4 OR 1.

<sup>30</sup> [Cameron Stephens Mortgage Capital Ltd v Conacher Kingston Holdings Inc](#), 2025 ONCA 732 at para 31; [Royal Bank of Canada v Soundair Corp](#), *supra* note 29.

<sup>31</sup> [Crown Trust Co et al v Rosenberg et al](#) (1986), 60 OR 87 (Sup Ct J).

<sup>32</sup> Second Report at paras 30 to 38.

- process was robust, open, transparent, and commercially reasonable; and (ii) as described in the Second Report, the sale process resulted in sufficient market exposure for the Company and the Real Properties;
- (b) the terms of the Subscription Agreement are commercially reasonable;
  - (c) the Transaction represents the highest and best price available for the Company and its assets, and is the best available outcome in the circumstances;
  - (d) unlike a conventional real property sale, the Transaction preserves significant value that would not otherwise be realized, including material tax attributes of the Company;
  - (e) having regard to the purchase price, the Receiver is realizing material value for the Company's tax attributes and land transfer tax savings compared to a sale of the Real Properties;
  - (f) the interests of all stakeholders were appropriately considered. In this respect, the Receiver notes the following:
    - (i) the Company will be able to continue to provide much needed healthcare-related services to seniors living in the small rural community of Lucan, Ontario, as the Purchaser has advised that it intends, through the Company, to conduct similar operations as the Company did previously, being the care for those unable to live independently without assistance;
    - (ii) the Transaction may create opportunity and employment for the local community from the Company's continued operations; and

(iii) MarshallZehr, the senior secured creditor of the Company, was consulted throughout the sale process and is supportive of the Transaction and the proposed ARVO; and

(g) given the length of time on the market, it is unlikely that exposing the Real Properties to the market for additional time would result in a superior transaction than the one contemplated by the Transaction.

33. For the above noted reasons, the Receiver submits that the Transaction and Subscription Agreement should be approved.

## **B. The ARVO Should Be Approved**

### *i. Jurisdiction for a Reverse Vesting Order*

34. The proposed ARVO seeks approval of the Subscription Agreement, which contemplates a Transaction through a “reverse vesting” structure.

35. Courts have recognized that there exists jurisdiction to approve reverse vesting transactions in receivership proceedings pursuant to section 243 of the BIA.<sup>33</sup>

36. As Justice Colin C.J. Feasby stated in *Cleo Energy Corp (Re)*, 2025 ABKB 621, reverse vesting orders are no longer deemed an “extraordinary” remedy as they are now a “common way for insolvency and restructuring matters to be resolved.”<sup>34</sup>

37. A reverse vesting order has been determined to be a suitable restructuring tool to, among other things, preserve certain tax attributes that would otherwise be lost in a traditional vesting

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<sup>33</sup> [Peakhill Capital Inc v Southview Gardens Limited Partnership](#), 2023 BCSC 1476.

<sup>34</sup> [Cleo Energy Corp \(Re\)](#), 2025 ABKB 621 at para 10.

order transaction.<sup>35</sup>

38. In *Harte Gold Corp. (Re)*, the Court articulated the factors to be considered in respect of a proposed reverse vesting transaction, which include:

- a) Why is the reverse vesting order necessary in the present case?
- b) Does the reverse vesting structure produce an economic result at least as favourable as any other viable alternative?
- c) Is any stakeholder worse off under the reverse vesting structure than they would be under any other viable alternative?
- d) Does the consideration being paid for the debtor's business reflect the importance and value of the assets being preserved under the reverse vesting structure?<sup>36</sup>

***ii. The Harte Gold Criteria Has Been Met and a Reverse Vesting Structure is Appropriate***

The Reverse Vesting Order Is Necessary

39. While the *Harte Gold* factors state that a reverse vesting structure must be “necessary”, Courts have indicated that this need not be “necessary in the absolute sense.”<sup>37</sup> As such, it is not necessary to demonstrate that the assets are impossible to transfer through a traditional approval and vesting order structure. Courts have granted reverse vesting orders where there is, among other things, a potential loss of tax attributes through a traditional approval and vesting order that would

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<sup>35</sup> [British Columbia v Peahill Capital Inc, 2024 BCCA 246.](#)

<sup>36</sup> [Harte Gold Corp \(Re\), 2022 ONSC 653](#) at para 38.

<sup>37</sup> [Bank of Montreal v Haro-Thurlow Street Project Limited Partnership, 2024 BCSC 1722](#) at para 33, where the court approved an RVO in a receivership, noting in its reasons that the RVO was “not necessary in the absolute sense, but the structure of an RVO will result in a net benefit to the estate.”

affect the purchaser's willingness or ability to complete the transaction.<sup>38</sup>

40. The Purchaser has indicated that a reverse vesting structure through the proposed ARVO is a necessary term of the Subscription Agreement and their willingness to proceed with the Transaction.<sup>39</sup>

41. Based on the Company's books and records along with the filed tax returns, the Company has approximately \$22.5 million in non-capital loss carryforwards, which constitutes a valuable attribute of the shares of the Company.<sup>40</sup>

42. Incidentally, the Transaction allows the Purchaser to acquire the Real Properties without the need for land transfer tax to be paid, as title will remain with the Company.<sup>41</sup> As per section 3(2) of the of the *Land Transfer Tax Act*<sup>42</sup> and guidance from the Ministry of Finance,<sup>43</sup> the transfer of shares in a corporation which holds land in its own right does not ordinarily attract payment of the land transfer tax, as there is no corresponding transfer of the beneficial interest in land.<sup>44</sup>

43. A conventional real property sale or asset sale implemented through a traditional approval and vesting order would not permit preservation or realization of the Company's non-capital loss carryforwards and would result in the loss of the land transfer tax savings. The reverse vesting structure is therefore necessary to preserve and monetize the tax losses and land transfer tax

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<sup>38</sup> [Aquilini Development Limited Partnership v Garibaldi at Squamish Limited Partnership, 2024 BCSC 764](#) at paras 94-95; [Comark Holdings et al., \(March 21, 2025\), Ontario Superior Court of Justice \(Commercial List\), Court File No. CV-25-00734339-00CL \(Endorsement of Justice Cavanagh\)](#).

<sup>39</sup> Second Report at para 41(a)(ii).

<sup>40</sup> Second Report at paras 34 and 41(a)(i).

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

<sup>42</sup> [Land Transfer Tax Act](#), RSO 1990, c L.6, [s 3](#).

<sup>43</sup> Ontario, Ministry of Finance, "Land Transfer Tax and Treatment of Unregistered Dispositions of Beneficial Interest in Land", online: Government of Ontario <<https://www.ontario.ca/document/land-transfer-tax/land-transfer-tax-and-treatment-unregistered-dispositions-beneficial>>.

<sup>44</sup> Jane C. Helmstadter and Craig R. R. Garbe, "Ontario and Toronto Land Transfer Tax Update 2018" (2018), Bennett Jones Insights, online: <<https://www.bennettjones.com/Insights/Updates/Ontario-and-Toronto-Land-Transfer-Tax-Update-2018>> (accessed February 13, 2026); [Lo Faso v Ferracuti Estate, 2013 ONCA 123](#) at para 26.

savings for the benefit of stakeholders in connection with the Transaction.

44. In *Peakhill Capital Inc. v Southview Gardens Limited Partnership*, 2023 BCSC 1476, the Court granted a reverse vesting order in a contested proceeding where land transfer tax savings was the only benefit.<sup>45</sup> The decision was appealed and the Court of Appeal for British Columbia held that structuring a transaction, through a reverse vesting order, to avoid land transfer tax is a legitimate commercial practice.<sup>46</sup>

45. As further held by the Court of Appeal for British Columbia, the goal of maximizing recovery for creditors is a *bona fide* purpose intended to further the objectives of the BIA and in this case the land transfer tax savings are simply the means by which that benefit is being conferred.<sup>47</sup>

The Reverse Vesting Structure Produces An Economic Result At Least As Favourable As Any Other Viable Alternative

46. As discussed in the Second Report, the Transaction implemented through the ARVO preserves both the tax loss carryforwards and incidentally the land transfer tax savings, while delivering a purchase price that reflects these enhanced economics.<sup>48</sup>

47. By contrast, a conventional asset sale would eliminate the ability to preserve and monetize the Company's tax losses and would materially reduce the overall value available to stakeholders.<sup>49</sup>

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<sup>45</sup> [Peakhill Capital Inc v Southview Gardens Limited Partnership](#), *supra* note 33.

<sup>46</sup> [British Columbia v Peakhill Capital Inc](#), *supra* note 35 at para 30.

<sup>47</sup> *Ibid* at para 31.

<sup>48</sup> Second Report at para 41(b)(i).

<sup>49</sup> Second Report at para 41(b)(i).

48. Accordingly, the Receiver is of the view that the ARVO structure produces an economic result that is at least as favourable, and in fact superior, to any other reasonably available alternative transaction structure. This is confirmed by the fact that the Transaction is the highest price received compared to the other four offers received for the Real Properties (as defined in the Second Report) in a conventional land sale transaction.<sup>50</sup>

No Stakeholder Is Worse Off Under the Reverse Vesting Structure Than They Would Be Under Any Other Viable Alternative

49. As outlined in paragraph 41(c) of the Second Report, the Receiver is not aware of any creditor who would be materially prejudiced by the proposed ARVO structure as compared to a conventional sale transaction.<sup>51</sup>

50. Because the Transaction is structured as a share purchase rather than a sale of real property, land transfer tax is not payable. However, the impact of the ARVO on the Province of Ontario is no different than the purchase of the shares of a real estate holding company in a non-insolvency context.<sup>52</sup>

51. Given the Company's outstanding obligations to its secured creditors, there will be no recovery for unsecured creditors under this or any alternative structure. Unsecured creditors would likewise not be expected to receive any recovery if the Transaction were completed through an asset sale rather than the ARVO.<sup>53</sup>

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<sup>50</sup> Second Report at para 41(b)(i).

<sup>51</sup> Second Report at para 41(c)(i).

<sup>52</sup> Second Report at para 41(c)(i).

<sup>53</sup> Second Report at para 41(c)(ii).

The Consideration Being Paid For The Company's Shares Reflects The Importance And Value Of  
The Reverse Vesting Structure

52. The Receiver is of the view that the consideration payable under the Transaction appropriately reflects the value of the tax attributes, and the land transfer tax savings being preserved through the ARVO structure.<sup>54</sup>

**C. The Sealing Order Should be Granted**

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

- a) where it is necessary to prevent a serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- b) where the salutary effects of the confidentiality outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.<sup>55</sup>

54. In *Sherman Estate v. Donovan*, the Supreme Court of Canada held that a person asking a court to exercise discretion in limiting the 'open court' presumption must establish that:<sup>56</sup>

- a) court openness poses a serious risk to public interest;
- b) the order sought is necessary to prevent the risk to the identified interest because reasonably

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<sup>54</sup> Second Report at para 41(d)(i).

<sup>55</sup> [Sierra Club of Canada v Canada \(Minister of Finance\), 2002 SCC 41 \(CanLII\), 2002 SCC 41](#) at para 45.

<sup>56</sup> [Sherman Estate v Donovan, 2021 SCC 25 \(CanLII\), 2021 SCC 25](#) at para 38.

alternative measures will not prevent this risk; and

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

55. This Court has applied the *Sierra* test in court-supervised sale proceedings to ensure that competitors or potential bidders do not gain an advantage if a proposed sale transaction does not close. In *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, this Court held that the “integrity of the sales process necessitates keeping all bids confidential until a final sale of the assets has taken place.”<sup>57</sup>

56. The Confidential Appendices to the Second Report consist of the unredacted Subscription Agreement and the offer summary.<sup>58</sup> A redacted version of the Subscription Agreement was attached to the Second Report and the only redactions contained therein relate to the cash consideration, purchase price and the deposit.<sup>59</sup>

57. The Confidential Information contains commercially sensitive information, including the purchase price information, information regarding other bids, and other critical commercial information, the disclosure of which prior to the closing of the Transaction could adversely impact the future marketability of the Company and the Real Properties should the Transaction not close.<sup>60</sup>

58. The proposed sealing order is limited in scope and is temporally limited to the closing of the Transaction. Accordingly, the Receiver submits that the sealing order is proportional in the circumstances and the benefits of preserving the confidential information pending closing of the

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<sup>57</sup> [GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc, 2014 ONSC 1173](#) at para 34.

<sup>58</sup> Second Report at para 51; Confidential Appendices “1” and “2” to the Second Report.

<sup>59</sup> Appendix “C” to the Second Report.

<sup>60</sup> Second Report at para. 52.

Transaction outweigh any negative effects.<sup>61</sup>

**D. Residual Co. Should be Added as an Applicant and the First Director Should be Granted the Protections in the Proposed ARVO**

59. The proposed ARVO provides that the Excluded Assets and Excluded Liabilities will vest in Residual Co. upon the closing of the Transaction. As contemplated in the ARVO, Residual Co. will assume the role of the debtor and a Respondent in these Receivership Proceedings, upon issuance of the Closing Certificate confirming the closing of the Transaction, following which the Company will no longer be party to these Receivership Proceedings.<sup>62</sup>

60. The substitution of the Residual Co. as a debtor in insolvency proceedings involving reverse vesting order transactions is commonplace.<sup>63</sup>

61. The Court possesses the necessary authority to add Residual Co. as an Applicant to these BIA Proceedings and appoint the First Director of Residual Co. While section 64(1) of the BIA expressly permits directors of a corporation to be removed from their position pursuant to a court order<sup>64</sup>, it is silent on the ability to appoint. As there is no explicit statutory prohibition against the appointment of directors under the BIA, this Court has the authority to draw upon its inherent jurisdiction preserved by section 183(1) of the BIA to make the requested appointments.<sup>65</sup>

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<sup>61</sup> Second Report at para 53.

<sup>62</sup> Second Report at para 29(i).

<sup>63</sup> [BDC Capital Inc. v. Magnum Worldwide Holdings Inc. et al. \(January 9, 2026\), Ontario Superior Court of Justice \(Commercial List\), Approval and Reverse Vesting Order.](#)

<sup>64</sup> BIA s. 64(1).

<sup>65</sup> BIA s. 183(1).

62. A representative of MarshallZehr has agreed to act as the First Director of Residual Co. as required for the incorporation of Residual Co. The First Director has agreed to assume this role upon certain conditions, including receipt of certain protections pursuant to the ARVO.<sup>66</sup>

**E. The Second Report and the Receiver's Activities Should Be Approved**

63. The Court has the inherent jurisdiction to review and approve the activities of a Court-appointed receiver as set out in the receiver's reports.<sup>67</sup>

64. It is common practice for Court officers to bring motions to seek approval of their reports and the activities set out therein. Court approval, among other things, allows the Court officer to bring its activities before the Court and presents an opportunity to address concerns of stakeholders, while enabling the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner.<sup>68</sup>

65. The activities of the Receiver described in the Second Report were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Appointment Order.

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

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<sup>66</sup> Second Report at para 60.

<sup>67</sup> [Bank of America Canada v Willam Investments Ltd \(1996\), 1996 CanLII 2782 \(Ont\)](#)

<sup>68</sup> [Triple-I Capital Partners Limited v 12411300 Canada Inc, 2023 ONSC 3400](#) at paras 65-66

## **F. The Fees and Disbursements of TDB and its Counsel Should Be Approved**

67. TDB is seeking approval of its professional fees and disbursements incurred by it as Receiver and those of its legal counsel, Chaitons.

68. The Appointment Order provides that TDB and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.<sup>69</sup>

69. In determining whether to approve the accounts of a Court-appointed receiver and its counsel, the Court will consider the overall value contributed, taking into account the following factors: a) the nature, extent and value of the assets; b) the complications encountered; c) the degree of assistance provided by the debtor; d) the time spent; e) the receiver's knowledge, experience and skill; f) the diligence and thoroughness displayed; g) the responsibilities assumed; h) the results of the receiver's efforts; and i) the cost of comparable services when performed in a prudent and economical manner.<sup>70</sup>

70. The Receiver is of the view that the fees and disbursements of the Receiver and Chaitons are reasonable in the circumstances and have been validly incurred in accordance with the provisions of the Appointment Order.<sup>71</sup>

71. The Receiver respectfully submits that it is appropriate to approve the fees and disbursements of TDB and its counsel in the circumstances.

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<sup>69</sup> Appointment Order, Appendix "A" to the Second Report at paras. 18 to 20.

<sup>70</sup> [\*Bank of Nova Scotia v Diemer\*, 2014 ONCA 851](#) at para 33

<sup>71</sup> Second Report at para 58.

### **G. The Distributions Should Be Approved**

72. Orders granting distributions are routinely granted in insolvency proceedings, including receiverships.<sup>72</sup>

73. The Receiver obtained an opinion from its counsel, RAR, regarding the validity of the MarshallZehr's security. The legal opinion stated that subject to the customary qualifications and assumptions set out therein, the security held by MarshallZehr is valid.<sup>73</sup>

74. As described in the Second Report, the Fee Accrual is sufficient to fund the fees and disbursements of the Receiver and Chaitons required to complete the administration of these proceedings, including the assignment of Residual Co. into bankruptcy.<sup>74</sup>

75. The Receiver recommends approval of the Distributions proposed in paragraph 49 of the Second Report.

### **H. The Receiver's Discharge and Release Should Be Approved**

76. 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>75</sup>

77. Upon completion of the Remaining Duties (as defined in the Second Report), the Receiver will have completed its mandate. In order to avoid the costs of making a further motion to the Court to obtain the Receiver's discharge, the Receiver respectfully submits that the Receiver

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<sup>72</sup> [Ontario Securities Commission v Bridging Income Fund LP](#), 2022 ONSC 4472 at para 8.

<sup>73</sup> Second Report at para 48.

<sup>74</sup> Second Report at paras 56 and 57.

<sup>75</sup> [Ed Mirvish Enterprises Limited v Stinson Hospitality Inc](#) (2009), 2009 CanLII 55113 at para 8 (Ont Sup Ct J).

should be discharged and released following the filing of the Discharge Certificate with the Court, certifying that it has completed any remaining activities.<sup>76</sup>

78. The order contains standard provisions providing for the Receiver's release from liability upon its discharge (subject to the usual expectations for gross negligence and wilful misconduct) and permitting the Receiver to continue to perform any incidental and necessary duties. The Receiver's release is a standard term in the Commercial List model order of discharge which has, in the absence of any evidence of improper or negligent conduct on the part of the Receiver, been routinely granted.<sup>77</sup>

#### **PART V – RELIEF SOUGHT**

79. 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.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 14<sup>th</sup> day of February, 2026.



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**CHAITONS LLP**  
*Lawyers for the Court-appointed Receiver,  
TDB Restructuring Limited*

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<sup>76</sup> Second Report at para 62.

<sup>77</sup> [Kingsett Mortgage Corporation v Churchill Lands United Inc, 2024 ONSC 7127](#) at para 47.

## SCHEDULE “A”

### LIST OF AUTHORITIES

<b>Tab</b>	<b>Title</b>	<b>Pinpoints</b>
1	<a href="#"><u>Royal Bank of Canada v Soundair Corp (1991), 4 OR 1</u></a>	
2	<a href="#"><u>Cameron Stephens Mortgage Capital Ltd v Conacher Kingston Holdings Inc, 2025 ONCA 732</u></a>	31
3	<a href="#"><u>Crown Trust Co et al v Rosenberg et al (1986), 60 OR 87 (Sup Ct J)</u></a>	
4	<a href="#"><u>Peahill Capital Inc v Southview Gardens Limited Partnership, 2023 BCSC 1476</u></a>	29
5	<a href="#"><u>Cleo Energy Corp (Re), 2025 ABKB 621</u></a>	10
6	<a href="#"><u>British Columbia v Peahill Capital Inc, 2024 BCCA 246</u></a>	30-31
7	<a href="#"><u>Harte Gold Corp (Re), 2022 ONSC 653</u></a>	38
8	<a href="#"><u>Bank of Montreal v Haro-Thurlow Street Project Limited Partnership, 2024 BCSC 1722</u></a>	33
9	<a href="#"><u>Aquilini Development Limited Partnership v Garibaldi at Squamish Limited Partnership, 2024 BCSC 764</u></a>	94-95
10	<a href="#"><u>Comark Holdings et al., (March 21, 2025), Ontario Superior Court of Justice (Commercial List), Court File No. CV-25-00734339-00CL (Endorsement of Justice Cavanagh).</u></a>	
11	<a href="#"><u>Lo Faso v Ferracuti Estate, 2013 ONCA 123</u></a>	26
12	<a href="#"><u>Sierra Club of Canada v Canada (Minister of Finance), 2002 SCC 41 (CanLII), 2002 SCC 41</u></a>	45
13	<a href="#"><u>Sherman Estate v Donovan, 2021 SCC 25 (CanLII), 2021 SCC 25</u></a>	38
14	<a href="#"><u>GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc, 2014 ONSC 1173</u></a>	34
15	<a href="#"><u>BDC Capital Inc. v. Magnum Worldwide Holdings Inc. et al. (January 9, 2026), Ontario Superior Court of Justice (Commercial List), Approval and Reverse Vesting Order</u></a>	
16	<a href="#"><u>Bank of America Canada v Willann Investments Ltd (1996), 1996 CanLII 2782 (Ont)</u></a>	
17	<a href="#"><u>Triple-I Capital Partners Limited v 12411300 Canada Inc, 2023 ONSC 3400</u></a>	65-66
18	<a href="#"><u>Bank of Nova Scotia v Diemer, 2014 ONCA 851</u></a>	33
19	<a href="#"><u>Ontario Securities Commission v Bridging Income Fund LP, 2022 ONSC 4472</u></a>	8
20	<a href="#"><u>Ed Mirvish Enterprises Limited v Stinson Hospitality Inc (2009), 2009 CanLII 55113 (Ont Sup Ct J)</u></a>	8
21	<a href="#"><u>Kingsett Mortgage Corporation v Churchill Lands United Inc, 2024 ONSC 7127</u></a>	47

## Secondary Sources

1. Ontario, Ministry of Finance, "Land Transfer Tax and Treatment of Unregistered Dispositions of Beneficial Interest in Land", online: Government of Ontario <<https://www.ontario.ca/document/land-transfer-tax/land-transfer-tax-and-treatment-unregistered-dispositions-beneficial>>.
2. Jane C. Helmstadter and Craig R. R. Garbe, "Ontario and Toronto Land Transfer Tax Update 2018" (2018), Bennett Jones Insights, online: <<https://www.bennettjones.com/Insights/Updates/Ontario-and-Toronto-Land-Transfer-Tax-Update-2018>> (accessed February 13, 2026).

## SCHEDULE “B”

### STATUTORY AUTHORITIES

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

#### Removal of directors

**64 (1)** The court may, on the application of any person interested in the matter, make an order removing from office any director of a debtor in respect of whom a notice of intention has been filed under section 50.4 or a proposal has been filed under subsection 62(1) if the court is satisfied that the director is unreasonably impairing or is likely to unreasonably impair the possibility of a viable proposal being made in respect of the debtor or is acting or is likely to act inappropriately as a director in the circumstances.

#### Courts vested with jurisdiction

- **183 (1)** The following courts are invested with such jurisdiction at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction in bankruptcy and in other proceedings authorized by this Act during their respective terms, as they are now, or may be hereafter, held, and in vacation and in chambers:
  - (a) in the Province of Ontario, the Superior Court of Justice;
  - (b) [Repealed, 2001, c. 4, s. 33]
  - (c) in the Provinces of Nova Scotia and British Columbia, the Supreme Court;
  - (d) in the Provinces of New Brunswick and Alberta, the Court of Queen’s Bench;
  - (e) in the Province of Prince Edward Island, the Supreme Court of the Province;
  - (f) in the Provinces of Manitoba and Saskatchewan, the Court of Queen’s Bench;
  - (g) in the Province of Newfoundland and Labrador, the Trial Division of the Supreme Court; and
  - (h) in Yukon, the Supreme Court of Yukon, in the Northwest Territories, the Supreme Court of the Northwest Territories, and in Nunavut, the Nunavut Court of Justice.

#### 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.

*Land Transfer Tax Act, RSO 1990, c L.6*

**Tax on disposition of a beneficial interest**

(2) If there is a disposition of a beneficial interest in land, tax at the rates otherwise determined under [section 2](#) is payable to the Minister on the thirtieth day after the date of the disposition as if the disposition were a conveyance of land tendered for registration. R.S.O. 1990, c. L.6, s. 3 (2); 1994, c. 18, s. 4 (5).

**MARSHALLZEHR GROUP INC.**

**- and -**

**2301402 ONTARIO LIMITED and JAKE'S HOUSE  
COMMUNITY RESIDENCES**

Applicant

Respondents

Court File No. CV-25-00741261-00CL

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

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