

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

B E T W E E N:

**TREZ CAPITAL LIMITED PARTNERSHIP and TCC MORTGAGE HOLDINGS INC.**

Applicants

-and-

**ELDERWOOD HOLDINGS INC., ELDERWOOD TOWNHOMES INC., ELDERWOOD  
TOWNHOMES II INC., and 2633501 ONTARIO INC.**

Respondents

IN THE MATTER OF AN APPLICATION UNDER 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

**FACTUM OF THE RECEIVER**  
(Sale Process Approval Order)

April 25, 2025

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capacity as court-appointed Receiver of  
certain property of Elderwood Holdings Inc.

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## **PART I – OVERVIEW**

1. On February 27, 2025, this Honourable Court granted an application for an order (the “**Appointment Order**”) appointing KSV Restructuring Inc. as receiver and manager (in such capacity, the “**Receiver**”) over the real property described in Schedule “A” to the Sale Process Approval Order (as defined herein) (the “**Real Property**”), the undertakings of Elderwood Holdings Inc. (the “**Debtor**”) and in all of the Debtor’s present and after acquired property solely relating to the Real Property (together with the Real Property, the “**Property**”) pursuant to Section 101 of the *Courts of Justice Act* (Ontario) and Section 243 of the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”).

2. The Receiver brings this motion for an order (the “**Sale Process Approval Order**”) which, among other things:

- (a) if necessary, abridges the time for service of this motion and declares that the motion is properly returnable before the Court;
- (b) approves the sale process (the “**Sale Process**”) for the Property as set out in Section 4.2 of the First Report dated April 23, 2025 (the “**First Report**”);
- (c) authorizes the Receiver to enter into the listing agreement between Jones Lang Lasalle Real Estate Services Inc. (the “**Listing Brokerage**”) and the Receiver dated April 22, 2025 (the “**Listing Agreement**”) for the sale of the Property; and
- (d) approves the First Report and the activities of the Receiver described therein.

3. The Receiver understands that Trez Capital Limited Partnership (“**Trez**”) and Trez’s nominee, TCC Mortgage Holdings Inc. (“**TCC**” and together with Trez, the “**Applicants**”) support the approval of the Sale Process Approval Order. The Receiver is not presently aware of any opposition to the relief sought.

## **PART II – FACTS**

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

4. The Debtor's principal asset is the Real Property, comprising the properties municipally known as:

(a) 1677-1679 Bathurst Street, Toronto, Ontario; and

(b) 73-75 Elderwood Drive, Toronto, Ontario.

5. The Real Property is a multi-family residential site on approximately 23,000 square feet of land. It contains three residential apartment buildings totaling approximately 10,900 rentable square feet with a total of 13 rental apartments.<sup>1</sup>

6. The Real Property is managed by Socan Property Management Inc. ("**Socan**"), who is responsible for the day-to-day operations of the Property. Socan collects rent from the tenants on a monthly basis and remits the net rent to the Receiver, after deducting operating expenses.<sup>2</sup>

7. The Debtor had intended to rezone the Real Property for the purposes of construction of a four-storey residential apartment building and, in 2019, received a zoning by-law amendment and official plan amendment approval from the Ontario Land Tribunal (formerly, the Land Planning Appeal Tribunal). The conditions to approval remain outstanding as of the date of the First Report.<sup>3</sup>

8. As of March 20, 2025, TCC is the sole secured creditor of the Debtor. TCC holds, among other security interests, a mortgage registered on title to the Real Property.<sup>4</sup>

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<sup>1</sup> Motion Record of the Receiver, Tab 2, First Report of the Receiver dated April 23, 2025 (the "**First Report**"), Section 2, [para 1](#).

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

<sup>3</sup> First Report, Section 2, [para 3](#).

<sup>4</sup> First Report, Section 3.1, [paras. 5-6](#).

9. As a result of the Debtor being in default of its obligations to the Applicants, on February 27, 2025, this Honourable Court granted the Appointment Order.

10. The primary purpose of the receivership proceeding is to create a stabilized environment to enable the Receiver to conduct a sale process for the Property. To enable the Receiver to carry out its mandate, the Appointment Order, among other things:

- (a) authorizes the Receiver to manage, operate and carry on the business of the Debtor, Elderwood Townhomes Inc., Elderwood Townhomes II Inc., and 2633501 Ontario Inc. in connection with the Property;
- (b) with the prior written consent of Trez, authorizes the Receiver to market and solicit offers for the sale of any or all the Property and to negotiate such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (c) with the prior written consent of Trez, authorizes the Receiver to sell any or all of the Property outside the ordinary course of business, provided that the Receiver shall obtain the approval of the Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000;
- (d) granted the Receiver and its counsel a charge on the Property as security for the payment of such fees and disbursements, both before and after the Appointment Order, in respect of this proceeding; and
- (e) granted a second-ranking charge on the Property as security for the Receiver's borrowings of up to \$250,000 to fund the exercise of its powers and duties.<sup>5</sup>

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<sup>5</sup> First Report, [Appendix A](#) – Receivership Order dated February 27, 2025.

## **B. Selection of Listing Brokerage**

11. Following the Receiver's appointment, the Receiver solicited proposals from three relators to act as listing agent for the Real Property.<sup>6</sup>

12. The Receiver requested that each realtor provide certain information in its proposal including each firm's experience and knowledge of the Toronto market, a marketing plan for the Real Property, the indicative range of values of the Real Property, and the realtor's proposed commission structure.<sup>7</sup>

13. In consultation with Trez, the Receiver selected the Listing Brokerage to list the Real Property. This decision was based on, among other things:

- (a) Trez's supports the retention of the Listing Brokerage;
- (b) the Listing Brokerage's significant experience marketing and selling properties comparable to the Property in Toronto and its national platform;
- (c) the Receiver's experience retaining the Listing Brokerage in similar mandates; and
- (d) the Receiver is of the view that the Listing Brokerage's proposed commission rate of 3.25% is reasonable.<sup>8</sup>

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<sup>6</sup> First Report, Section 4.1, [para. 1.](#)

<sup>7</sup> First Report, Section 4.1, [para. 2.](#)

<sup>8</sup> First Report, Section 4.1, [para. 4.](#)

### C. The Sale Process

14. The proposed Sale Process contemplates, *inter alia*:
- (a) the marketing materials and prospect identification, is to be completed as soon as practicable following the commencement of the Sale Process;
  - (b) the deadline for submission of bids for the Property will be set by the Receiver, in consultation with the Listing Brokerage and Trez, approximately 30 to 45 days after the commencement of the marketing launch of the Sale Process;
  - (c) the Property will be marketed on an “as is, where is” basis;
  - (d) if the Receiver determines, in its sole discretion, that doing so would help maximize recoveries for stakeholders, the Receiver shall have the right to: (i) waive strict compliance with the terms of the Sale Process; and (ii) modify or adopt such other procedures as may assist in facilitating the sale of the Property;
  - (e) Trez will have the opportunity to credit bid its debt and to acquire the Property, subject to the Receiver confirming the validity and enforceability of the security granted to Trez through its nominee; and
  - (f) any transaction will be subject to Court approval.<sup>9</sup>
15. The Receiver, in consultation with Trez, will have discretion over the exact timing of the launch of the Sale Process. This timing will be based on a cost-benefit analysis of whether to pursue certain development approvals from government authorities prior to commencing the Sale

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<sup>9</sup> First Report, [Section 4.2](#).

Process, as such approvals may enhance the overall value of the Property.<sup>10</sup>

16. If the Receiver does not commence the Sale Process within three months of obtaining the signed Sale Process Approval Order, it will return to Court to seek fresh approval of the proposed Sale Process.<sup>11</sup>

### **PART III – ISSUES**

17. The issues on this motion are whether the Court should:

- (a) approve the Sale Process, including the Listing Agreement; and
- (b) approve the Receiver's First Report and the activities of the Receiver described therein.

### **PART IV – LAW & ARGUMENT**

#### **A. The Court Should Approve the Sale Process**

18. The Receiver seeks approval of the Sale Process, including the Listing Agreement with the Listing Brokerage for the sale of the Property.

19. Subsection 243(1) of the BIA empowers the Court to confer broad powers to receivers in respect of their exercise of control over a debtor's property:

**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;

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<sup>10</sup> First Report, Section 4.2, [para. 2](#).

<sup>11</sup> First Report, Section 4.2, [para. 2](#).



- (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.<sup>12</sup>

20. The Appointment Order authorizes and empowers the Receiver to market the Property, which includes advertising and soliciting offers in respect of the Property and negotiating such terms and conditions.<sup>13</sup> In accordance with the Appointment Order, the Receiver, in collaboration with the Listing Brokerage, has developed the Sale Process to solicit offers from prospective purchasers with a view of executing a transaction that maximizes value for all of the Company's stakeholders, including the Applicants.

21. While the decision to approve a sale process is distinct and separate from the decision to approve the ultimate sale, this Court has held that "the reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors which a court will take into account when considering the approval of a proposed sale."<sup>14</sup>

22. In *Royal Bank of Canada v Soundair Corp.*, the Ontario Court of Appeal held that a court was to consider the following factors when deciding whether to approve the sale of a property subject to a receivership:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the efficacy and integrity of the process by which offers are obtained;

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<sup>12</sup> *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, [s. 243](#).

<sup>13</sup> First Report, [Appendix A](#) – Receivership Order dated February 27, 2025.

<sup>14</sup> *CCM Master Qualified Fund v blutip Power Technologies*, 2012 ONSC 1750 at [para 6](#) [CCM]; citing *Royal Bank of Canada v Soundair*, 1991 CanLII 2727 (ONCA) at [para 16](#) [Soundair].

- (c) whether there has been unfairness in working out of the process; and
- (d) the interests of all parties (collectively, the “**Soundair Factors**”).<sup>15</sup>

23. In *CCM Master Qualified Fund Ltd. v blutip Power Technologies Ltd.*, this Court held that the Soundair Factors should also be applied when determining whether to approve a proposed sale process.<sup>16</sup> Specifically, when reviewing a sales and marketing process proposed by a receiver, the Court is to assess:

- (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 sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale (collectively, the “**CCM Factors**”).<sup>17</sup>

24. When reviewing a sale process, the court generally defers to the business expertise of the receiver and does not intervene or “second guess” the receiver’s recommendation.<sup>18</sup> It is only in “exceptional” circumstances that a court will intervene and proceed contrary to the recommendation of the receiver.<sup>19</sup>

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<sup>15</sup> *Soundair* at [para 16](#).

<sup>16</sup> *CCM*, *supra* at [para 6](#).

<sup>17</sup> *Ibid.*

<sup>18</sup> *Ontario Securities Commission v. Bridging Finance Inc.*, 2022 ONSC 1857 at [paras. 43-45](#) citing *Marchant Realty Partners Inc. v. 2407533 Ontario Inc.*, 2021 ONCA 375 at [para 15](#).

<sup>19</sup> *Ibid.*

25. Each of the Soundair Factors and CCM Factors support the approval of the Sale Process:

- (a) *Whether the Sale Process is commercially efficient* – The Sale Process is proposed to be overseen and conducted by the Receiver and the Listing Brokerage, who is a reputable broker that has extensive experience marketing comparable real properties. The involvement and assistance of the Listing Brokerage will ensure that the Sale Process is efficient and value maximizing.<sup>20</sup>
- (b) *Whether the Sale Process is fair and transparent* – The proposed Sale Process is a fair, open and transparent process intended to market the Real Property broadly on an orderly basis. Further, the Sale Process encourages all potential bidders to submit their bids in a form consistent with the Receiver’s standard purchase and sale agreement, thereby promoting uniformity. Any successful bid and the related transaction will be subject to Court approval. The proposed Sale Process is consistent with other sale processes approved by the Court for real property.<sup>21</sup>
- (c) *Whether the Sale Process optimizes the chance of securing the best possible price* – The timelines contemplated in the proposed Sale Process are sufficient to allow interested parties to perform diligence and submit offers. The Receiver will have the ability to extend or amend timelines as it considers necessary to maximize value for the benefit of the stakeholders of the Debtor. Further, the Receiver is permitted to engage with any interested bidder to ask such bidder to modify, improve, or clarify the terms of its offer, in as many rounds as required, to maximize the consideration and minimize closing risk.<sup>22</sup>

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<sup>20</sup> First Report, Section 4.3, [para. 1\(a\) and \(b\)](#).

<sup>21</sup> First Report, [Section 4.2](#).

<sup>22</sup> First Report, Section 4.2, [para. 2\(d\), \(f\) and \(g\)](#).

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

26. 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 Listing Brokerage, the preparation of the Sale Process and considering the development potential of the Real Property.

27. 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>23</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>24</sup>

28. 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.

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

## **PART V – RELIEF REQUESTED**

30. Based on the foregoing, the Receiver requests the Sale Process Approval Order in the form included at Tab 3 of the Receiver's Motion Record.

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<sup>23</sup> *Bank of America Canada v Willann Investments Ltd.*, 1996 CanLII 2782 (ON CA).

<sup>24</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](#).

**PURSUANT TO RULE 4.06(2.1), THE UNDERSIGNED** certifies that they are satisfied as to the authenticity of every authority cited in this factum.



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**SIMRAN JOSHI** (LSO No. 89775A)

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 25TH DAY OF APRIL, 2025**

*/s/ Reconstruct LLP*

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**RECONSTRUCT LLP**

## **SCHEDULE “A”**

### **List of Authorities**

1. *CCM Master Qualified Fund v. blutip Power Technologies*, [2012 ONSC 1750](#)
2. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#)
3. *Ontario Securities Commission v. Bridging Finance Inc.*, [2022 ONSC 1857](#)
4. *Marchant Realty Partners Inc. v. 2407533 Ontario Inc.*, [2021 ONCA 375](#)
5. *Bank of America Canada v Willann Investments Ltd.*, [1996 CanLII 2782 \(ON CA\)](#)
6. *Target Canada Co. (Re)*, [2015 ONSC 7574](#) [Morawetz R.S.J. (as he then was)]
7. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#) [Osborne J.]

## **SCHEDULE “B”**

### **Statutory Authorities**

#### **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.

#### **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.



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