

**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  
(RE: Approval and Vesting Order and Discharge Order)**

November 11, 2025

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

**TO: THE SERVICE LIST**

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## **PART I – OVERVIEW**

1. On February 27, 2025, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted Trez Capital Limited Partnership (“**Trez**”) and TCC Mortgage Holdings Inc. (“**TCC**”) an order (the “**Appointment Order**”) that, among other things, appointed KSV Restructuring Inc. (“**KSV**”) as receiver and manager over the real property legally described in Schedule “A” to the Appointment Order (the “**Real Property**”), the undertakings of Elderwood Holdings Inc. (the “**Debtor**”) and in all of the Debtor’s present and after acquired personal property solely relating to the Real Property (together with the Real Property, the “**Property**”).

2. The principal purpose of the receivership proceeding was to create a stabilized environment to enable the Receiver to conduct a Court-supervised sale process for the Property that maximized value for the Debtor’s stakeholders, including Trez as the sole secured creditor.

3. On April 29, 2025, the Court approved an order (the “**Sale Process Order**”) that, among other things, approved a sale process for the Property (the “**Sale Process**”) and authorized the Receiver to enter into a listing agreement between Jones Lang Lasalle Real Estate Services Inc. (the “**Listing Brokerage**”) and the Receiver dated April 22, 2025 (the “**Listing Agreement**”) to market the Property.

4. The Receiver returns before this 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) approves the transaction contemplated by a purchase and sale agreement dated November 6, 2025 (the “**Sale Agreement**”) between the Receiver, as vendor, and TCC, as purchaser (in its capacity as purchaser, the “**Purchaser**”) for the sale of the Purchased Assets (as defined herein), including the Real Property (the “**Transaction**”);

- (ii) vests the Purchased Assets in and to the Purchaser, free and clear of all encumbrances upon the delivery of a certificate of the Receiver certifying that all conditions for the Transaction have been satisfied;
  - (iii) seals Confidential Appendix “1” to the Second Report (as defined herein), being a summary of the offers received in the Sale Process; and
- (b) an discharge order (the “**Discharge Order**”), substantially in the form included at tab 5 of the Receiver’s motion record that, among other things:
  - (i) approves the Second Report of the Receiver dated November 6, 2025 (the “**Second Report**”) and the activities of the Receiver described therein;
  - (ii) approves the fees, costs and expenses of the Receiver, including those of its independent legal counsel, Reconstruct LLP (“**RECON**”) for the period from February 27, 2025 to November 5, 2025 (collectively, the “**Professional Fees**”) and the quantum of the administrative costs required to complete the administration of the Debtor’s estate (the “**Remaining Fees and Disbursements**”), as set out in the fee affidavits appended to the Second Report (the “**Fee Affidavits**”);
  - (iii) approves the discharge of the Receiver upon the filing of a discharge certificate in the form substantially set out in Schedule “A” to the Discharge Order (the “**Discharge Certificate**”); and
  - (iv) releases KSV from any and all liability that it now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of KSV while acting in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on the Receiver’s part.

5. The Receiver is of the view that the Transaction provides the highest price amongst all of the offers received, will benefit Trez, the Debtors' sole secured creditor in so far that it will allow Trez to realize value on account of its indebtedness through a credit bid and the Transaction will also provide stability for the tenants currently residing at the Real Property. The Receiver is not presently aware of any opposition to the relief sought.

## **PART II – FACTS**

6. All terms not otherwise defined herein shall have the same meaning ascribed to such term in the Sale Agreement.

### **A. Overview of the Debtor and the Receivership<sup>1</sup>**

7. 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.

8. 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>2</sup>

9. TCC, as agent for Trez, is the sole secured creditor of the Debtor. TCC, on behalf of Trez, holds, among other security interests, a mortgage registered on title to the Real Property.<sup>3</sup>

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

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<sup>1</sup> Second Report of KSV Restructuring Inc., in its capacity as receiver and manager over the Property, dated November 6, 2025 Tab 2, Receiver's Motion Record [**"Second Report"**].

<sup>2</sup> Second Report, para. 2.0.1.

<sup>3</sup> Second Report, para. 2.0.5.

11. The primary purpose of the receivership proceeding was to conduct a sale process for the Property and maximize value for the Debtor's stakeholders. 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; and
- (c) grants 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.<sup>4</sup>

12. On April 29, 2025, this Court approved the Sale Process Order, including the Listing Agreement with the Listing Brokerage.

13. The Sale Process expressly contemplated that:

- (a) the deadline for submission of bids for the Property would be set by the Receiver, in consultation with the Listing Brokerage and Trez, which would be approximately 30 to 45 days following the commencement of the marketing launch of the Property;
- (b) the Receiver would 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, if the Receiver determines, in its sole discretion,

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<sup>4</sup> Second Report, Appendix "A", Receivership Order.

that doing so would help maximize recoveries for stakeholders;

- (c) Trez would have the opportunity to credit bid and to acquire the Property subject to the Receiver confirming the validity and enforceability of the security granted to Trez through its nominee; and
- (d) if the Court approves the credit bid with Trez or its nominee for the purchase of the Property, the Listing Brokerage shall be entitled to a fee of \$75,000 on closing of such transaction.<sup>5</sup>

**B. Sale Process for the Property**

14. In accordance with the Sale Process Order, the Receiver initiated a Sale Process.

15. The Listing Brokerage, with the assistance of the Receiver, launched its marketing efforts in respect of the Sale Process on June 17, 2025. As part of its marketing efforts, the Listing Brokerage, among other things:

- (a) prepared marketing materials describing the opportunity to acquire the Real Property, as well as a form of confidentiality agreement for interested parties to execute in order to be given access to a virtual data room and perform due diligence;
- (b) distributed marketing materials to the Listing Brokerage's database of over 6,000 active investors and developers across Canada; and
- (c) set up a virtual data room ("**VDR**") for prospective purchasers that included, among other things, an overview of the Real Property, tenant leases, permits, drawings, floor plans, and a template agreement of purchase and sale to facilitate potential

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<sup>5</sup> Second Report, Appendix "C", First Report of the Receiver dated April 23, 2025, para. 4.2.2.



transactions.<sup>6</sup>

16. The Receiver, in consultation with the Listing Brokerage set July 24, 2025 as the earliest date that an offer could be submitted in the Sale Process (the “**Offer Not Before Date**”).<sup>7</sup>

17. By the Offer Not Before Date, 31 interested parties had signed confidentiality agreements and were granted access to the VDR. Two parties submitted offers.<sup>8</sup> The Receiver, in consultation with Trez, reviewed both offers but determined that they were not acceptable, as the proposed purchase prices were too low. The Listing Brokerage went back and encouraged both bidders to approve the terms of their respective offers. Neither bidder would increase their proposed purchase price.<sup>9</sup>

18. Following the submission of the two offers and the Offer Not Before Date, the Listing Brokerage continued to market the Real Property and received one additional offer on September 13, 2025, which the Receiver rejected. No further bids or resubmissions were received, and other interested parties indicated that they would not or could not submit an acceptable offer.<sup>10</sup>

19. In accordance with the terms of the Sale Process, Trez advised the Receiver that it would submit a bid a credit bid for the Real Property.<sup>11</sup>

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<sup>6</sup> Second Report, para. 4.0.5.

<sup>7</sup> Second Report, para. 4.0.7.

<sup>8</sup> Second Report, para. 4.0.8.

<sup>9</sup> Second Report, para. 4.0.9.

<sup>10</sup> Second Report, para. 4.0.10.

<sup>11</sup> Second Report, para. 4.0.11.

### C. Key Terms of the Proposed Transaction

20. On November 6, 2025, the Receiver and Purchaser executed the Sale Agreement, subject to Court approval. The key terms of the Transaction are the following:

- (a) **Purchased Assets:** the purchased assets include, among other things, the Real Property, leases, inventory, equipment, books and records, tenant receivables, and permits to the extent transferable to the Purchaser (collectively, the “**Purchased Assets**”).
- (b) **Purchase Price:** the purchase price is comprised of: 1) the Priority Payment Amount (including payment of claims ranking in priority to Trez’s security interests in the Real Property, such as the Professional Fees and Remaining Fees and Disbursements incurred by the Receiver and RECON up to and including the Closing Date); 2) the Listing Brokerage’s commission fee (\$75,000 plus applicable sales tax); and 3) \$7,000,000 to be satisfied by way of a credit bid of the indebtedness owing to Trez.
- (c) **Excluded Assets:** the excluded assets include all assets, undertakings and properties of the Debtors other than the Purchased Assets.
- (d) **“As is, Where Is”:** the Purchased Assets are sold on an “as is, where is” basis.
- (e) **Permitted Encumbrances:** the permitted encumbrances include, among other things, any subsisting reservations, limitations, provisions or conditions in original Crown grants, all applicable laws, and any statutory rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada.
- (f) **Conditions to Closing:** There are only standard conditions to closing including the issuance of the AVO vesting the Purchased Assets in the Purchaser.
- (g) **Closing Date:** the Transaction will close the later date of: (a) the first business day following the date that is ten (10) days after the date on which the AVO is issued by the Court, and (b) the first business day following the date that is ten (10) days after the date on which any appeals or motions to set aside or vary the AVO have been finally determined, or such other date as agreed in writing by the Purchaser

and Receiver.<sup>12</sup>

**D. Approval of the Receiver's Professional Fees and Remaining Fees and Disbursements**

21. The Receiver is seeking approval of the Professional Fees of KSV, in its capacity as Receiver, during the period February 27, 2025 through to and including October 31, 2025,<sup>13</sup> and approval of the fees and disbursements of its counsel, RECON, incurred during the period of February 27, 2025 through to and including November 5, 2025.<sup>14</sup>

22. In support of this motion, the Receiver delivered its Second 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.

23. The fees and disbursements of KSV from February 27, 2025 through to and including October 31, 2025 total \$113,448.25.

24. The fees and disbursements of RECON from February 27, 2025 through to and including November 5, 2025 total \$56,576.75.

25. RECON and KSV anticipate that they will incur additional costs of approximately \$125,000 to cover their fees, disbursements, and other ancillary expenses from November 1, 2025, up to the filing of the Discharge Certificate. If there are any Remaining Fees and Disbursements remaining after the filing of the Discharge Certificate, such monies will be returned to Trez and

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<sup>12</sup> Second Report, para. 4.1.2.

<sup>13</sup> Second Report, Appendix "E", Affidavit of Noah Goldstein sworn November 6, 2025.

<sup>14</sup> Second Report, Appendix "F", Affidavit of Caitlin Fell sworn November 6, 2025.

TCC.<sup>15</sup>

**E. Substantial Completion of the Receiver's Duties**

26. Based on the Sale Process and subject to the Court's approval of the Sale Agreement, the Receiver has completed its duties as set out in the Appointment Order, save and except for the following:

- (a) payment of the outstanding Professional Fees and the Remaining Fees and Disbursements;
- (b) preparation and filing of the final report prescribed under subsection 246(3) of the BIA; and
- (c) attending to other administrative matters as necessary (collectively, the **"Remaining Duties"**).<sup>16</sup>

**PART III – ISSUES**

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

- (a) approve the Sale Agreement and vest the Purchased Assets in the Purchaser free and clear of encumbrances;
- (b) grant a temporary sealing order sealing Confidential Appendix "1" to the Second Report;
- (c) approve the Second Report and the activities of the Receiver described therein;
- (d) approve and authorize payment of the Professional Fees and the Remaining Fees

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<sup>15</sup> Second Report, para. 6.0.5.

<sup>16</sup> Second Report, para. 7.0.2.

and Disbursements; and

- (e) approve the discharge and release of the Receiver upon the filing of the Discharge Certificate.

#### **PART IV – LAW & ARGUMENT**

##### **A. The Court Should Approve the Transaction, and Vest the Purchased Assets in the Purchaser**

28. 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>17</sup>

29. 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 by which offers are obtained; and
- (d) whether there has been unfairness in working out of the process (collectively, the **“Soundair Factors”**).<sup>18</sup>

30. Unless a proposed transaction clearly offends the Soundair Factors, courts generally

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<sup>17</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>18</sup> *Royal Bank of Canada v. Soundair Corp.* [“**Soundair**”], 1991 CanLII 2727 (ON CA).

uphold the business judgement of the court-appointed receiver overseeing the sale.<sup>19</sup>

31. 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.** The Listing Brokerage, with the assistance of the Receiver, extensively canvassed the market for the Property. The purchase price for the Purchased Assets is fair and reasonable in the circumstances. The Transaction provides the most certainty and the greatest recovery available for the Debtor's sole secured creditor. Furthermore, as notice of the sale of the Property was sent to more than 6,000 parties and the Property was on the market for approximately 11 weeks at the time of the Purchaser's offer, it is unlikely that exposing the Property to the market for additional time will result in a superior transaction than the Sale Agreement.<sup>20</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 Property for the benefit of all stakeholders. The Receiver submits that the Transaction represented the highest bid for the Property and is in the best interests of the Debtor's stakeholders. As a result of the low bids received, the Transaction, to be completed by way of a credit bid, enables the Debtor's senior secured creditor to realize value on account of its indebtedness. In addition, the terms of the Transaction are fair, reasonable and typical for real estate asset sales in

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<sup>19</sup> Soundair, para. 21; Marchant Realty Partners Inc. v. 2407553 Ontario Inc., 2021 ONCA 375 at para. 19;

<sup>20</sup> Second Report, para. 4.3.1(e).

insolvency proceedings.<sup>21</sup>

- (c) **The Sale Process undertaken by the Receiver was commercially reasonable, efficient and conducted with integrity.** The Receiver conducted the Sale Process in accordance with the terms of the Sale Process Order approved by this Court. The Receiver engaged the Listing Brokerage, who is regularly involved in real estate sale processes in insolvency proceedings across Canada, after reviewing multiple listing proposals from established listing brokerages. The Receiver and the Listing Brokerage 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 the marketing materials to approximately 6,000 industry contacts; and
  - (iii) ensured that all parties were granted fair and equal access to due diligence materials relating to the Property through the VDR.
- (d) **There has been no unfairness in the working out of the process.** The Receiver does not believe there was any unfairness in working out of the Sale Process. The Receiver is not aware of any opposition to the proposed Transaction.<sup>22</sup>

32. The AVO is based on and does not substantively depart from the Commercial List's Model Approval and Vesting Order.<sup>23</sup>

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<sup>21</sup> Second Report, para. 4.3.1(c).

<sup>22</sup> Second Report, para. 4.3.1(h).

<sup>23</sup> Motion Record of the Receiver, Tab 4, Redline of Approval and Vesting Order to Commercial List's Model Approval and Vesting Order.

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

**B. The Court Should Grant a Sealing Order for Confidential Appendix “1”**

34. The Receiver seeks an order sealing Confidential Appendix “1” to the Second Report, containing a summary of all the bids received throughout the Sale Process, including the proposed purchase price for each offer.

35. 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>24</sup>

36. The test for a sealing order was established by the Supreme Court of Canada in *Sierra Club*<sup>25</sup> and subsequently in *Sherman Estate*.<sup>26</sup> The test involves three prerequisites which must be satisfied:

- (a) whether court openness poses a serious risk to an important public interest;
- (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>27</sup>

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

- (a) Public disclosure of the Confidential Appendix “1” poses a serious and immediate

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<sup>24</sup> CJA, *supra*, s. 137(2).

<sup>25</sup> *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41.

<sup>26</sup> *Sherman Estate v. Donovan*, 2021 SCC 25.

<sup>27</sup> *Ibid* at para. 38.



risk. Disclosure of the summary of offers received throughout the Sale Process and interested parties' valuation of the Property would be highly prejudicial to any additional marketing efforts that may be needed in the event that another transaction that provides for superior consideration than what is contemplated under the Sale Agreement arises prior to Closing. In such instance, disclosure would undermine the integrity of the process and prevent the maximization of value, to the detriment of all stakeholders.<sup>28</sup>

- (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 Confidential Appendix "1". The scope of the sealing provision is appropriately limited and remains subject to further order of this Court.<sup>29</sup>
- (c) The benefits of granting the sealing provision outweigh any potential negative effects. The sealing of the offer summary until the Transaction has closed 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.<sup>30</sup>

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<sup>28</sup> Second Report, para. 4.2.1.

<sup>29</sup> Second Report, para. 4.2.4.

<sup>30</sup> Second Report, para. 4.2.3.

**C. The Court Should Approve the Second Report and the Activities of the Receiver**

38. The Receiver seeks approval of its activities since the Sale Process Order as set out in the Second Report which includes, among other things, dealing with operational matters, selection of the successful bidder from the Sale Process, and preparing materials to seek the approval of the AVO and Discharge Order.

39. 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>31</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>32</sup>

40. The Receiver submits that the activities described in the Second 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 Sale Process Order.

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

**D. The Court Should Authorize Approve the Payment of Professional Fees and the Remaining Fees and Disbursements**

42. The Receiver seeks authorization and approval to pay Professional Fees and the Remaining Fees and Disbursements to efficiency in the receivership proceeding by alleviating the need for a further motion and passing of accounts.

43. 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

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<sup>31</sup> *Bank of America Canada v Willann Investments Ltd.*, 1996 CanLII 2782 (ON CA).

<sup>32</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.

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 Commercial List of the Ontario Superior Court of Justice.<sup>33</sup>

44. The test on a motion to pass accounts is on the basis of an “overriding principle of reasonableness.”<sup>34</sup> The overall value contributed by the Receiver and its counsel is the predominant consideration in assessing the reasonableness of the accounts.<sup>35</sup>

45. 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>36</sup>

46. The Receiver, with the assistance of RECON, carried out extensive activities during the times subject to the Fee Affidavits, as detailed in the Second Report. The material responsibilities that the Receiver discharged include, among other things: (a) monitoring the Property; (b) conducting the Sale Process which successfully resulted in the Transaction; and (c) preparing the materials to seek approval of the AVO and Discharge Order.

47. Based on the assumption that there are no delays, disputes or unforeseen developments, the Receiver estimates that the costs associated with the completion of the Debtor’s estate will total approximately \$125,000. This includes among others, finalizing the Second Report, closing the Transaction, the preparation of materials for and attendance at the within motion, and completion of the Remaining Duties.<sup>37</sup>

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<sup>33</sup> Second Report, Receivership Order, Appendix “A”, paras. 18-19.

<sup>34</sup> *Nortel Networks Inc.*, 2022 ONSC 6680 at para. 10.

<sup>35</sup> *Re Nortel Networks Corporation et al*, 2017 ONSC 673 at paras. 15 and 21.

<sup>36</sup> *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 at para. 33.

<sup>37</sup> Second Report, para 7.0.2.

48. 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.

49. The Receiver and RECON's fees are in line with what is expected for similar insolvency proceedings in Toronto.

50. 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.

**E. The Court Should Approve the Discharge of the Receiver upon the filing of the Discharge Certificate**

51. Upon the completion of the Remaining Duties, the main objective of this receivership proceeding will be achieved, monetization of the Property for the benefit of the Debtor's stakeholders.

52. The Discharge Order provides that upon the filing of the Discharge Certificate certifying that all matters in connection with the receivership of the Debtor have been completed to the satisfaction of the Receiver, the Receiver shall be discharged and released.

53. KSV shall remain the Receiver for the performance of any incidental duties as may be required to complete the administration of the Debtor's estate. In fulfilling such duties, the Receiver shall continue to have the benefit of the provisions of all orders made in connection with this receivership.

54. Relief with respect to the Discharge Order is consistent with the Commercial List's Model Discharge Order, consistent with precedent, and is commonly granted in discharge orders in

receivership proceedings.<sup>38</sup>

55. The termination, discharge and release in the Discharge Order are appropriate given that there will be no more assets for the Receiver to realize upon, the Receiver will have completed all its statutory duties and obligations under the Appointment Order, and the administration of the Debtor's estate will be complete.

56. The Receiver respectfully submits that it is also appropriate to grant a limited release in favour of it. In *Pinnacle v Kraus*, this Court held that in the absence of any evidence of improper or negligent conduct on the part of the Receiver, the release in favour of the Receiver should be granted.<sup>39</sup>

57. Throughout the receivership proceeding, the Receiver has acted prudently and contributed to the administration of these proceedings. Accordingly, the Receiver respectfully submits that the requested release is reasonable in the circumstances, will provide the Receiver with finality, and should be granted.

## **PART V – RELIEF REQUESTED**

58. Based on the foregoing, the Receiver requests the AVO, substantially in the form appended at tab 3 to the Receiver's motion record, and the Discharge Order, substantially in the form appended at tab 5 to the Receiver's motion record.

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<sup>38</sup> *Pinnacle v. Kraus*, 2012 ONSC 6376 [***Pinnacle v Kraus***] at para. 47; *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, 2024 ONSC 7127 at para. 47; *1112396 Ontario limited, Blueberry Records Inc., Stanart Holdings Inc., and Flavo Holdings Limited v Z. Dejardins Holding Inc. and Zachary Dejardins*, Fee Approval, Distribution and Discharge Order of the Honourable Justice Carnegie dated as of February 14, 2025 [CV-23-00002144-0000].

<sup>39</sup> *Pinnacle v Kraus*, para. 47.

**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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Simran Joshi (LSO No. 89775A)

**ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 11<sup>TH</sup> DAY OF NOVEMBER 2025.**

*/s/ Reconstruct*

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**RECONSTRUCT LLP**

**SCHEDULE "A"**  
**List of Authorities**

1. *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA).
2. *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375
3. *Sierra Club of Canada v. Canada (Minister of Finance)*, 2002 SCC 41
4. *Sherman Estate v. Donovan*, 2021 SCC 25
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.]
8. *Nortel Networks Inc.*, 2022 ONSC 6680
9. *Re Nortel Networks Corporation et al*, 2017 ONSC 673
10. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851
11. *Pinnacle v. Kraus*, 2012 ONSC 6376
12. *Kingsett Mortgage Corporation v. Churchill Lands United Inc.*, 2024 ONSC 7127
13. *1112396 Ontario limited, Blueberry Records Inc., Stanart Holdings Inc., and Flavo Holdings Limited v Z. Dejardins Holding Inc. and Zachary Dejardins*, Fee Approval, Distribution and Discharge Order of the Honourable Justice Carnegie dated as of February 14, 2025 [CV-23-00002144-0000]

**SCHEDULE "B"**  
**Statutory Authorities**

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

**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.

## **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.

### **Documents public**

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

### **Sealing documents**

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

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

**and**

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

Applicants

Respondents

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

Proceedings commenced at Toronto

**FACTUM OF THE RECEIVER  
(Re: Approval and Vesting Order and Discharge Order)**

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