Court File No. CV-26-00000762-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

THE TORONTO-DOMINION BANK

Applicant

and

DIAMOND INTERNATIONAL REALTY INC., DIAMOND LUXURY DEVELOPMENTS CORP. and IMRAN ALI AHMED

Respondents

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 MOVING PARTY RECEIVER
(Release and Discharge Motion - Returnable October 30, 2026)

October 19, 2026

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PART I - OVERVIEW[1]

1. This Factum is filed by Albert Gelman Inc. (**"AGI"**), in its capacity as court-appointed Receiver (in such capacity, the "**Receiver**") without security, of all of the assets, undertakings and properties of each of the respondent corporations, Diamond Luxury Developments Corp. ("**Diamond Luxury**") and Diamond International Realty Inc. ("**Diamond Realty**" and, together with Diamond Luxury, the "**Companies**") acquired for, or used in relation to a business carried on by the Companies, including all proceeds thereof (collectively, the "**Property**") and as Receiver of the real property municipally known as 316 William Street, London, Ontario and legally described in PIN 08312-0025 (LT) (the "**Real Property**") for an Order, *inter alia*:

a) If necessary, dispensing with service and/or declaring that service of this motion has been validly effected on all necessary parties and declaring that this motion is properly returnable on October 30th, 2026 at 10:00 a.m. or as soon after that time as the motion can be heard;

b) Approving the Receiver's First Report dated October 15, 2026, (the "**First Report**"), and the activities and conduct of the Receiver as described therein;

c) removing the Real Property from the Receivership Proceedings and from the definition of "**Property**" in the Realty Appointment Order, effective on the date the Receiver delivers written notice of the Release and Discharge Order to the City, with a copy to TD Bank (the "**Release Date**"), and declaring that from and after the Release Date the Receiver shall have no obligation or liability of any kind in respect of the Real Property;

d) declaring that from and after the Release Date the Receiver shall have no obligation or liability of any kind in respect of the Real Property, shall not be deemed to be an owner,

[1] Capitalized terms used but not defined herein have the meaning defined in the First Report of the Receiver dated October 15, 2026 (the "**First Report**").

occupier or person having care, charge, possession, management or control of the Real Property for any purpose, and shall not be required to pay any realty taxes, utilities, by-law charges, inspection fees, penalties or other amounts in respect of the Real Property, all as more particularly described in the First Report;

e) authorizing the Receiver, on or before the Release Date, to deliver the keys and any access information for the Real Property to the City, to cancel the insurance coverage and terminate the property management and other arrangements it has put in place in respect of the Real Property, and to register a copy of the Release and Discharge Order and the Discharge Certificate (defined below) on title to the Real Property;

f) lifting the stays of proceedings and of the exercise of rights and remedies provided for in paragraphs 9 and 10 of the Realty Appointment Order, effective as of the Release Date, to the extent necessary to permit the City to exercise its statutory rights and remedies in respect of the Real Property;

g) Approving the Receiver's final statement of receipt and disbursements (the "**Final SRD**") including the estimated accruals to complete the Receiver's administration set out therein (the "Estimated Final Accruals");

h) discharging AGI as Receiver of each of the Companies, effective upon the Receiver filing with the Court a certificate confirming that it has completed the Remaining Activities (as defined in the First Report and in paragraph 35 below) (the "**Discharge Certificate**"), releasing AGI from any and all liability arising from or in connection with its acts or omissions in its capacity as Receiver, save and except for any gross negligence or wilful misconduct on its part, and directing that, upon the filing of the

Discharge Certificate, the Receiver's Charge and the Receiver's Borrowings Charge (each as defined in the Appointment Orders) shall be released and discharged;

i) Approving the fees and disbursements of the Receiver, including the fees and disbursements of its legal counsel, including the Estimated Final Accruals, all as particularized in the First Report;

j) declaring that the Receiver is not required to take any further steps in respect of the Property of Diamond Luxury; and

k) such further and other relief as the Receiver may request and this Honourable Court may consider just.

PART II – FACTS

Background

2. Diamond Realty is an Ontario corporation incorporated on July 30, 2021, with its registered head office at 1534 Dundas Street West, Mississauga, Ontario. Diamond Realty carried on business as a real estate brokerage, operating under the name "Save Max Diamond Realty Brokerage", from the Real Property.[2]

3. Diamond Luxury is a federal corporation incorporated under the *Canada Business Corporations Act* on January 1, 2017, with its registered office at 1534 Dundas Street West, Mississauga, Ontario. Diamond Luxury carried on business as a construction and home-building company.[3]

[2] First Report, s. II, at para. 6.
[3] First Report, s. II, at para. 7.

TD Bank's Loans and Security

4. The Toronto-Dominion Bank ("**TD Bank**") extended credit to Diamond Realty pursuant to a letter agreement dated April 26, 2023, comprising a term facility and a credit card facility. According to TD Bank's application record, as at February 25, 2026 Diamond Realty was indebted to TD Bank in the aggregate amount of $592,255.94, comprising $565,451.33 under the term facility and $26,804.61 under the credit card facility, plus accruing interest at TD Bank's prime rate plus 1.00% per annum and costs (the "**Realty Indebtedness**"). The Realty Indebtedness is secured by, among other things, the TD Mortgage (defined below), a General Security Agreement dated May 8, 2023 registered under the Personal Property Security Act (Ontario) (the "**PPSA**") on May 10, 2023, and an unlimited guarantee of Imran Ali Ahmed ("**Mr. Ahmed**") dated May 8, 2023.[4]

5. TD Bank extended credit to Diamond Luxury pursuant to a Letter Agreement dated October 30, 2024 (comprising an operating facility and a credit card facility) and a Highly Affected Sectors Credit Availability Program ("**HASCAP**") credit agreement dated June 7, 2021 (comprising a term facility). According to TD Bank's demand dated January 28, 2026, as at January 27, 2026 Diamond Luxury was indebted to TD Bank in the aggregate amount of $778,163.65, comprising $211,552.71 under the operating facility, $514,681.28 under the HASCAP term facility and $51,929.66 under the credit card facility, plus accruing interest and costs (the "**Luxury Indebtedness**"). The Luxury Indebtedness is secured by, among other things, a General Security Agreement dated November 1, 2024 registered under the PPSA on November

[4] First Report, s. II, at para. 10.

12, 2024, a security agreement dated June 7, 2021 granted in connection with the HASCAP facility, and an unlimited Guarantee of Mr. Ahmed dated November 1, 2024.[5]

The Appointment Orders

6. By Order of Justice Kalajdzic made on July 24, 2026, AGI was appointed receiver and manager, without security, of the Property of Diamond Luxury (the "**Luxury Appointment Order**") and by Order of Justice M.A. Cook made on August 7, 2026 and entered on August 12, 2026, AGI was appointed receiver and manager, without security, of the Property of Diamond Realty, including the Real Property (the "**Realty Appointment Order**" and, together with the Luxury Appointment Order, the "**Appointment Orders**"). The receivership proceedings in respect of the Companies are together referred to as the "**Receivership Proceedings**".[6]

7. To the Receiver's knowledge, the Real Property is the only material asset of either of the Companies.[7]

The Real Property

8. The Real Property is an interior lot of approximately 3,800 square feet (60 feet by 63 feet) improved with a single-storey commercial building of approximately 2,797 square feet, with a small partial basement, located on the east side of William Street in London, Ontario, and zoned RSC2 and RSC4 (Restricted Service Commercial) under the Corporation of the City of London (the "**City**") zoning by-law. Diamond Realty acquired the Real Property on October 15, 2021 for

[5] First Report, s. II, at para. 11.
[6] Appointment Orders – Motion Record of the Receiver - Tab 2 Appendices "A" and "B".
[7] First Report, s. I, at para. 4.

$330,000. The parcel register discloses one registered encumbrance, being a charge in favour of TD Bank in the principal amount of $600,000 registered on May 11, 2023 (the "**TD Mortgage**").[8]

9. TD Bank is the only party with a registered interest in the Real Property, and its PPSA registration against Diamond Realty is the only PPSA registration against Diamond Realty. The Receiver has not obtained an independent security opinion in respect of TD Bank's security, as no distribution to TD Bank is proposed and no realization is expected in the Receivership Proceedings.[9]

Receiver's Activities

10. Since its appointment as Receiver, AGI has, among other things: taken possession of the Real Property; retained Garfinkle Biderman as its independent legal counsel; given notice of its appointment to the Companies, Mr. Ahmed, TD Bank, the City, the CRA and the other secured creditors disclosed by its PPSA searches; issued the Notices and Statements of the Receiver under sections 245 and 246 of the Bankruptcy and Insolvency Act in respect of each of the Companies; delivered the Information Request and follow-up demands to Mr. Ahmed; arranged for the funding of the Receivership Proceedings by TD Bank; retained TL Smith Appraisals to prepare an appraisal for the Real Property; arranged for insurance coverage with Aon Reed Stenhouse Inc., contacted the City and the CRA; engaged Tert & Ross, a property management firm, to attend at, secure and monitor the Real Property, who then, on behalf of the Receiver, liaised with the City in respect of the by-law notices and orders the City had posted at the exterior of the building, and provided the

[8] First Report, s. II, at para. 8.
[9] First Report, s. II, at para. 39.

Receiver with an assessment of the work required to secure the building and prepare it for a sale process.[10]

11. The Real Property is a vacant, boarded-up, fire and vandalism damaged commercial building that has been the subject of orders issued by the City under its property standards and vacant building bylaws. It is also subject to realty tax arrears dating from 2023 and has an appraised value that is a fraction of the amount secured against it by TD Bank's first mortgage.[11]

12. On August 21, 2026, the Receiver's appraiser, TL Smith Appraisals, (the "**Appraiser**") inspected the interior and exterior of the Real Property.[12] Among other things, the Appraiser described the property as having boarded doors and windows. The interior is covered with debris, drywall has been torn down and scattered, the dropped ceiling has been ripped down in various areas, metal framing in the walls and ceiling is damaged and exposed, the offices have been lived in and contain mattresses, debris, needles and garbage, and parts of the interior have been used as a toilet. The Appraiser observed that there did not appear to be any area of the interior that had not been affected by vandalism, that safety boots were required to enter, and that the exterior showed weeds and deferred maintenance, with the asphalt at the end of its economic life. The Appraiser also photographed the encampment in the yard adjacent to the building.[13]

13. On September 9, 2026, the Receiver received from the City two orders to secure or repair the building located on the Real Property and a notice of inspection fees issued under the City's property standards and vacant building by-laws (the "**City By-law Orders**")[14].

[10] First Report, s. VI, at paras. 30-36.
[11] First Report, s. I, at para. 4.
[12] First Report, s. VI, at para. 35.
[13] First Report, s. VIII, at para. 50.
[14] First Report, s. VI, at para. 36 and Appendix "E" to the First Report.

14. The Receiver's administration has been materially impeded by the failure of Mr. Ahmed, the director and guiding mind of Diamond Realty and the controlling shareholder and guiding mind of Diamond Luxury, to respond to any of the Receiver's communications, including the Receiver's written requests for information and documents delivered on August 21, September 2 and September 11, 2026, or to provide the Receiver with a single document or any information of any kind in respect of either of the Companies. The Receiver has likewise received no communication from Rahman Mohammed or Mandeep Singh, the other directors of record of the Companies.[15]

15. In addition, Diamond Luxury has no real property and only limited personal property. The Receiver has not taken possession or control of any assets of Diamond Luxury. In the absence of any books and records, any response from Mr. Ahmed or any information from any other source, the Receiver has not been able to identify any bank account, accounts receivable, equipment, inventory or other asset of Diamond Luxury that is available for realization.[16]

16. The PPSA search results described in the First Report indicate that the motor vehicles that appear to have been used in Diamond Luxury's business are each subject to a lease or purchase-money financing registration in favour of the applicable dealer, lessor or lender, and the Receiver has no information suggesting that Diamond Luxury holds any equity in those vehicles. Without access to Diamond Luxury's records the Receiver has no means of identifying any potential accounts receivables or other assets, and given the magnitude of the CRA's deemed trust claims against Diamond Luxury described in the First Report, which would rank ahead of TD Bank's

[15] First Report, s. V, at paras. 20-27.
[16] First Report, s. VI, at para. 37.

security in any realization on Diamond Luxury's accounts, the Receiver does not consider that any further steps in respect of Diamond Luxury would be commercially reasonable.[17]

The Appraisal Report

17. The Receiver obtained a comprehensive appraisal report from TL Smith Appraisals (the "**Appraisal**") in respect of the Real Property. The Appraisal is dated August 28, 2026 and has an effective date and inspection date of August 21, 2026.[18]

18. As per the Appraiser's estimate, the Real Property in its current condition would reasonably achieve a price of approximately $80 per square foot, resulting in an estimated market value of $225,000 as at August 21, 2026, with a reasonable exposure time of three weeks to four months. In addition to the Appraisal, the Receiver consulted a commercial realtor active in the London market, who indicated an opinion of value in the range of approximately $200,000.[19]

19. The appraised value of $225,000 is considerably less than the $330,000 that Diamond Realty paid for the Real Property in October 2021, and represents approximately 38% of the $600,000 principal amount of the TD Mortgage and approximately 38% of the Realty Indebtedness as at February 25, 2026, before accruing interest and costs.[20]

Estimated Cost to Secure and Prepare the Real Property for Sale

20. Based on its inspections, the City By-law Orders and the advice of Tert & Ross, the Receiver prepared an estimate of the work that would be required to secure the building, bring it

[17]First Report, s. VI, at para. 37.
[18]First Report, s. VIII at para. 51 and Appendix "H".
[19] First Report, s. VIII at para. 52.
[20]First Report, s. VIII at para. 53.

into compliance with the City By-law Orders, and render it safe for access by prospective purchasers, inspectors and the Receiver's professionals before the Real Property could be marketed for sale.[21] The Receiver's estimate is summarized below (all amounts exclusive of HST):

Item	Low Estimate ($)	High Estimate ($)
Installation of steel door	10,000	16,000
Full interior clean-out, bins and disposal	30,000	50,000
Hazardous materials / substances assessment	3,000	6,000
Electrical, fire and life-safety inspections; temporary lighting and safety	10,000	22,000
Plumbing and mechanical repairs, inspection and safety	4,000	10,000
General interior safety repairs	15,000	25,000
Basement stair access repairs	6,000	12,000
Exterior landscaping	2,000	5,000
Final cleaning	3,000	6,000
Total	**83,000**	**152,000**

21. These estimates do not include any allowance for repair of the fire damage to the roof structure, remediation of any hazardous materials that the assessment may identify, or any of the cosmetic work that would be required to present the building as anything other than a vandalized shell. Nor do they include the ongoing carrying costs of the Real Property during a sale process, including insurance premiums, property management and inspection fees, utilities, snow removal and grounds maintenance, security, and further City inspection fees and penalties.[22]

[21] First Report, s. VIII at para. 54.
[22] First Report, s. VIII at para. 55.

Cost Benefit Analysis

22. On September 8, 2026, the Receiver provided TD Bank with a cost-benefit analysis comparing the estimated net result of conducting a sale process for the Real Property with the estimated result of removing it from the Receivership Proceedings without a sale (the "**Cost-Benefit Analysis**").[23] The Cost-Benefit Analysis is summarized below:

	Sale Process – Low ($)	**Sale Process – High ($)**
Estimated gross sale proceeds (Appraisal / realtor opinion)	200,000	225,000
Less: cost to secure and prepare the Real Property for sale (before HST)	(152,000)	(83,000)
Less: HST on preparation costs not recoverable by the estate	(19,760)	(10,790)
Less: realty tax arrears and City charges payable on closing (priority lien)	(22,768)	(22,768)
Less: real estate commission and closing costs	(25,000)	(15,000)
Less: carrying costs during sale process (insurance, property management, utilities, security, City fees)	(75,000)	(65,000)
Less: incremental professional fees of the Receiver and its counsel to conduct the sale process and obtain an approval and vesting order	(100,000)	(75,000)
Estimated net result of sale process	(194,528)	(46,558)
Estimated net result of removal of the Real Property from the Receivership Proceedings (no further costs incurred)	**Nil**	**Nil**

23. As the summary illustrates, the cost of securing and preparing the Real Property for sale is the single largest expense in any realization scenario and, together with the priority realty tax arrears, closing costs, carrying costs and the incremental professional fees that a sale process and approval and vesting motion would entail, is expected to consume the entire gross proceeds of any

[23] First Report, s. VIII at para. 56.

sale under the Receiver's low-case assumptions and to leave, at best, a nominal net recovery under its high-case assumptions. In either case, the Receiver would be required to borrow the full cost of the work from TD Bank under the Receiver's Borrowings Charge in advance, against an uncertain recovery, and TD Bank would bear the risk that the actual costs exceed the estimates, that hazardous materials are identified, that the building is further vandalized or damaged during the sale process, or that the market for a property of this kind in this condition proves thinner than the Appraisal suggests. TD Bank would also continue to bear the accruing carrying costs of the Real Property for the duration of the sale process, which the Appraiser estimated could extend to four months from listing, in addition to the time required to complete the preparatory work.[24]

24. Based on the Cost-Benefit Analysis, the Receiver concluded that the estimated result of completing a sale process is significantly worse than the estimated result of removing the Real Property from the Receivership Proceedings.[25] The Receiver also considered conducting a sale process, selling the Real Property "as is" without preparatory work, and demolishing the building and selling the vacant land, and concluded, for the reasons set out in the First Report, that none of those alternatives would be expected to produce any material net recovery for the receivership estate or its stakeholders.[26]

25. The Receiver considered whether TD Bank, as first mortgagee, would take possession of the Real Property or enforce the TD Mortgage by power of sale or otherwise, either in place of the Receivership Proceedings or following the Receiver's discharge. Having considered the Appraisal and the Cost-Benefit Analysis, TD Bank has advised the Receiver that it does not wish to take

[24] First Report, s. VIII at para. 57.
[25] First Report, s. VIII at para. 58.
[26] First Report, s. IX at paras. 59(i)-(iii).

possession of the Real Property or to exercise any of its rights or remedies under the TD Mortgage in respect of the Real Property. This alternative is therefore not available.[27]

26. The Receiver also considered whether an assignment in bankruptcy of Diamond Realty would provide a more efficient means of dealing with the Real Property and it is of opinion that it would not. A trustee in bankruptcy would face the same absence of realizable equity, the same funding constraints and the same lack of co-operation from Mr. Ahmed, and the additional administration would simply add cost without extinguishing the City's liens or improving any creditor's position.[28]

27. In light of the cost of securing and preparing the Real Property for sale, the priority realty tax arrears, the closing and carrying costs and the incremental professional fees that a sale process would entail, all of which are expected to consume all or substantially all of the gross proceeds of any sale, the Receiver has concluded that there is no realizable equity in the Real Property for any stakeholder and that it is not commercially reasonable to continue to carry, or to remediate, the Real Property.[29]

28. As such, the Receiver requests that the Court remove the Real Property from the Receivership Proceedings and grant the ancillary relief requested for the following reasons:

i. There is no realizable equity in the Real Property for TD Bank, the City, the unsecured creditors of Diamond Realty or Diamond Realty itself;[30]

[27] First Report, s. IX at para. 59(iv).
[28] First Report, s. IX at para. 59(v).
[29] First Report, s. IX at paras. 57-58 and 63(a)-(b).
[30] First Report, s. IX at para. 63(a).

ii. Continued administration of the Real Property would deteriorate rather than enhance the receivership estate: every month that the Receiver remains in possession adds insurance, property management, inspection and City by-law costs, all of which must be borrowed from TD Bank against a property that cannot repay them;[31]

iii. TD Bank, the only creditor with an economic interest in the Real Property and the funder of the Receivership Proceedings supports the Receiver's recommendation and has confirmed it does not intend to take possession of the Real Property or to enforce its mortgage;[32]

iv. The Receiver would be required to borrow the full cost of securing and preparing the Real Property for sale from TD Bank under its Borrowing Charge, in advance, and TD Bank would bear the risk of those costs in the face of uncertain recovery, while continuing to bear the accruing carrying costs of the Real Property for the duration of the sale process.[33]

v. No other stakeholder is prejudiced: the City retains its priority lien and all of its by-law and tax sale remedies, which are unaffected by the relief sought, the CRA has no material claim against Diamond Realty, and unsecured creditors would receive nothing in any scenario;[34]

vi. Mr. Ahmed, whose failure to co-operate with the Receiver, to maintain the Real Property, to maintain insurance and to pay realty taxes contributed directly to the present circumstances, has been given every opportunity to engage with the Receiver and has chosen not to do so; and[35]

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[31] First Report, s. IX at para. 63(b).
[32] First Report, s. IX at para. 61.
[33] First Report, s. IX at para. 57.
[34] First Report, s. IX at para. 63(d).
[35] First Report, s. IX at para. 63(e).

vii. The Receiver has considered the available alternatives and has come to the conclusion that removing the Real Property from the Receivership Proceedings is the only commercially reasonable course.[36]

Release of the Real Property

29. The Receiver proposes to proceed as follows, if the Release and Discharge Order is granted:

(a) within five business days of the granting of the Release and Discharge Order, the Receiver will deliver written notice that the Real Property has been removed from the Receivership Proceedings, enclosing a copy of the Release and Discharge Order, to the City (to the attention of its City Solicitor, City Treasurer and Tax Collector, Chief Building Official and Fire Chief), with copies to TD Bank and its counsel and to Diamond Realty and Mr. Ahmed, and the date of delivery of that notice will be the Release Date;[37]

(b) on or before the Release Date, the Receiver will deliver keys and access information for the Real Property to the City and will leave the building in its secured condition;[38]

(c) As of the Release Date, the Receiver will cancel the insurance coverage, and terminate its property management arrangements;[39]

[36] First Report, s. IX at para. 63(f).
[37] First Report, s. IX at para. 64(a).
[38] First Report, s. IX at para. 64(b).
[39] First Report, s. IX at para. 64(c).

(d) The Receiver will register a copy of the Release and Discharge Order on title to the Real Property, and will subsequently register a copy of the Discharge Certificate;[40] and

(e) After the Release Date, the Receiver will take no further steps in respect of the Real Property.[41]

Receiver's First Report

30. In connection with the Receiver's proposed discharge, AGI seeks the approval of the Receiver's First Report and the actions, conduct and activities of the Receiver as described therein.

Final SRD, Fees and Remaining Activities

31. The First Report also includes a Statement of Receipts and Disbursements as of October 14, 2026, which accurately sets out the receipts and disbursements of the Receiver to date, together with the Estimated Final Accruals. [42]

32. The fees of the Receiver are more particularly set out in the affidavit of Tom McElroy sworn October 15, 2026 (the "**McElroy Affidavit**") for the period from June 23, 2026 to September 30, 2026, totaling $41,176.91 inclusive of disbursements, all exclusive of HST.[43]

33. The fees of Garfinkle Biderman are more particularly set out in the affidavit of Monika Gugu sworn October 15, 2026 (the "Gugu Affidavit") for the period from August 7, 2026 to October 14, 2026, totaling $16,621.68, inclusive of disbursements and HST.[44]

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[40] First Report, s. IX at para. 64(d).
[41] First Report, s. IX at para. 64(e).
[42] First Report, s. X at para. 67.
[43] First Report, at Appendix "K".
[44] First Report, at Appendix "L".

34. The Receiver is of the view that the hourly rates charged by the Receiver and Garfinkle Biderman are consistent with the rates charged by insolvency professionals and law firms practicing in the area of insolvency in the Greater Toronto Area, and that their fees and disbursements are reasonable and appropriate in the circumstances of the Receivership Proceedings.[45]

35. In order to complete its mandate, the Receiver intends to: (a) deliver the notices, keys and access information, cancel the insurance coverage, terminate the property management arrangements and register the Release and Discharge Order on title to the Real Property, as described in paragraph 29; (b) pay the approved fees and disbursements of the Receiver and Garfinkle Biderman, including the Estimated Final Accruals, and repay to TD Bank any surplus funds remaining in its hands; (c) file its final report and statement of accounts with the Office of the Superintendent of Bankruptcy in respect of each of the Companies; (d) maintain the case website for at least six months following its discharge; and (e) undertake such other administrative activities as may be required to complete its mandate (collectively, the "**Remaining Activities**").[46]

36. Upon completing the Remaining Activities, the Receiver will file the Discharge Certificate with the Court in order to effect its discharge as Receiver of the Companies.[47]

PART III – ISSUES

37. The Receiver's motion raises the following main legal issues:

[45] First Report, s. XII at para 77.
[46] First Report, s. XIII at para 78.
[47] First Report, s. XIII at para 79.

a) Should the Court approve the Receiver's First Report, and the activities described therein?

b) Should the Court release the Real Property from the Receivership Proceedings?

c) Should the Court approve the Final SRD, including the Estimated Final Accruals?

d) Should the Court approve the fees and disbursements of the Receiver and its counsel?

e) Should this Court approve the discharge and release of AGI as Receiver, effective upon the filing of the Discharge Certificate?

PART IV – LAW and ARGUMENT

The First Report and the Activities of the Receiver Should Be Approved

38. 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.[48]

39. Court approval allows the court officer to bring its activities before the court and present an opportunity to address stakeholders' concerns, while enabling the court to satisfy itself that the activities have been conducted in a prudent and diligent manner.[49]

40. There are good policy and practical reasons for this, including that Court approval: (a) allows the court-officer to move forward with next steps in the proceeding; (b) brings the court-officer's activities before the court; (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified; (d) enables the Court to satisfy itself that the court officer's activities have been conducted in prudent and diligent manners; (e) provides protection for the court-officer; and (f) protects the creditors from the delay in distribution that

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[48] *Bank of America Canada v Willann Investments Ltd*, 1996 CanLII 2782 (ONCA).
[49] *Target Canada Co. (Re)*, 2015 ONSC 7574 at para 23; *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400 at paras 65-66.

would be caused by: (i) re-litigation of steps taken to date, and (ii) potential indemnity claims by the court-officer.[50]

41. This Court has held that the same observations apply to the activities of a Court-appointed receiver because the activities of any court officer "can and should be considered by the Court as against the mandate, powers and authority of that officer."[51]

42. The Receiver respectfully submits that it has acted in good faith and with due diligence in its efforts to preserve the Real Property and execute its duties in this Receivership as set out in the First Report of the Receiver and respectfully requests that the First Report and the actions, decisions and conduct of the Receiver set out therein be approved.[52]

The Court Should Release the Real Property from the Receivership Proceedings

43. Paragraph 3 of the Appointment Orders empowers but does not obligate the Receiver to take possession of the property of the debtor.[53]

44. Although the Receiver did initially take possession of the Real Property, the Receiver is an officer of the court, not an agent of the debtor or a single creditor. If continuing to hold and market the Real Property causes economic erosion to the estate (via the ongoing care and carrying costs), the Receiver has a duty to stop.[54]

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[50] *Target Canada Co. (Re)*, 2015 ONSC 7574 at paras 12 and 23.
[51]; *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, 2023 ONSC 3400 ("Triple-I") at paras 65-66.
[52] First Report, s. VI, at paras. 29-37.
[53] Appointment Orders at para. 3(a).
[54] *Ostrander v. Niagara Helicopters Ltd.* (1973), 1 O.R. (2d) 281(S.C.), at p. 286.

45. The Receiver was appointed pursuant to section 243 of the *Bankruptcy and Insolvency Act* ("BIA")[55] and section 101 of the *Courts of Justice Act* ("CJA"), which permit the Court to appoint a receiver where it is just or convenient to do so and to authorize the receiver to take any other action that the Court considers advisable.

46. When speaking of the court's power under section 243(1) of the BIA, the Ontario Court of Appeal, in quoting Justice Farley, described it as permitting the Court to do not only "what justice dictates" but also what "practicality demands."[56]

47. In this case, practicality demands that the Court release the Real Property from the Receivership Proceedings.

48. By analogy, section 20(1) of the BIA permits a trustee in bankruptcy to disclaim or abandon real property of the bankrupt and provides for the registration of a notice of abandonment in the land registry office, so that interested parties are notified that the property no longer forms part of the estate and has been returned to the debtor. The Receiver proposes to achieve the same notice function here by registering a copy of the Release and Discharge Order on title to the Real Property.[5758]

49. The relief sought does not transfer, convey, surrender or vest the Real Property in any person. Title to and possession of the Real Property remain with Diamond Realty, and the TD

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[55] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, s. 243(1)(c).
[56] *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 at paras. 53 and 57 https://canlii.ca/t/j12dh#par53, https://canlii.ca/t/j12dh#par57.
[57] *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 20, https://canlii.ca/t/7vcz#sec20.
[58] Nyberg, Chris, "Economic Triage: The Abandonment of Property in Insolvency", Research paper prepared for the Canadian Association of Insolvency and Restructuring Professionals in fulfillment of the Eleventh Annual Lloyd Houlden Fellowship (2017) pp. 24 https://cairp.ca/_Library/lloyd_houlden_fellowship/11th-lloyd-houlden-memorial-research-fellowship-paper-eng-final.pdf

Mortgage, the City's special lien for realty taxes and all other interests in the Real Property are unaffected.[59]

50. Following the removal of the Real Property from the Receivership Proceedings, the City retains all of its statutory rights and remedies in respect of the Real Property, including the right to carry out work under the City By-law Orders at the owner's expense and to add the cost to the tax roll with priority lien status, and the right under Part XI of the *Municipal Act, 2001* to register a tax arrears certificate, to offer the Real Property for public sale and, failing a successful sale, to vest the Real Property in the City. TD Bank, the only other party with an interest in the Real Property, has advised that it does not wish to take possession of the Real Property or to enforce the TD Mortgage and supports the relief sought. The City has been kept informed of the Receiver's appointment and of the relief it intends to seek, will be served with the motion record and will have the opportunity to be heard. No stakeholder is prejudiced.[60]

51. The Supreme Court of Canada has cautioned that an insolvent estate may not use the disclaimer of property to shed regulatory obligations while retaining and distributing the value of its other assets. That concern does not arise here: Diamond Realty has no assets other than the Real Property, no distribution is proposed to any creditor, the City's rights and remedies are asset-based and are preserved, and the Receiver is not asking the Court to convey, surrender or vest the Real Property in the City or to relieve any person other than the Receiver of any obligation in respect of it. The Court is not being asked to permit an estate to avoid regulatory obligations while

[59] First Report, s. IX at paras. 60(a) and 60(e).
[60] First Report, s. IX at paras. 60(d), 61 and 62.

realizing value for creditors; it is being asked to bring to an end a receivership that has no remaining economic purpose.[61]

52. In exercising its supervisory jurisdiction over the Receiver, the Court will consider whether the Receiver has acted honestly, in good faith and in a commercially reasonable manner, whether there is any realizable equity in the property for any stakeholder, whether continued administration would deteriorate rather than enhance the estate, whether the secured creditor with the economic interest in the property consents, and whether any party would be prejudiced. For the reasons set out in paragraph 28, each of those considerations favours the relief sought.[62]

The Final SRD and Fee Accrual Should Be Approved

53. The Final SRD should be approved. The First Report seeks approval of the Final SRD, including the Estimated Final Accruals required to complete the Receiver's mandate. The Final SRD is attached to the First Report as Appendix "J".

The Fees and Disbursements of the Receiver and its Counsel Should Be Approved

54. The Receiver respectfully submits that the Receiver's fees and disbursements and those of its counsel, as detailed in the First Report, should be approved. In determining whether to approve the fees of a Receiver and its counsel, the Court should consider whether the remunerations and disbursements incurred in carrying out the receivership were fair and reasonable and take into consideration, *inter alia*, the factors set out in *Bank of Nova Scotia v. Diemer.*[63]

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[61] *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5; First Report, s. IX at para. 60(e).
[62] First Report, s. IX at paras. 60(c) and 63.
[63] *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras. 33 and 45.

55. Pursuant to paragraph 18 of each of the Appointment Orders and to section 243(6) of the *BIA*, the Court may make any order respecting the payment of fees and disbursement of the Receiver that it considers proper.[64]

56. It is the Receiver's submission that the fees and disbursements of the Receiver and its Counsel were incurred at the respective party's standard rates and charges, and that they are fair, reasonable and justified in the circumstances. Further, the fees and disbursements sought accurately reflect the work done by the Receiver and its counsel in connection with the receivership. In addition, the Receiver's fees and Garfinkle Biderman's fees and disbursements are supported by detailed fee affidavits.

57. As such the fees and disbursements of the Receiver and Garfinkle Biderman should be approved.

The Discharge and Release of the Receiver

58. The Receiver has administered the Property of the Companies, including the Real Property in compliance with its mandate as contemplated by the Appointment Orders, and under the *BIA*. 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. Accordingly, the Receiver respectfully submits that it should be discharged and released, following the release of the Real Property and its administration of the assets, undertakings and property of the Companies (including paying the Receiver's fees and counsel's fees and disbursements) and the activities necessary to conclude the Receivership Proceedings have been completed.

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[64] Section 243(6), *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, Schedule B.

59. The proposed discharge and release should be approved. In order to complete its mandate, the Receiver intends to take the steps described in paragraph 29 regarding the Real Property and will pay the final fees of the Receiver and counsel to the Receiver as set out in the Estimated Final Accruals, and undertake such other minor administrative activities as may be required to complete its mandate. Upon completing the Remaining Activities, the Receiver will file the Discharge Certificate with the Court in order to effect its discharge as Receiver of the Companies.

60. The Receiver also seeks a release 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 the Receiver while acting in its capacity as Receiver, save and except for any gross negligence or willful misconduct on the part of the Receiver.

61. The release is a standard term and mirrors the language used in the Commercial List model Discharge Order. The Court has stated that "in the absence of any evidence of improper or negligent conduct, the Release should be issued." There is no evidence of improper or negligent conduct in this case. Thus, the Receiver submits that the release should be granted.[65]

PART V - ORDER REQUESTED

62. The Receiver therefore respectfully recommends and requests an Order:

a) If necessary, dispensing with service and/or declaring that service of this motion has been validly effected on all necessary parties and declaring that this motion is

[65] *Pinnacle Capital Resources Ltd. v. Kraus Inc*., 2012 CarswellOnt. 14138 (ONSC [Commercial List]).pdf at para 47. https://nextcanada.westlaw.com/Document/Ice9505e851f0673be0440021280d79ee/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0

properly returnable on October 30, 2026 at 10:00 a.m. or as soon after that time as the motion can be heard;

b) Approval of the Receiver's First Report dated October 15, 2026, and the Receiver's conduct and activities described therein;

c) Removing the Real Property from the Receivership Proceedings effective on the Release Date, and granting the ancillary relief described in paragraphs 1(c) to (f) above;

d) Approval of the Receiver's Final SRD dated October 14, 2026;

e) Approval of the fees and disbursements of the Receiver and its counsel Garfinkle Biderman as set out in the Fee Affidavits for the period of time set out therein, plus an accrual to complete the Remaining Activities; and

f) Discharging AGI as Receiver of each of the Companies upon the filing of the Receiver's Discharge Certificate, releasing AGI from liability as described in paragraph 1(h) above, and releasing and discharging the Receiver's Charge and the Receiver's Borrowings Charge.

All of which is respectfully submitted this 19th day of October 2026.

October 19, 2026



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Lawyers for the Court - Appointed Receiver,
Albert Gelman Inc.

SCHEDULE "A" – AUTHORITIES CITED

Case law

1. *Bank of America Canada v Willann Investments Ltd*, 1996 CanLII 2782

2. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras. 33 and 45.

3. *Ostrander v. Niagara Helicopters Ltd.,* (1973), 1 O.R. (2d) 281(S.C.)

4. *Target Canada Co (Re)*, 2015 ONSC 7574

5. *Triple-I Capital Partners Limited v 12411300 Canada Inc*, 2023 ONSC 3400

6. *Pinnacle Capital Resources Ltd. v. Kraus Inc*., 2012 CarswellOnt. 14138 (ONSC [Commercial List]).pdf; https://nextcanada.westlaw.com/Document/Ice9505e851f0673be0440021280d79ee/View/FullText.html?transitionType=Default&contextData=(sc.Default)&VR=3.0&RS=cblt1.0

7. *Third Eye Capital Corporation v Ressources Dianor Inc./Dianor Resourc* 2019 ONCA 508, https://nextcanada.westlaw.com/SharedLink/d2c832483c444dbba76dc40? productview=IndigoAdvantageCA&VR=3.0&RS=cblt1.0

8. *Orphan Well Association v. Grant Thornton Ltd.*, 2019 SCC 5 (CanLII), <https://canlii.ca/t/hx95f>

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date October 19, 2026



Signature

SCHEDULE "B" – LEGISLATION CITED

Rules 2.03, 3.02, 16.04 and 16.08, *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194.

COURT MAY DISPENSE WITH COMPLIANCE

2.03 The court may, only where and as necessary in the interest of justice, dispense with compliance with any rule at any time.

EXTENSIONS OR ABRIDGMENT

General Powers of Court

3.02(1) Subject to subrule (3), the court may by order extend or abridge any time prescribed by these rules or an order, on such terms as are just.

Section 243 (6), *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended

Orders respecting fees and disbursements

243 (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.

THE TORONTO-DOMINION BANK	and	DIAMOND INTERNATIONAL REALTY INC., et al.	
Applicant		Respondents	Court File No. CV-26-00000762-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
APPLICATION UNDER SUBSECTION 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
Proceeding commenced at London

FACTUM OF THE RECEIVER
(Release and Discharge Motion)

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