

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

B E T W E E N:

**WINDSOR PRIVATE CAPITAL LIMITED PARTNERSHIP
and WINDSOR II LIMITED PARTNERSHIP**

Applicants

- and -

2352107 ONTARIO INC.

Respondent

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

FACTUM OF THE RECEIVER

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TO: THE SERVICE LIST

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FACTUM OF THE RECEIVER

1. Albert Gelman Inc. (“**AGI**”), in its capacity as Court-appointed receiver (in such capacity, the “**Receiver**”) of the property municipally located at 175 Melvin Robson Avenue, Aurora, Ontario (the “**Real Property**”) and all assets, undertakings and properties of 2352107 Ontario Inc. (the “**Company**”) situated on, arising from, used in connection with or otherwise relating to the Real Property, including all proceeds thereof (collectively, the “**Property**”), seeks an order:

- (a) approving the marketing and sale process for the Retail Plaza (as defined below), including the engagement of Jones Lang LaSalle Real Estate Services Inc. (“**JLL**”) as the listing agent;

- (b) authorizing the Receiver to make the Interim Distributions (as defined below);
- (c) approving the First Report¹, the First Supplement and the Second Report, and the activities of the Receiver described therein;
- (d) approving the Receiver's interim statement of receipts and disbursements as of March 20, 2026 (the "**Interim SRD**");
- (e) approving the fees and disbursements of the Receiver and its legal counsel, Chaitons LLP ("**Chaitons**") and Torkin Manes LLP ("**Torkin**"); and
- (f) such further and other relief as this Honourable Court may deem just.

PART I - FACTS

Background

2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated January 23, 2026 (the "**Appointment Order**"), AGI was appointed as Receiver of the Property, including the Real Property.²

3. The Real Property has been developed as a multi-phased mixed-use commercial development known as the 'Aurora Mills Business Park' (the "**Project**").³

4. Phase one of the Project is comprised of Blocks 1, 5 and 6. Block 1 has been developed as a retail plaza (the "**Retail Plaza**"), which is currently leased to three commercial tenants (the

¹ Capitalized terms used but not defined herein have the meanings given to them in the Second Report of the Receiver dated March 23, 2026 (the "**Second Report**").

² Second Report at para. 7; Appendix "A" to the Second Report.

³ Second Report at para. 2.

“**Retail Plaza Tenants**”). Blocks 5 and 6 has been developed with a total of 24 industrial condominium units (collectively, the “**Condo Units**”).⁴ The balance of the Real Property remains undeveloped.⁵

5. Prior to the appointment of the Receiver, the Company entered into agreements of purchase and sale in respect of 20 of the 24 Condo Units, which were originally scheduled to close in December 2025. Those transactions did not close, in part due to the registration of construction liens against the Real Property.⁶ The Appointment Order authorized the Receiver to complete the existing agreements of purchase and sale.⁷

6. On February 2, 2026, this Court granted vesting orders in respect of the 20 pre-sold Condo Units to facilitate the completion of those transactions.⁸

The Retail Plaza Sale Process

7. Following its appointment, the Receiver solicited and received listing proposals from three reputable real estate brokers for the marketing and sale of the Retail Plaza.⁹

8. The Receiver reviewed and evaluated the listing proposals based on the following criteria (the “**Realtor Selection Criteria**”):¹⁰

- (a) experience selling real property similar in nature and geography to the Real Property;

⁴ Second Report at para. 3.

⁵ Second Report at para. 47(b).

⁶ Second Report at para. 5.

⁷ Second Report at para. 8.

⁸ Second Report at para. 9; Appendix “B” to the Second Report.

⁹ Second Report at para. 49.

¹⁰ Second Report at para. 49.

- (b) experience selling real property in receivership mandates;
- (c) proposed marketing and sales strategy;
- (d) commission and fee structure; and
- (e) other criteria as determined relevant by the Receiver.

9. Based on the criteria above, and in consultation with the Applicants (“**Windsor**”), on March 18, 2026, the Receiver selected JLL as the listing agent and will be entering into a listing agreement with it.¹¹

10. The Receiver’s and JLL’s recommended Retail Plaza Sale Process, including the proposed timelines for pre-marketing, marketing, due diligence and the submission of offers, is summarized in paragraph 50 of the Second Report.¹²

11. Additional aspects of the proposed Retail Plaza Sale Process include:¹³

- (a) the Retail Plaza will be marketed and sold on an “*as is, where is*” basis, with the standard representations and warranties for a receivership transaction;
- (b) the Receiver will have the right to reject any and all offers, including the highest offer; and
- (c) any transaction entered into by the Receiver shall be subject to Court approval.

¹¹ Second Report at para. 49.

¹² Second Report at para. 50.

¹³ Second Report at paras. 50.

Proposed Interim Distributions

12. As of the date of the Second Report, the Receiver is holding approximately \$19.8 million (the “**Estate Funds**”) in its estate trust account representing the aggregate of: (i) funds received from the Company’s accounts at NBC; (ii) collection of rent from the Retail Plaza Tenants; (iii) collection of occupancy fees from the Condo Unit purchasers; and (iv) proceeds from the sale of the 14 Condo Units, net of Receiver’s costs and expenses incurred in administering these receivership proceedings and maintaining the Real Property.¹⁴

13. The Real Property is subject to multiple registered charges, including:¹⁵

- (a) a first-ranking charge in the principal amount of \$110,000,000 (the “**NBC Charge**”) in favour of National Bank of Canada (“**NBC**”);
- (b) a second-ranking charge in the principal amount of \$40,000,000 in favour of Westmount Guarantee Services Inc.;
- (c) a third-ranking charge in the principal amount of \$25,000,000 in favour of Windsor Private Capital Limited Partnership; and
- (d) a fourth ranking charge in the principal amount of \$16,000,000 in favour of Olympia Trust Company and Belmont Mortgage Administration Limited.

14. Pursuant to a credit agreement dated July 29, 2022, as amended from time to time, NBC made available to the Company a demand construction term loan in the maximum principal amount of \$25,765,000 (the “**NBC Term Loan**”) and a letter of credit facility initially in the

¹⁴ Second Report at para. 48.

¹⁵ Second Report at para. 55; Appendix O” to the Second Report.

amount of \$1,000,000, later increased to \$5,000,000 (the “LCs”). The NBC credit facilities are secured by, among other things, the NBC Charge, a site-specific general security agreement and an assignment of cash collateral.¹⁶

15. Pursuant to a Payout and Assignment Agreement dated January 15, 2026, Windsor II Limited Partnership (“**Windsor II**”) paid out NBC’s outstanding indebtedness relating to the NBC Term Loan, and NBC assigned to Windsor II all of NBC’s right, title and interest in the credit agreement, security and indebtedness relating to the NBC Term Loan (the “**Assigned Interest**”). NBC retained its interest in the credit agreement and related security as it relates to the LC’s (the “**Retained Interest**”) until the earlier of: (a) the cancellation and/or return of all outstanding LC’s; or (b) NBC’s receipt of cash collateral equal to the face value of the outstanding LC’s. The Payout and Assignment Agreement further provides that, prior to the release of the Retained Interest, NBC’s Retained Interest ranks in priority to Windsor II’s Assigned Interest.¹⁷

16. As of March 20, 2026, the amount owing to Windsor II, as assignee of the NBC Term Loan, is \$28,381,445, plus accruing interest and costs (the “**Windsor II Debt**”).¹⁸

17. The Receiver has obtained an independent legal opinion with respect to the validity and enforceability of the security granted in favour of NBC, and assigned to Windsor II, which, subject to customary qualifications, assumptions and limitations included therein, confirms the validity and enforceability of the NBC security.¹⁹

¹⁶ Second Report at para. 56.

¹⁷ Second Report at para. 57.

¹⁸ Second Report at para. 59.

¹⁹ Second Report at para. 58.

18. The Receiver proposes to make an interim distribution of the Estate Funds as follows (the “**Interim Distributions**”):²⁰

- (a) payment of the unpaid fees and expenses of the Receiver and its legal counsel, Chaitons and Torkin;
- (b) payment to any amount owing to the Town of Aurora in respect of unpaid property taxes;
- (c) payment to NBC of the amount necessary to fully cash collateralize the LCs in an amount up to \$4,734,961.72; and
- (d) payment to Windsor II, as assignee of the NBC Term Loan and security, in an amount up to the Windsor II Debt amount.

19. The Receiver intends to reserve sufficient funds in respect of the basic 10% holdback amount that the construction liens may have priority for over the registered charges/mortgages.²¹

Activities of the Receiver

20. Paragraph 18 of the Second Report includes a detailed summary of the Receiver’s activities since the date of the Appointment Order.²²

²⁰ Second Report at para. 68.

²¹ Second Report at para. 69.

²² Second Report at para. 18.

Professional Fees and Disbursements

21. The Second Report includes fee affidavits sworn by the Receiver and its counsel, Chaitons and Torkin, which set out the fees and disbursements incurred in connection with these proceedings for the period to February 28, 2026.

PART II - ISSUE

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

- (a) Should the Court approve the Retail Plaza Sale Process, including the engagement of JLL?
- (b) Should the Court authorize the Receiver to make the Interim Distributions?
- (c) Should the Court approve the Receiver's Interim SRD?
- (d) Should the Court approve the Receiver's First Report, First Supplement and Second Report, and the activities described therein?
- (e) Should the Court approve the fees and disbursements of the Receiver and its counsel, Chaitons and Torkin?

PART III – LAW AND ARGUMENT

Approval of the Retail Plaza Sale Process

23. The Court has jurisdiction to approve the Retail Plaza Sale Process pursuant to section 243(1)(c) of the *Bankruptcy and Insolvency Act* (Canada).²³

24. In the case of *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 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;
- (c) whether there has been unfairness in the working out of the process; and
- (d) the interests of all parties.²⁴

25. In *CCM Master Qualified Fund Ltd. v. blutip Power Technologies Ltd.*, the Court held that the criteria identified in *Soundair* also inform the determination of whether to approve a court-appointed receiver's proposed sale process. Specifically, the court is to assess:

- (a) the fairness, transparency and integrity of the proposed process;

²³ *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, [ss. 243\(1\)\(c\)](#).

²⁴ *Royal Bank of Canada v. Soundair Corp.* (1991), [1991 CanLII 2727](#) at para 16 (ONCA).

- (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.²⁵

26. Pursuant to the terms of the Appointment Order, the Receiver is authorized to, among other things:²⁶

- (a) market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate; and
- (b) to engage consultants, appraisers, agents, experts and such others to assist with the exercise of the Receiver's powers and duties.

27. The Receiver respectfully submits that the proposed Retail Plaza Sale Process, including the engagement of JLL as listing agent, should be approved for the following reasons:

- (a) JLL is an established real estate brokerage with extensive experience in the sale of comparable properties;

²⁵ [*CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750](#) at para 6.

²⁶ *Windsor Private Capital Limited Partnership and Windsor II Limited Partnership v. 2352107 Ontario Inc.* (January 23, 2026), Toronto, Court File No. CL-26-00000005-0000, [Order (Appointing Receiver)] (ONSC) (Commercial List), (Steele J) (the "**Appointment Order**") at para. 3.

- (b) the proposed process is fair, open and transparent and is intended to canvass the market broadly on an orderly basis in order to obtain the highest and best price in a reasonable time period; and
- (c) the duration of the proposed process is sufficient to allow interested parties to perform diligence and to submit offers. The Receiver will also have the right to extend or amend timelines, as it considers necessary, to maximize value. All bidders will be provided with the same deadline to submit an offer.

Approval of the Interim Distributions

28. The Appointment Order provides that all funds received or collected by the Receiver, including, without limitation, from the sale of all or any of the Property and the collection of any accounts receivable, shall be paid out in accordance with the terms of the Appointment Order or any further Order of the Court.²⁷

29. The Receiver recommends approval of the proposed Interim Distributions for the following reasons:

- (a) the proposed distributions are to secured creditors in accordance with their respective priorities;
- (b) the Receiver has obtained an opinion from Weirfoulds confirming that the NBC security, as assigned to Windsor II, is valid and enforceable, subject to customary qualifications and assumptions; and

²⁷ Appointment Order, *supra* note 26, at para. 13.

- (c) the Receiver is not aware of any priority or deemed trust claims other than construction lien holdback claims, in respect of which the Receiver will retain the basic holdback in the amount of 10% of the face value of the lien claim.

The Court Should Approve the Interim SRD

30. The Interim SRD summarizes the receipts and disbursements in these receivership proceedings to March 20, 2026. All disbursements have been necessary, reasonable and incurred in the ordinary course of administering these receivership proceedings.²⁸

31. The Receiver submits that the Interim SRD should be approved.

The Court Should Approve the Receiver's Reports and the Activities Described Therein

32. The Court has the inherent jurisdiction to review and approve the activities of a court appointed receiver as set out in its reports.²⁹

33. Court approval allows the court officer to bring its activities before the court and present an opportunity to address stakeholder concerns, while enabling the court to satisfy itself that the activities have been conducted in a prudent and diligent manner.³⁰

34. The Second Report includes a detailed summary of the Receiver's activities since the date of the Appointment Order, which were all necessary and undertaken in good faith pursuant to the

²⁸ Second Report at para. 70; Appendix "Q" to the Second Report.

²⁹ [Bank of America Canada v. Willann Investments Ltd.](#) (1996), 1996 CanLII 2782 (ONCA).

³⁰ [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.

Receiver's duties and powers set out in the Appointment Order, and were in each case in the best interest of the Company's stakeholders.³¹

35. The Receiver respectfully submits that the First Report, First Supplement and the Second Report, and the activities described therein should be approved.

The Court Should Approve Fees and Disbursements of the Receiver and its Counsel

36. The Appointment Order provides that the Receiver and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.³²

37. In determining whether to approve the accounts of a Court-appointed receiver and its counsel, the Court will consider the overall value contributed, taking into account the following factors:³³

- (a) the nature, extent and value of the assets;
- (b) the complications encountered;
- (c) the degree of assistance provided by the debtor;
- (d) the time spent;
- (e) the receiver's knowledge, experience and skill;

³¹ Second Report at para. 18.

³² Appointment Order, *supra* note 26, at para. 18.

³³ [*Bank of Nova Scotia v. Diemer*, 2014 ONCA 851](#) at para 33.

- (f) the diligence and thoroughness displayed;
- (g) the responsibilities assumed;
- (h) the results of the receiver's efforts; and
- (i) the cost of comparable services when performed in a prudent and economic manner.

38. The Receiver is of the view that its fees and disbursements and those of its counsel, Chaitons and Torkin, as described in their respective fee affidavits, are fair and reasonable, and are consistent with the rates charged by law firms practicing in the area of insolvency in the Toronto market.³⁴

39. The Receiver respectfully requests the approval of its fees and disbursements and those of its counsel.

PART IV – RELIEF SOUGHT

40. For the reasons set out above, the Receiver respectfully recommends and requests that the Court grant the relief sought on this motion.

I certify the authenticity of every authority cited in this factum.

³⁴ Second Report at para. 79.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of March, 2026.



CHAITONS LLP

**Lawyers for Albert Gelman Inc., in its
capacity as Court-appointed Receiver,
and not in its personal or corporate
capacities**

**SCHEDULE “A”
AUTHORITIES**

Tab	Title	Pinpoints
Case law		
1	<u><i>Bank of America Canada v Willann Investments Ltd</i>, 1996 CanLII 2782</u>	
2	<u><i>Bank of Nova Scotia v Diemer</i>, 2014 ONCA 851</u>	33
3	<u><i>CCM Master Qualified Fund v blutip Power Technologies</i>, 2012 ONSC 1750</u>	6
4	<u><i>Royal Bank of Canada v Soundair Corp</i>, 1991 CanLII 2727</u>	16
5	<u><i>Target Canada Co (Re)</i>, 2015 ONSC 7574</u>	23
6	<u><i>Triple-I Capital Partners Limited v 12411300 Canada Inc</i>, 2023 ONSC 3400</u>	65-66

SCHEDULE "B"
TEXT OF STATUTES, REGULATIONS & BY-LAWS

**WINDSOR PRIVATE CAPITAL LIMITED PARTNERSHIP
and WINDSOR II LIMITED PARTNERSHIP**

-and-

2352107 ONTARIO INC.

Applicants

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Court File No.: CL-26-00000005-0000

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