Court File No. CV-25-00102436-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST – EAST REGION

BETWEEN:

THE TORONTO-DOMINION BANK

Applicant

-and-

GILMOUR REAL ESTATE CORPORATION, GILMOUR'S ON 38 INC., GILMOUR'S BY THE BAY INC., 1203113 ONTARIO INC., GILMOUR HOLDING CORPORATION, and J. GILMOUR HOLDINGS INC.

Respondents

FACTUM OF THE APPLICANT

(Application Returnable January 20, 2026)

January 7, 2026

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PART I – THE APPLICATION

The Applicant, The Toronto-Dominion Bank (the "**Bank**") seeks the following Order, substantially in the form attached as Schedule "A" and in template form (the "**Appointment Order**") to the Notice of Application:

a) Appointing Albert Gelman Inc., as Receiver ("**AGI**" or the "**Receiver**"), without security, of all of the assets, undertakings and properties of the Respondents, Gilmour Real Estate Corporation ("**Gilmour REC**"), Gilmour's On 38 Inc. ("**Gilmour 38**"), Gilmour's By The Bay Inc. ("**Gilmour BTB**"), 1203113 Ontario Inc. ("**120 Ontario**") J. Gilmour Holdings Inc. ("**JGH**"), and Gilmour Holding Corporation ("**GHC**" and collectively the "**Debtors**"), acquired for, or used in relation to the business carried on by the Debtors, including the Real Property (as defined below), located in Harrowsmith, Ontario;

b) That the time for service, filing and confirming of the Notice of Application and the Application Record be abridged and validated so that this application is properly returnable today and dispensing with further service thereof; and,

c) Such further and other relief as to this Honourable Court may seem just.

The Position of the Bank

1. It is the Bank's position that the present circumstances are an appropriate case for the appointment of the Receiver, including the following (all capitalized terms as defined herein):

    a) The Bank is a secured creditor of the Debtors pursuant to the GSA;

    b) The Debtors defaulted under the terms of the Letter Agreement, as a result of, *inter alia*, the following:

        i. failing to provide reporting to the Bank as they became due and was requested;

        ii. failing to make payments to the Bank as they became due; and,

        iii. failing to stay current with third parties, specifically to Canada Revenue Agency and the Township of South Frontenac for property taxes.

    c) The Debtors have failed to cure the Defaults, and the Demands issued by the Bank have expired;

    d) In the face of the expired Demands, the Debtors are insolvent. No further terms of credit nor forbearance is available to the Debtors from the Bank;

    e) The Bank's Security provides the Bank with the right to appoint a Receiver over all property of the Debtors, as a result of the Defaults;

    f) It is necessary for the protection of the Debtors' estate that a Receiver be appointed;

    g) A Receiver will also be required to preserve and maintain the property of the Debtors and complete the orderly sale of same, and to ensure that the proceeds of any such sale are applied to the Debtor's obligations. In relation to any such sale, the

Appointment of Receiver is also necessary to deal with the subsequent claims to the proceeds;

h) The Bank has provided substantial time for the Debtors to complete a refinancing or sale of the Real Property, and the Debtors have been unable to do so.

i) The Debtors provided a Consent to Appointment, consenting to the appointment of the Receiver, pursuant to the Forbearance Agreement.

PART II – FACTS/OVERVIEW

2. Gilmour REC, is a company incorporated pursuant to the laws of the Province of Ontario, with its registered office located in Harrowsmith, Ontario.

Reference: **Affidavit of Dennis Zamanis, sworn December 29, 2025, at para 2 and Exhibit "A" thereto (the "Zamanis Affidavit").**

3. Gilmour REC, owns real property, municipally known as 5062 Highway 38, Harrowsmith, Ontario, and legally described as:

PT LT 6 CON 5 PORTLAND PT 1 13R19528; SOUTH FRONTENAC (PIN 36141-0227 LT) (the "**Real Property**").

Reference: **Zamanis Affidavit at para 8 and Exhibit "G".**

4. Gilmour 38 is a company incorporated pursuant to the law of the Province of Ontario, with its registered office located in Harrowsmith, Ontario. Gilmour 38 operates as a butcher shop from the Real Property.

Reference: **Zamanis Affidavit at para 3 and Exhibit "B" thereto.**

5. Gilmour BTB is a company incorporated pursuant to the law of the Province of Ontario, with its registered office located in Belleville, Ontario. Gilmour BTB operates as a butcher shop in Belleville, Ontario.

Reference: Zamanis Affidavit at para 4 and Exhibit "C" thereto.

6. 120 Ontario is a company incorporated pursuant to the law of the Province of Ontario, with its registered office located in Belleville, Ontario.

Reference: Zamanis Affidavit at para 5 and Exhibit "D" thereto.

7. JGH is a company incorporated pursuant to the law of the Province of Ontario, with its registered office located in Godfrey, Ontario.

Reference: Zamanis Affidavit at para 6 and Exhibit "E" thereto.

8. GHC is a company incorporated pursuant to the law of the Province of Ontario, with its registered office located in Godfrey, Ontario.

Reference: Zamanis Affidavit at para 7 and Exhibit "F".

9. The Debtors are insolvent, and are currently in Default (a "**Default**", or the "**Defaults**") of its obligations to the Bank as a result of the following:

   a) Failing to make payments to the Bank as they became due;

   b) Failing to provide reporting to the Bank as it became due and was requested; and,

   c) Failing to stay current with third parties, specifically Canada Revenue Agency and realty taxes (collectively, the "**Defaults**").

Reference: Zamanis Affidavit at para 10.

<u>The Obligations to the Bank and Security Held</u>

<u>Gilmour REC</u>

10. As of December 10, 2025, Gilmour REC was indebted to the Bank in the amount of $1,800,933.31, plus accruing interest and the Bank's continuing costs of enforcement including legal and professional costs (the "**Gilmour REC Obligations**"), in respect of certain

financing advanced to Gilmour REC pursuant to the terms of a Letter Agreement dated April 15, 2021, (the "**Gilmour REC Letter Agreement**").

Reference: Zamanis Affidavit, at para 13 and Exhibit "H".

11. The credit facilities established by the Gilmour REC Letter Agreement are:

    a) <u>Committed Reducing Term Facility:</u> with a maximum credit limit of $1,970,000, on which the sum of $1,800,933.31 was owing as at December 10, 2025;

    (collectively, the "**Gilmour REC Financing**").

Reference: Zamanis Affidavit, at para 14.

12. The Gilmour REC Financing is secured by, *inter alia*, the following:

    a) General Security Agreement from Gilmour REC dated April 15, 2021 (the "**Gilmour REC GSA**").

    b) General Security Agreement from Gilmour BTB dated April 22, 2021 (the "**Gilmour BTB GSA**").

    c) General Security Agreement from Gilmour 38 dated April 22, 2021 (the "**Gilmour 38 GSA**").

    d) General Security Agreement from 120 Ontario dated April 22, 2021 (the "**120 Ontario GSA**").

    e) General Security Agreement from GHC dated April 22, 2021 (the "**GHC GSA**").

    f) General Security Agreement from JGH dated April 22, 2021 (the "**JGH GSA**" and collectively, with the Gilmour REC GSA, the Gilmour BTB GSA, the Gilmour 38 GSA, the 120 Ontario GSA and the GHC GSA, the "**GSA's**").

    g) Guarantee from Gilmour 38 for each of Gilmour REC and Gilmour BTB, dated April 22, 2021, unlimited in sum (the "**Gilmour 38 Guarantee**").

h) Guarantee from Gilmour BTB for each of Gilmour REC and Gilmour 38, dated April 22, 2021, unlimited in sum (the "**Gilmour BTB Guarantee**").

i) Guarantee from Gilmour REC for each of Gilmour 38 and Gilmour BTB dated April 22, 2021, unlimited in sum (the "**Gilmour REC Guarantee**").

j) Guarantee from GHC for each of Gilmour REC, Gilmour BTB and Gilmour 38 dated April 22, 2021, unlimited in sum (the "**GHC Guarantee**").

k) Guarantee from JGH for each of Gilmour REC, Gilmour BTB and Gilmour 38 dated April 22, 2021, unlimited in sum (the "**JGH Guarantee**").

l) Guarantee from 120 Ontario for each of Gilmour REC, Gilmour BTB and Gilmour 38 dated April 22, 2021, unlimited in sum (the "**120 Ontario Guarantee**" and collectively with the Gilmour 38 Guarantee, the Gilmour REC Guarantee, the Gilmour BTB Guarantee, the GHC Guarantee, and the JGH Guarantee, the "**Guarantees**").

m) Charge/Mortgage from Gilmour REC, in the principal sum of $2,245,000.00, receipted as instrument number FC323542 on April 23, 2021, over the Real Property (the "**Mortgage**"), as governed by Standard Charge Terms No. 8520 (the "**Standard Charge Terms**").

n) Assignment of Rents from Gilmour REC receipted as instrument number FC323543 on April 23, 2021 (the "**Assignment of Rents**"), over the Real Property.

(collectively, the "**Gilmour REC Security**").

Reference: Zamanis Affidavit, at para 15 and Exhibit "I"- "W" thereto.

Gilmour 38

13. As of December 10, 2025, Gilmour 38 was indebted to the Bank in the amount of $125,114.54 in respect of certain financing, plus accruing interest and the Bank's continuing costs of enforcement including legal and professional costs (the "**Gilmour 38 Obligations**"), advanced pursuant to the terms of a Letter Agreement dated April 15, 2021, (the "**Gilmour 38 Letter Agreement**").

Reference: Zamanis Affidavit, at para 16 and Exhibit "X".

14. The credit facilities established by the Gilmour 38 Letter Agreement are:

    a) Operating Loan: with a maximum credit limit of $125,000, on which the sum of $125,114.54 was owing as at December 10, 2025;

(collectively, the "**Gilmour 38 Financing**").

Reference: Zamanis Affidavit, at para 17.

15. The Gilmour REC Financing is secured by, *inter alia*, the following:

    a) The GSAs;

    b) The Guarantees;

    c) The Mortgage; and,

    d) The Assignment of Rents.

(collectively the "**Gilmour 38 Security**").

Reference: Zamanis Affidavit, at para 18.

Gilmour BTB

16. As of December 10, 2025, Gilmour BTB was indebted to the Bank in the amount of $70,517.65 in respect of certain financing, plus accruing interest and the Bank's continuing costs of enforcement including legal and professional costs (the "**Gilmour BTB Obligations**"), advanced pursuant to the terms of a Letter Agreement dated April 15, 2021, (the "**Gilmour BTB Letter Agreement**").

Reference: Zamanis Affidavit, at para 19 and Exhibit "Y".

17. The credit facilities established by the Gilmour BTB Letter Agreement are:

a) <u>Operating Loan:</u> with a maximum credit limit of $75,000, on which the sum of $70,517.65 was owing as at December 10, 2025.

(collectively, the "**Gilmour BTB Financing**").

Reference: Zamanis Affidavit, at para 20.

18. The Gilmour REC Financing is secured by, *inter alia*, the following:

a) The GSAs;

b) The Guarantees;

c) The Mortgage; and,

d) The Assignment of Rents.

(collectively the "**Gilmour BTB Security**" and collectively with the Gilmour 38 Security and the Gilmour REC Security, the "**Security**").

Reference: Zamanis Affidavit, at para 21.

<u>The Bank's Security Interest in The Personal Property of the Debtor</u>

19. The GSAs secures all personal property of the Debtors. The Bank has registered a Financing Statement as against the Debtors pursuant to the provisions of the *Personal Property Security Act* (Ontario) to perfect its security interest in the personal property of the Debtors secured under the GSAs.

Reference: Zamanis Affidavit, at paras 22-24, and Exhibit "Z"- "EE" thereto.

<u>The Bank's Security Interest in the Real Property</u>

20. The Bank's interest in the Real Property is secured by the Mortgage, which constitutes a first charge on the Real Property, as governed by the GSAs.

Reference: Zamanis Affidavit, at paras 15, 25 – 27, and Exhibit "U" thereto.

<u>Defaults and Demands</u>

21. The Debtors are insolvent, and has defaulted under the Financing, as set out above.

Reference: Zamanis Affidavit, at para 28.

22. As a result of the continuing Defaults, the Bank did deliver demands for payment and Notices of Intention to Enforce Security to the Debtors, all dated June 17, 2024 pursuant to section 244(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**"). The Bank also issued demands for payment to the guarantors of the Debtors, dated June 17, 2024 (collectively, the "**Demands**").

Reference: Zamanis Affidavit, at para 29 and Exhibit "FF".

23. Following the Demands, in January 2025 Gilmour REC did sell certain real property subject to a Mortgage in favour of the Bank and in consideration of the Bank discharging the mortgage held paid:

    a) to the Bank: the sum of of $1,469,484.45 plus $13,783.68 for costs

    b) the sum of $116,150.40 on account of Gilmour REC tax arrears owing on the Real Property to the Township of South Frontenac.

Reference: Zamanis Affidavit, at para 30.

24. The Debtors then advised the Bank that Gilmour REC was attempting to complete a refinancing or sale of the Real Property to repay the Obligations.

Reference: Zamanis Affidavit, at para 31.

25. On May 20, 2025, the Bank and the Debtors entered into a forbearance agreement (the "**Forbearance Agreement**"), to allow for refinancing or sale of the Real Property to be completed, which had a termination date of June 30, 2025.

Reference: Zamanis Affidavit, at para 32, and Exhibit "GG" thereto.

26. On July 28, 2025, the Bank and the Debtors entered into an addendum to forbearance agreement (the "**Addendum**"), to allow for refinancing or sale of the Real Property to be completed, which had a termination date of October 31, 2025.

Reference: Zamanis Affidavit, at para 33, and Exhibit "HH" thereto.

27. The Debtors are in default of the Forbearance Agreement and Addendum as a result of, among other things, the following:

    a) Failing to pay the Financing by October 31, 2025.

Reference: Zamanis Affidavit, at para 34.

28. On September 29, October 10, and October 14, 2025, counsel for the Bank emailed the Debtors to request an update on the proposed sale of the Real Property.

Reference: Zamanis Affidavit, at para 36, and Exhibit "II" thereto.

29. On October 20, 2025, the Debtors called counsel for the Bank to advise that the proposed sale of the Real Property had fallen through and that the property would be relisted.

Reference: Zamanis Affidavit, at para 37.

30. On October 21, 2025, the Debtors emailed the Bank to provide an updated listing for the Real Property.

Reference: Zamanis Affidavit, at para 38, and Exhibit "JJ" thereto.

31. The Debtors failed to complete a refinancing or sale of the Real Property and pay the Obligations in accordance with the Forbearance Agreement and Addendum.

Reference: Zamanis Affidavit, at para 39.

32. The Debtors have not provided any evidence that a refinancing or sale of the Real Property to pay the Obligations is imminent.

Reference: Zamanis Affidavit, at para 40.

33. All statutory notice periods in relation to the Demands have expired, and the Debtors and the guarantor of the Debtors have failed to repay the Obligations due, despite the Demands.

Reference: Zamanis Affidavit, at para 41.

<u>The Appointment of a Receiver</u>

34. The Obligations due pursuant to the Demands have not been paid. The ten (10) day period under section 244 of the BIA has expired. The Debtors in default of the Financing. The Bank is in a position to appoint a receiver over the assets and property of the Debtors as secured by the Bank's Security, pursuant to section 243 of the BIA.

Reference: Zamanis Affidavit, at paras 42-43.

35. The GSAs grant the Bank the right to appoint a Receiver over the Real Property and all personal property of the Debtors, as a result of the Defaults of the Debtors under the Financing.

Reference: Zamanis Affidavit, at paras 44 to 48.

36. AGI has consented to act as Receiver, should this Honourable Court so appoint it.

Reference: Zamanis Affidavit, at para 56.

PART III – ISSUES, LAW AND ARGUMENT

<u>Issues</u>

37. The issues before this Court, and addressed below, are:

a) Does this Court have jurisdiction to appoint the Receiver?

b) Should this Court appoint the Receiver?

c) If this Court decides to appoint the Receiver, then are the terms of the Receivership Order appropriate in the circumstances of this receivership?

<u>(a) This Court has jurisdiction to appoint the Receiver</u>

38. Subsection 243(5) of the BIA provides that an application under subsection 243(1) of the BIA is to be filed in a court having jurisdiction in the judicial district of the “locality of the debtor”, which is defined in section 2 of the BIA.

BIA, s. 2, Schedule “B”; BIA, s. 243(5), Schedule “B”.

39. The Debtors are an Ontario corporation with its registered office in Ontario. The business carried on by the Debtors that are subject to the proposed receivership is located in Ontario. The locality of the Debtors is, therefore, Ontario, and this application is properly brought before the Ontario Superior Court of Justice.

40. Subsection 243(4) of the BIA provides that only a trustee, as defined in section 2 of the BIA, may be appointed under subsection 234(1) of the BIA.

BIA, s. 2, Schedule “B”; BIA, s. 243(4), Schedule “B”.

41. AGI is a trustee as defined in the BIA, and therefore, satisfies the requirements for appointment pursuant to the BIA.

<u>(b) This Court should appoint the Receiver</u>

42. Section 244(1) requires that a secured creditor provide an insolvent person with the requisite

advance notice of its intention to enforce security.

BIA, s. 244(1), Schedule "B".

43. The Applicant sent the Demands together with its Notice of Intention to Enforce Security pursuant to such section of the BIA, to the Debtors on June 17, 2024, and this application is being heard on a date that is after the date on which any applicable notice periods expired.

44. Section 101 of the *Courts of Justice Act,* R.S.O. 1990, c. C-43, as amended (the "**CJA**") provides for the appointment of a receiver by this Court where it is "just and convenient". Section 243(1) of the BIA also provides that, on an application by a secured creditor, this Court may appoint a receiver if it considers it to be just and convenient to do so to: (a) take possession over the assets of an insolvent person; (b) exercise any control that the Court considers advisable over the property and business; or (c) take any other action that the Court considers advisable.

CJA, s. 101, Schedule "B"; BIA, s. 243(1) and 243(2), Schedule "B".

45. Where the loan agreement and related transaction documents contemplate the appointment of a receiver, this Court may have regard to the principles summarized by Justice Newbould in *RMB Australia Holdings Limited v. Seafield Resources Ltd*:

> 28 In determining whether it is "just or convenient" to appoint a receiver under either the BIA or CJA, Blair J., as he then was, in *Bank of Nova Scotia v. Freure Village on Clair Creek* (1996), 40 C.B.R. (3d) 274 (Ont. Gen. Div. [Commercial List]) stated that in deciding whether the appointment of a receiver was just or convenient, the court must have regard to all of the circumstances but in particular the nature of the property and the rights and interests of all parties in relation thereto, which includes the rights of the secured creditor under its security. He also referred to the relief being less extraordinary if a security instrument provided for the appointment of a receiver:
>
>> While I accept the general notion that the appointment of a receiver is an extraordinary remedy, it seems to me that where the security instrument permits the appointment of a private receiver — and even contemplates, as this one does, the secured creditor seeking a court appointed receiver — and where the circumstances of default justify the appointment of a private receiver, the "extraordinary" nature of the remedy sought is less essential to the inquiry. Rather,

> the "just or convenient" question becomes one of the Court determining, in the exercise of its discretion, whether it is more in the interests of all concerned to have the receiver appointed by the Court or not.
>
> 29 See also *Elleway Acquisitions Ltd. v. Cruise Professionals Ltd.*, 2013 ONSC 6866 (Ont. S.C.J. [Commercial List]), in which Morawetz J., as he then was, stated:
>
> > ...while the appointment of a receiver is generally regarded as an extraordinary equitable remedy, courts do not regard the nature of the remedy as extraordinary or equitable where the relevant security document permits the appointment of a receiver. This is because the applicant is merely seeking to enforce a term of an agreement that was assented to by both parties. See *Textron Financial Canada Ltd. v. Chetwynd Motels Ltd.*, 2010 BCSC 477, [2010] B.C.J. No. 635 at paras. 50 and 75 (B.C. S.C. [In Chambers]); *Freure Village*, supra, at para. 12; *Canadian Tire Corp. v. Healy*, 2011 ONSC 4616, [2011] O.J. No. 3498 at para. 18 (S.C.J. [Commercial List]); *Bank of Montreal v. Carnival National Leasing Limited and Carnival Automobiles Limited*, 2011 ONSC 1007, [2011] O.J. No. 671 at para. 27 (S.C.J. [Commercial List].

RMB Australia Holdings Limited v. Seafield Resources Ltd., 2014 ONSC 5205 (CanLII), paras 28-29.

46. The existence of a contractual right to appoint a receiver in the loan agreement and related transaction documents is key. Where the rights of the secured creditor include, pursuant to the terms of its security, the right to seek the appointment of a receiver, the burden on the applicant is lessened: while the appointment of a receiver is generally an extraordinary equitable remedy, the courts do not so regard the nature of the remedy where the relevant security permits the appointment and as a result, the applicant is merely seeking to enforce a term of an agreement already made by both parties.

Elleway Acquisitions Limited v. The Cruise Professionals Limited, 2013 ONSC 6866 (CanLII) at para 27.

47. This relief that is granted more as a matter of course, is especially true in cases in which the circumstances further support such an appointment. That is the case here.

BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc., 2020 ONSC 1953 (CanLII) at paragraph 44.

48. This even further lowered burden in cases in which there has been a default by a mortgagor is described by Justice Farley in *Confederation Life Insurance Co. v. Double Y Holdings Inc.*:

> 20 I must also note that there appears to be a major distinction between those case where the borrower is in default and those where it is not (or a receiver is being asked for in say a shareholder dispute - e.g. *Goldtex Mines Ltd. v. Nevill* (1974), 7 O.R. (2d) 216 (Ont. C.A.)). See *Receiverships*, *Bennet* (1985), at p.91 referring to: "In many cases, a security holder whose instrument charges all or substantially all of the debtor's property will request a court - appointed receivership if the debtor is in default". (In this case the plaintiffs have a very strong case - not only are the loans in default, they have matured). See also *Kerr on Receiverships* (1983), 16th ed. at p.5:
>
>> There are two main classes of cases in which appointment is made: (1) to enable persons who possess rights over property to obtain the benefit of those rights and to preserve the property, pending realization, where ordinary legal remedies are defective and (2) to preserve property from some danger which threatens it.
>>
>> Appointment to Enforce Rights
>>
>> In the first class of cases are included those in which the court appoints a receiver at the instance of a mortgagee whose principal is immediately payable or whose interest is in arrear. ... In such cases the appointment is made as a matter of course as soon as the applicant's right is established and it is unnecessary to allege any danger to the property.

***Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List)) ["*Confederation Life*"], para. 20, Tab 1 of the Applicant's Book of Authorities.**

49. In the present case, the Debtors are in default under the loan agreement and related transaction documents and the Mortgage is immediately payable, meaning that this is the first class of cases referred in *Confederation Life*. In this sort of case, allegations of danger to the property are not necessary, though such allegations do exist in this case, as described in the Zamanis Affidavit.

***Confederation Life,* para. 20.**

50. Thus, with the Applicant's contractual entitlement to appoint a receiver and the existence of mortgage default, the appointment of a receiver is not extraordinary relief, and the burden has been lowered further. With this lower burden, the following additional "just or convenient" factors identified by Justice Farley in *Confederation Life* may be considered:

a) The lenders' security is at risk of deteriorating;

b) There is need to stabilize and preserve the Debtor's business;

c) Loss of confidence in the Debtor's management; and,

d) Positions and interests of other creditors.

Confederation Life paras. 19-24.

51. It is not essential that the moving party/secured creditor establish that it will suffer irreparable harm if a receiver/manager is not appointed.

***Swiss Bank Corporation (Canada) v. Odyssey Industries Incorporated* (1995), 30 C.B.R. (3d) 49 at para 28, Tab 2 of the Applicant's Book of Authorities.**

52. When the above *Confederation Life* factors are applied to this case, the Applicant submits that the burden to appoint a receiver has been met and that such appointment is just and convenient in the circumstances:

a) ***The Debtors contractually agreed to the appointment of a receiver.*** The loan agreements and the related transaction documents among the Applicant and the Debtors expressly entitle the Applicant to appoint a receiver under certain circumstances, including the present circumstances. The Applicant now exercises these entitlements, subject to this Court's authority.

b) ***The loan agreement is in default.*** As set out above, events of defaults have occurred and are continuing under the loan agreement and the related transaction documents. The Applicant has demanded on the Obligations. The Applicant provided the Debtors with statutory notice of their intention to enforce security, and the applicable notice periods have elapsed.

c) ***The lenders' security is at risk of deteriorating.*** The Bank is concerned that the Debtors do not have the working capital needed to maintain its property. If the property of the Debtors deteriorates, the realizable value of the Security will diminish as a result.

d) ***The Debtors' business needs to be stabilized and preserved.*** The Debtors' liquidity crisis will continue to worsen in the absence of action. A receiver will be able to provide stability and transparency, and take the necessary steps to preserve the Security, including conducting an orderly sale process that will generate recoveries for creditors. If the Debtors' business experiences further disarray, or the Security is not preserved, there will be further negative consequences.

e) ***The Applicant has lost confidence in the Debtors' management.*** The Debtors have not advised or provided evidence of alternatives to a receivership that stand any reasonable chance of success, despite significant time in which to do so. The Applicant has justifiably lost confidence in the management of the Debtors due to the events described in the Zamanis Affidavit.

f) ***Position and interests of other Creditors.*** The Applicant is not the only creditor of the Debtors. As at the date of this Factum, no creditor has opposed the receivership application. The Receiver will be able to properly and equitably deal with the interests of creditors other than the Applicant. A receivership provides parties with an effective forum in which to deal with any issues, including any competing claims, that may arise in respect of the Debtors and their property.

53. As at the date of this Factum, the Applicant is not aware of any restructuring efforts by the Debtors that stands any reasonable chance of success.

(c) The Terms of the Receivership Order are Appropriate

54. The terms of the proposed Receivership Order are substantially the same as the terms of the Commercial List's model receivership order, and the modifications to same are indicated in the blacklined copy provided.

> **Blackline of the draft Order against the Model Receivership Order; Application Record, Tab 1, Schedule "A-2".**

PART IV – ORDER REQUESTED

55. For the reasons set forth herein and in the Application Record, it is respectfully submitted that the appointment of a receiver is just and convenient and is necessary for the protection of the estate of the Debtors and the interests of the Bank and other stakeholders.

56. The Bank respectfully requests that this Honourable Court grant the Appointment Order substantially in the form attached as Schedule "A" to the Notice of Application.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 7th day of January, 2026

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The Toronto-Dominion Bank

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Confederation Life Insurance Co. v. Double Y Holdings Inc.*, 1991 CarswellOnt 1511 (Ont. S.C.J. (Commercial List))

2. *Elleway Acquisitions Limited v. The Cruise Professionals Limited*, 2013 ONSC 6866 (CanLII)

3. *RMB Australia Holdings Limited v. Seafield Resources Ltd.,* 2014 ONSC 5205 (CanLII)

4. *Swiss Bank Corporation (Canada) v. Odyssey Industries Incorporated* (1995), 30 C.B.R. (3d) 49

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY-LAWS

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

Court may appoint receiver

243. (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

(a) the insolvent person consents to an earlier enforcement under subsection 244(2); or

(b) the court considers it appropriate to appoint a receiver before then.

Definition of receiver

(2) Subject to subsections (3) and (4), in this Part, receiver means a person who

(f) is appointed under subsection (1); or

(g) 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.

Advance notice

244 (1) A secured creditor who intends to enforce a security on all or substantially all of

(a) the inventory,

(b) the accounts receivable, or

(c) the other property

of an insolvent person that was acquired for, or is used in relation to, a business carried on by the insolvent person shall send to that insolvent person, in the prescribed form and manner, a notice of that intention.

Period of notice

(2) Where a notice is required to be sent under subsection (1), the secured creditor shall not enforce the security in respect of which the notice is required until the expiry of ten days after sending that notice, unless the insolvent person consents to an earlier enforcement of the security.

No advance consent

(2.1) For the purposes of subsection (2), consent to earlier enforcement of a security may not be obtained by a secured creditor prior to the sending of the notice referred to in subsection (1).

Exception

(3) This section does not apply, or ceases to apply, in respect of a secured creditor

(a) whose right to realize or otherwise deal with his security is protected by subsection 69.1(5) or (6); or

(b) in respect of whom a stay under sections 69 to 69.2 has been lifted pursuant to section 69.4.

Idem

(4) This section does not apply where there is a receiver in respect of the insolvent person.

locality of a debtor means the principal place

(a) where the debtor has carried on business during the year immediately preceding the date of the initial bankruptcy event,

(b) where the debtor has resided during the year immediately preceding the date of the initial bankruptcy event, or

(c) in cases not coming within paragraph (a) or (b), where the greater portion of the property of the debtor is situated; (localité)

trustee or ***licensed trustee*** means a person who is licensed or appointed under this Act. (*syndic* ou *syndic autorisé*)

Courts of Justice Act, RSO 1990, c. C-43.

Injunctions and receivers

101. (1) In the Superior Court of Justice, an interlocutory or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

THE TORONTO-DOMINION BANK v. GILMOUR REAL ESTATE CORPORATION., et al.

Applicant Respondents

Court File No CV-25-00102436-0000

ONTARIO
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