Court File No.: CL-26-00000374-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

ADDENDA CAPITAL INC.

Applicant

- and -

DOV (495 RICHMOND) LIMITED

Respondent

IN THE MATTER OF AN APPLICATION PURSUANT TO 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., c. C.43, AS AMENDED

FACTUM OF THE APPLICANT
(Appointment of Receiver)

September 16, 2026

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TO: THE SERVICE LIST

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PART I – OVERVIEW

1. Addenda Capital Inc. ("**Addenda**" or the "**Applicant**") brings this application pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and section 101 of the *Courts of Justice Act* (Ontario) (the "**CJA**"), seeking an order (the "**Appointment Order**"), among other things:

(a) appointing Goldhar & Associates Ltd. ("**Goldhar**") as receiver and manager (in such capacity and if appointed, the "**Receiver**"), without security, over all of the assets, undertakings and properties of the Debtor, including all proceeds thereof and the real property municipally known as 495 Richmond Road, Ottawa, Ontario (the "**Real Property**" and collectively with the foregoing, the "**Property**"); and

(b) granting a Receiver's Charge and a Receiver's Borrowings Charge over the Property (each as defined below).

2. The Debtor is an Ontario corporation and the registered owner of the Real Property, a seven-storey Class A office building containing approximately 106,195 square feet of rentable space.

3. In 2019, Addenda agreed to lend the Debtor up to a maximum principal amount of $30,947,000 (the "**Loan**") in connection with the acquisition of the Real Property. The Loan is governed by the terms set out in a commitment letter dated October 11, 2019 (the "**Agreement**") and is secured by, among other things, a first mortgage (the "**Mortgage**") on the Real Property, a general security agreement (the "**GSA**"), assignments of rents, leases and insurance, and several guarantees (the "**Guarantees**") (collectively, the "**Security Documents**").

4. The Debtor has defaulted on the terms of the Agreement and Security Documents, including by (a) failing to repay over $25 million owing under the Loan (the "**Indebtedness**") on

maturity; and (b) failing to make interest payments on the Loan since June 2026. The Debtor has also failed to comply with material non-payment obligations under the Agreement. In particular, the Debtor has, among other things: (a) without Addenda's consent substantially demolished and altered the interior of the Real Property as part of a proposed conversion from commercial office space to residential rental units; and (b) failed to provide sufficient financial, tax, insurance, operational and redevelopment information to permit Addenda to assess the condition of the Real Property, the viability of the proposed redevelopment, or any alternative enforcement proposal.

5. These defaults have placed Addenda's security at material risk. Among other things, Addenda is concerned that the conversion of the Real Property from an office building, that formed the basis of its security, to a vacant and partially demolished construction site materially affects the character, condition, marketability, and value of the Real Property. Therefore, Addenda requires the assistance of the Receiver to preserve, protect and realize upon the Property in an orderly manner.

6. The appointment of the Receiver is just and convenient in the circumstances and is in the best interest of the Debtor's stakeholders generally. A receivership will provide the necessary oversight and authority to secure and preserve the Property, investigate and address the continuing defaults, obtain the information required to assess the Property and any proposed redevelopment or refinancing, and conduct an orderly, value-maximizing realization process if necessary.

PART II – FACTS

7. The facts in support of this application are more fully set out in the Affidavit of Ardi Pradana.[1]

[1] Affidavit of Ardi Pradana sworn September 2, 2026 ["**Pradana Affidavit**"]. Capitalized terms used and not otherwise defined herein have the meanings ascribed to them in the Pradana Affidavit.

A. The Parties

8. Addenda is an investment and asset-management firm and senior secured lender to the Debtor. The Debtor is an Ontario corporation with a registered head office in Toronto, Ontario, and is the registered owner of the Real Property.[2]

B. The Loan and Indebtedness

9. In October 2019, Addenda agreed to provide the Debtor with the Loan to finance the Debtor's acquisition of the Real Property, on the terms and subject to the conditions set out in the Agreement. The Loan originally matured on December 7, 2024, and was subsequently extended, most recently to September 7, 2026 (the "**Extension Period**"), to permit the Debtor with time to refinance the Loan. During the Extension Period, the Debtor was required to make interest-only payments.[3]

10. The Loan is secured by the Security Documents. In particular, the Debtor granted Addenda the Mortgage (being a first mortgage against title) over the Real Property and the GSA over all present and after-acquired personal property of the Debtor that is located on, affixed or attached to, situated on, or arises in connection with the ownership, use or disposition of the Real Property and its improvements, together with all additions, replacements, accessions, improvements and proceeds.[4]

11. Addenda also holds assignments of insurance, rents, leases and related agreements affecting the Real Property. Addenda registered its security interest under the *Personal Property*

[2] Pradana Affidavit at paras 5-6
[3] Pradana Affidavit at paras 7-9, 17.
[4] Pradana Affidavit at paras 22 and 25.

Security Act (Ontario).[5] The Guarantees provide additional security for the Indebtedness. Each Guarantor's obligations arise upon demand, subject to the applicable limit of liability.[6]

12. Under the Agreement and Security Documents, the Debtor is required to, among other things: (a) make the required payments under the Loan; (b) maintain, insure and refrain from unauthorized alterations to the Real Property; (c) pay property taxes; and (d) provide Addenda with requested financial, operating and property information. A breach of these obligations, material deterioration in the Debtor's financial condition or the value of the Real Property, and insolvency each constitute an event of default.[7]

13. Upon an event of default, Addenda may declare the Indebtedness immediately due and payable, enforce the Security Documents, and seek appointment of a receiver over the Property.[8]

C. Default and Demand

14. During the Extension Period, the Debtor failed to make the interest payments due in June, July and August 2026. These payment failures constitute events of default under the Agreement and Security Documents.[9]

15. In a letter dated June 12, 2026 (the "**Demand**"), Addenda demanded payment of the Indebtedness from the Debtor and the Guarantors in the amount of $25,798,415.18, plus legal costs and accruing interest, and delivered notices of intention to enforce security under section 244(1) of the BIA ("**244 Notices**"). Neither the Debtor nor the Guarantors have repaid the indebtedness, and the Loan remains in default.[10]

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[5] Pradana Affidavit at paras 29-30.
[6] Pradana Affidavit at para 31.
[7] Pradana Affidavit at paras 11-14, 23, 26-27.
[8] Pradana Affidavit at paras 24 and 28.
[9] Pradana Affidavit at para 32.
[10] Pradana Affidavit at paras 34-37.

16. Following the payment defaults, Addenda retained Brentwood Restructuring Services to inspect the Real Property and assess the proposed redevelopment and the Debtor's settlement proposal. The inspection revealed that the Debtor had substantially demolished and altered the interior of the Real Property in connection with a proposed conversion from office space to residential rental units.[11]

17. The inspection also identified unresolved fire and safety concerns, apparent non-payment of contractors and trades, and the disposal or removal of office equipment and leasehold items. Addenda did not consent to the Debtor's demolition or redevelopment of the Real Property.[12]

18. Addenda has not received satisfactory confirmation that the Real Property is insured for its current condition and use, that municipal taxes are current, or that the Debtor has provided the requested financial, operating, redevelopment and financing information. Addenda is therefore unable to assess the condition and value of the Real Property, the viability of the proposed redevelopment, or whether there is a viable alternative to enforcement.[13]

D. The Appointment of the Receiver is Necessary

19. The Debtor's continuing payment and non-payment defaults, the unauthorized demolition and redevelopment, and the uncertainty regarding insurance, taxes, liens and collateral have materially prejudiced Addenda's security. Addenda has lost confidence in the Debtor's ability or willingness to preserve the Real Property and protect the Property.[14]

20. Addenda is contractually entitled to the appointment of the Receiver. The Appointment Order is necessary to: (a) stabilize, preserve and protect the Property; (b) investigate the Debtor's

[11] Pradana Affidavit at paras 38-39.
[12] Pradana Affidavit at paras 39-40 and 42-43.
[13] Pradana Affidavit at paras 44-49 and 51-52.
[14] Pradana Affidavit at paras 57-62.

defaults; (c) obtain the information required to assess the Property and the proposed redevelopment; and (d) if necessary, conduct an orderly, value-maximizing realization process.[15]

PART III – ISSUES

21. The issues to be determined on this application are whether the appointment of the Receiver is just or convenient in the circumstances and the Court should grant the Appointment Order.

PART IV – LAW & ARGUMENT

A. The Appointment of the Receiver is Appropriate in the Circumstances

(1) This Court's Jurisdiction to Appoint the Receiver

22. This Court has jurisdiction to appoint the Receiver under section 243(1) of BIA and section 101 of the CJA. Under both provisions, the governing question is whether the appointment is "just or convenient".[16]

23. If that standard is met, the BIA provides that this Court may appoint a receiver to take possession over the assets of an insolvent person, exercise any control that the Court considers advisable over the property and business or take any other action that the Court considers advisable.[17]

24. The Applicant is a "secured creditor" within the meaning of the BIA. The Security Documents provide the Applicant with security over the Property, including the Mortgage over the

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[15] Pradana Affidavit at paras 57-65.
[16] *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, ss. 243(1), 243(1.1) ["**BIA**"]; *Courts of Justice Act,* R.S.O. 1990, c. C.43, s. 101 ["**CJA**"].
[17] BIA, s. 243(1).

Real Property, the GSA over the Debtor's property associated with the Real Property, and assignments of rents, leases and insurance.[18] Addenda registered its security interest under the *Personal Property Security Act* (Ontario).[19]

25. The Debtor is an "insolvent person" within the meaning of the BIA. It has failed to repay the Indebtedness despite the Demand and the expiry of the 244 Notice period and remains in default under the Agreement and Security Documents.[20]

26. This application is properly brought in this Court. The Debtor is an Ontario corporation with its registered head office in Toronto, Ontario, and owns the Real Property in Ontario. Goldhar is a licensed insolvency trustee and has consented to act as Receiver.[21]

27. The Applicant has also complied with section 244(1) of the BIA by delivering the Demand and 244 Notice on June 12, 2026. The required ten-day notice period has expired.[22]

(2) It is Just and Convenient for this Court to Appoint the Receiver

28. In determining whether it is "just or convenient" to appoint a receiver, the Court should have regard for all the circumstances, including: (a) the nature of the property over which the receiver is to be appointed; (b) the rights and interests of all parties in relation to the property over which the receiver is to be appointed; and (c) whether the secured creditor has the right under the security agreement to appoint a receiver privately. Although the framing of relevant factors may differ between cases, the key considerations are substantially similar.[23]

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[18] BIA, s. 2, definition of "secured creditor"; Pradana Affidavit at paras. 22, 25 and 29-30.

[19] Pradana Affidavit at paras 29-30.

[20] BIA, s. 2, definition of "insolvent person"; Pradana Affidavit at paras. 32 and 34-37.

[21] BIA, ss. 2 and 243(4)-(5); Pradana Affidavit at paras. 5, 68-70.

[22] BIA, ss. 243(1.1) and 244(1)-(2); Pradana Affidavit at paras. 34-36.

[23] *Bank of Nova Scotia v. Freure Village of Clair Creek*, 1996 CanLII 8258 (ON SC) at para. 10 [*Freure Village*]; KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al., 2023 ONSC 5881 at para. 36 [*The One*]. Some cases cite more factors: see, e.g., *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc*., 2020 ONSC 1953 at para. 45. Note that these factors are not a checklist, but rather considerations to reviewed holistically: *The One*, at para. 25.

29. An applicant is not required to demonstrate that it will suffer irreparable harm if the receivership application is not granted, or that other potential remedies are defective or insufficient.[24] Instead the Court is to balance the competing interests of various economic stakeholders, with the specific factors that a court will consider being "circumstance-oriented."[25]

30. The Applicant submits that it is just and convenient to appoint the proposed Receiver for the following reasons.

(i) The Applicant Has a Contractual Right to a Receiver and the Debtor Is in Continuing Default

31. The Mortgage and GSA each authorize the Applicant, following an event of default, to appoint a receiver or seek a Court-appointed receiver over the Property.[26] The Agreement also identifies, among other things, payment default, failure to maintain the Real Property, failure to pay property taxes, material deterioration in the value of the Real Property or the Debtor's financial condition, and non-compliance with the Security Documents as events of default.[27]

32. The Debtor has committed continuing payment defaults. It failed to make the interest payments due in June, July and August 2026. The Applicant demanded payment of the Indebtedness on June 12, 2026, but neither the Debtor nor the Guarantors have made payment.[28]

33. The Applicant previously accommodated the Debtor by extending the Loan's maturity date on various occasions, and most recently to September 7, 2026 to permit refinancing. The Debtor nevertheless failed to make the required interest payments and has not presented a viable means of repaying the Indebtedness or curing its defaults.[29]

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[24] *Callidus v. Carcap*, 2012 ONSC 163 at para. 42.
[25] *Romspen Investment Corporation v. 6711162 Canada Inc.*, 2014 ONSC 2781 at para. 61.
[26] Pradana Affidavit at paras 24, 28.
[27] Pradana Affidavit at para 14.
[28] Pradana Affidavit at paras. 32, 34-37.
[29] Pradana Affidavit at paras. 17-20, 32, 34-37 and 60.

(ii) The Property Requires Immediate, Independent Oversight

34. The condition of the Property creates an immediate and material risk to the Applicant's security. The Property was originally an income-producing office building. Without the Applicant's consent, however, the Debtor substantially demolished and altered its interior as part of a proposed conversion to residential rental units, leaving principally the concrete structure and building envelope intact.[30]

35. The Debtor has thereby transformed the Real Property from the office building that formed the basis of the Applicant's security into a vacant, partially demolished construction site. This has materially affected the Property's condition, marketability and value, and exposes the Applicant to the risk of further deterioration during any unmanaged enforcement process.[31]

36. The inspection also identified unresolved fire and/or safety concerns, apparent non-payment of the demolition contractor and other trades, and the disposal or removal of office equipment and leasehold items. These facts give rise to immediate safety, lien and collateral-preservation concerns.[32]

37. Addenda has not received satisfactory confirmation that the Property is insured for its current condition and use. It has also not received satisfactory confirmation that municipal taxes are current, or sufficient financial, operational, redevelopment and financing information to assess the Property, the proposed redevelopment or a viable alternative to enforcement.[33]

38. These are material concerns. The continuing defaults, unauthorized redevelopment, safety issues, potential liens, uncertainty concerning insurance and taxes, and lack of reliable

[30] Pradana Affidavit at paras. 38-40.
[31] Pradana Affidavit at paras. 40-41 and 50.
[32] Pradana Affidavit at paras. 39 and 42-43.
[33] Pradana Affidavit at paras. 44-49 and 51-52.

information prevent the Applicant from adequately assessing or protecting its security while the Debtor remains in control.[34]

(iii) A Receivership Will Preserve Value and Benefit Stakeholders

39. The balance of convenience strongly favours a receivership. Without one, the risks to the Property will continue and the Applicant's security may further erode. A receivership, by contrast, will preserve value by placing the Property under the control of a neutral officer of the Court. [35]

40. The Receiver will be able to secure and insure the Property, obtain and review the Debtor's records, determine the status of the demolition, construction, permits, taxes, insurance and potential liens, engage with contractors, insurers and governmental authorities, and, if necessary, conduct an orderly, value-maximizing realization process.[36]

41. A Court-appointed receiver is preferable to the exercise of private remedies in these circumstances. The Receiver will act transparently as an officer of the Court and can address the interests of the Debtor, the Guarantors, contractors, trades, insurers, governmental authorities and any other affected stakeholders within a single, supervised process.[37]

42. The appointment of the Receiver is therefore just and convenient in the circumstances.

B. The Terms of the Appointment Order are Appropriate

43. The proposed Appointment Order is substantially consistent with the Commercial List model receivership order, with provisions tailored to the risks presented by the Property and the proposed receivership.[38]

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[34] Pradana Affidavit at paras. 57-62.
[35] *Freure Village*, supra at para. 10; Pradana Affidavit at paras. 58-63.
[36] Pradana Affidavit at paras. 63-64.
[37] *The One* at paras. 41-42, 46; Pradana Affidavit at paras. 64-65.
[38] Pradana Affidavit at para. 66.

44. As in paragraphs 18 and 21 of the model order, the Receivership Order provides for two super-priority charges, which will rank in priority to all other interests:

(a) a first-ranking Receiver's Charge over the Property in favour of the Receiver and the Receiver's counsel to secure their fees and disbursements in these proceedings; and

(b) a second-ranking Receiver's Borrowings Charge over the Property to secure any borrowings made by the Receiver in exercising the powers and duties conferred upon the Receiver pursuant to the Appointment Order.

45. Priority charges like these are routinely approved in receivership proceedings,[39] and promote integrity, predictability and fairness of the receivership process, while protecting receivers by providing security for the fees and disbursements incurred in connection with carrying out their duties.[40]

46. Section 243(6) of the BIA authorizes the granting of a charge in respect of a receiver's fees and disbursements, while sections 31(1) and 243(1)(c) of the BIA allow a court to authorize a receiver to borrow in order to fund its duties and to grant a charge in respect of those borrowings.[41]

PART V – RELIEF REQUESTED

47. The Applicant therefore requests that the Appointment Order be granted substantially in the form found at Tab 3 of the Application Record.

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[39] See, e.g., *2106580 Ontario Inc. and Osmington (Wood Street) Inc. v. Green World Construction Inc.* (May 20, 2025), Ont S.C.J. [Commercial List], Court File No. CV-25-00740691-00CL (Order Appointing Receiver) at paras. 20, 23.

[40] *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750 at paras. 21-23; *Edmonton (City) v. Alvarez & Marsal Canada Inc.*, 2019 ABCA 109 at para. 17.

[41] *The One*, at paras. 53-54, 61.

PURSUANT TO RULE 4.06.1(2.1), THE UNDERSIGNED certifies that they are satisfied as to the authenticity of every authority cited in this factum.

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Natasha Rambaran LSO No. 80200N

ALL OF WHICH IS RESPECTFULLY SUBMITTED THIS 16TH DAY OF SEPTEMBER, 2026

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RECONSTRUCT LLP

SCHEDULE "A"

List of Authorities

1. *Bank of Nova Scotia v Freure Village on Clair Creek* (1996), 1996 CanLII 8258 (ON CTGD).

2. *KEB Hana Bank as Trustee et al. v. Mizrahi Commercial (The One) LP et al.*, 2023 ONSC 5881.

3. *BCIMC Construction Fund Corporation et al. v. The Clover on Yonge Inc.*, 2020 ONSC 1953.

4. *Callidus v. Carcap*, 2012 ONSC 163.

5. *Romspen Investment Corporation v. 6711162 Canada Inc.*, 2014 ONSC 2781.

6. *2106580 Ontario Inc. and Osmington (Wood Street) Inc. v. Green World Construction Inc.* (May 20, 2025), Ont S.C.J. [Commercial List], Court File No. CV-25-00740691-00CL (Order Appointing Receiver).

7. *CCM Master Qualified Fund v. blutip Power Technologies*, 2012 ONSC 1750.

8. *Edmonton (City) v. Alvarez & Marsal Canada Inc.*, 2019 ABCA 109.

SCHEDULE "B"

Statutory Authorities

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Definitions

2 In this Act,

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;

Trustee or ***licensed trustee*** means a person who is licensed or appointed under this Act.

Section 243(1) – Court may appoint receiver

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

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

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

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

Restriction on appointment of receiver

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

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

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

Definition of *receiver*

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

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

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

(i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or

(ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

Definition of *receiver* — subsection 248(2)

(3) For the purposes of subsection 248(2), the definition ***receiver*** in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

Trustee to be appointed

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

Place of filing

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

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.

Courts of Justice Act, R.S.O. 1990, c. C.43

Section 101 – Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction 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.

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