

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

BETWEEN:

NATIONAL BANK OF CANADA

Applicant

- and -

**BROOK RESTORATION LTD., EG 869 REST ACRES LTD., and SWINFIN
PROPERTIES INC.**

Respondents

**PRE-FILING REPORT OF DELOITTE RESTRUCTURING INC.
IN ITS CAPACITY AS PROPOSED RECEIVER**

DATED JANUARY 28, 2026

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INTRODUCTION

1. On February 3, 2026, pursuant to an application by National Bank of Canada (“**NBC**” or the “**Applicant**”) under section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), and section 101 of the *Courts of Justice Act* R.S.O. 1990 c. C.43, as amended, the Ontario Superior Court of Justice (the “**Court**”) will hear an application (the “**Receivership Application**”) requesting the appointment of Deloitte Restructuring Inc. (“**Deloitte**”) as receiver (in such capacity, the “**Receiver**”) without security, of the property expressly listed in Schedule “A” of the Receivership Order (as defined below), and all proceeds thereof (the “**Property**”) of Brook Restoration Ltd., (“**Brook**”), E G 869 Rest Acres Ltd. (“**Rest Acres**”), and Swinfin Properties Inc. (“**Swinfin**”, together with Rest Acres, the “**Corporate Guarantors**”, and together with Brook, the “**Debtors**”) acquired for, or used in relation to, the business carried on by the Debtors, for the purposes of concluding a sale transaction (the “**Transaction**”) to transfer all of the Property to Atwill-Morin Structure Inc. as purchaser (“**Atwill**”) in connection with the Asset Purchase Agreement signed January 7, 2026 (the “**APA**”).
2. The Applicant is seeking the Court’s approval of an order (the “**Receivership Order**”), among other things, appointing Deloitte as Receiver, without security, of the Property of the Debtors and authorizing the Receiver to file an assignment in bankruptcy.
3. If the Receivership Order is granted, and Deloitte is appointed as Receiver, the Applicant is also seeking an order (the “**Approval and Vesting Order**”), among other things:
 - (i) approving the Transaction contemplated by the APA, and authorizing and directing the Receiver to complete the Transaction;
 - (ii) upon execution and delivery of a certificate by the Receiver containing confirmation of the closing of the Transaction, vesting in the Purchaser all right, title, and interest in the Purchased Assets (as defined in the Purchase Agreement); and,

- (iii) sealing Confidential Appendix “1” and Confidential Appendix “2” (each as defined below and collectively, the “**Confidential Information**”).

- 4. This report is the proposed Receiver’s pre-filing report (the “**Pre-filing Report**”) in connection with the Receivership Application.

PURPOSES OF THIS PRE-FILING REPORT

- 5. The purpose of this Pre-filing Report is to provide the Court with information regarding the following:
 - (a) background information regarding the Debtors and the Property;
 - (b) a summary of the sales process undertaken by the parties prior to the Receivership Application;
 - (c) a summary of the series of events which led to the negotiation and execution of the APA;
 - (d) a summary of the terms of the APA;
 - (e) the proposed Receiver’s analysis of the Soundair Principles as they relate to the Receivership Application and approval of the APA;
 - (f) a summary of the security opinion prepared by the proposed Receiver’s legal counsel, Thornton Grout Finnigan LLP (“**TGF**”); and
 - (g) the proposed Receiver’s conclusions and recommendations.

TERMS OF REFERENCE

- 6. In preparing this Pre-filing Report, the proposed Receiver has been provided with, and has relied upon, unaudited, draft and/or internal financial information, the Debtors’ books and records, and discussions with management of the Debtors (collectively, the “**Information**”). Except as described in this Pre-filing Report:

- (a) Deloitte has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, Deloitte has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CAS**”) pursuant to the *Chartered Professional Accountants Canada Handbook*, and, accordingly, Deloitte expresses no opinion or other form of assurance contemplated under CAS in respect of the Information; and
 - (b) Deloitte has prepared this Pre-filing Report in its capacity as the proposed Receiver in connection with the relief sought by NBC in the Receivership Application. Parties using this Pre-filing Report other than for the purposes outlined herein are cautioned that it may not be appropriate for their purposes.
- 7. Unless otherwise stated, all dollar amounts contained in this Pre-filing Report are expressed in Canadian dollars.
 - 8. This Pre-filing Report should be read in conjunction with the affidavit of Vera Watson, sworn January 23, 2026 (the “**Watson Affidavit**”) in support of the Receivership Application. Certain information contained in the Watson Affidavit has not been included herein in order to avoid duplication. Capitalized terms not defined herein have their meaning in the Watson Affidavit.
 - 9. If the Court grants the relief set out in the proposed Receivership Order, the Court materials filed in these Receivership proceedings (the “**Receivership Proceedings**”), will be made available by Deloitte on its case website at <http://www.insolvencies.deloitte.ca/brookrestoration>.

BACKGROUND

- 10. Brook is a construction company specializing in building and public infrastructure restoration contracting. It is headquartered in Toronto, Ontario, and undertakes construction projects across Ontario, including in Toronto, the Greater Toronto Area (“**GTA**”), and Ottawa.
- 11. Brook was founded by Geoffrey Grist (“**Mr. Grist**”) and its current Chief Executive Officer is Edward Welch. Brook currently has 88 employees of which 51 are unionized.

12. In accordance with provisions of the *Construction Act* (Ontario), Brook is required to maintain surety bonds in respect of its restoration contracts. These performance bonds are in place to secure the payment for labour and materials for subcontractors and suppliers. The required bonds for Brook were posted by Liberty Mutual Surety (“**Liberty**”). Liberty has issued a number of performance bonds with respect to Brook contracts, (the “**Bonded Contracts**”), which make up the majority of Brook’s business. The proposed Receiver has been advised that these performance bonds remain in place until the completion of the contract and the full payment of the obligations under the contract to contractors and sub-contractors at which time they are discharged. If Liberty deemed that Brook failed to meet its obligations under the surety bonds, Liberty could exercise its rights as surety to replace Brook as contractor.
13. Brook is currently managing 14 Bonded Contracts throughout the GTA ranging from \$50-60 million in total revenues and 4 smaller contracts for which no surety bonds have been posted.
14. The Equipment is located at:
- (i) the various work sites,
 - (ii) 94 Brockport Drive, Etobicoke, Ontario (“**94 Brockport**”), an industrial warehouse space previously leased by Brook,
 - (iii) 22 Jamie Avenue, Ottawa, Ontario, an industrial warehouse space leased by Brook (together with 94 Brockport, the “**Leased Property**”),
 - (iv) 21 Kelfield Street, Toronto, Ontario (“**21 Kelfield**”), an owned industrial building comprised of approximately 15,130 square feet with a 2,679 square-foot office; and,
 - (v) 869 Rest Acres, Brantford, Ontario (“**869 Rest Acres**” and together with 21 Kelfield, the “**Real Property**”), an owned industrial building comprised of 5,882 square-feet located on a 1.34-acre parcel of land.

15. The Corporate Guarantors are holding companies which own the Real Property. Rest Acres is the registered owner of 869 Rest Acres, which is used as a lay-down yard, and Swinfin is the registered owner of 21 Kelfield. Neither Rest Acres nor Swinfin have other active business operations.
16. Brook is indebted to NBC pursuant to the terms of the Loan Agreement, which are described in detail in the Watson Affidavit at Paragraphs 33-38.
17. The Indebtedness and obligations owed to NBC are secured by, among other things the GSAs and the Mortgages in respect of the Real Property. Brook's obligations are guaranteed by the Corporate Guarantors, and Mr. Grist and Pauline Grist ("**Ms. Grist**"), as limited guarantors (together, with the Corporate Guarantors, the "**Guarantors**"). The proposed Receiver understands that there are additional guarantors of NBC's indebtedness who are not the subject of the Receivership Application.
18. In early 2024, Brook defaulted on its obligations of the Debtors owing to NBC, details of which are provided in the Watson Affidavit. Unable to rectify such defaults, on May 2, 2024, Brook and the Guarantors entered into a forbearance agreement with NBC (the "**Initial Forbearance Agreement**"), which provided for, among other things, the appointment of a financial advisor to assist with monitoring the performance of Brook and an opportunity for Brook to work through its cash flow issues and reduce the obligations owing to NBC. The Initial Forbearance Agreement was amended and extended multiple times throughout 2024 and 2025, (the "**Amended Forbearance Agreement**", together with the Initial Forbearance Agreement, the "**Forbearance Agreement**").
19. As at December 2, 2025, Brook was indebted to NBC in the amount of approximately \$27.8 million and, as set out in the Watson Affidavit, such indebtedness remains unpaid.

THE REFINANCING PROCESS AND STANDSTILL WITH LIBERTY

Events Leading to the Marketing Process

20. Throughout 2023 to 2025, efforts were made to address performance issues within the business. Brook was losing money on various contracts which was further affecting the liquidity of the business.
21. Brook began efforts to find additional investment to help recapitalize its business, which included further negotiations with NBC to consider a refinancing package, a search for a new term loan and consideration of a new investor or partner to inject capital into Brook. In addition, Brook hired a new director of finance to better manage the accounts, to determine where costs savings could be achieved and to better assess pricing for future contracts.
22. Financial distress continued for Brook, who was unable to pay certain sub-contractors and suppliers. This put Liberty at increased risk of having its performance bonds called upon. Although a refinancing solution for the business was actively being worked on, Liberty advised in April 2025 that they wanted to substitute Brook as the contractor of record on the existing Bonded Contracts and would not continue to provide Brook with new performance bonds. This effectively changed the refinancing process to a replacement process.
23. At the same time, Liberty and NBC began discussions regarding the status of Brook's operations, including regarding Brook's defaults in its obligations to NBC, Liberty's growing concerns that Brook was unable to fulfil its obligations under the Bonded Contracts, and Liberty's potential exposure under the performance bonds. NBC and Liberty subsequently entered into a standstill agreement dated September 8, 2025 (the "**Standstill Agreement**"), for the purposes of giving each party an opportunity to consider their options in respect of Brook. On October 21, 2025, the parties agreed to extend the Standstill Agreement for an additional 30 days.

The Marketing Process and Search for a Replacement Contractor

24. The process to identify a contractor to refinance and replace Brook under the surety bonds, and to simultaneously find a potential purchaser for Brook's assets, was undertaken over a period of several months. Mr. Grist advised the proposed Receiver that he spoke with a wide range of stakeholders to determine who could help him identify parties with the financial strength to assume Brook's contracts. A successful replacement contractor would need to have

sufficient professional reputation and suitable experience to be acceptable to current customers, as well as a strong enough balance sheet to qualify for adequate replacement bonding in order to satisfy Liberty. These requirements significantly narrowed the field of potential purchasers.

25. Brook connected with three interested parties, including Atwill, to determine if they would be suitable to assume the Bonded Contracts.
26. Brook shared financial and operational information with each of the interested parties and provided for a due diligence period allowing the parties to satisfy themselves as to the nature of the contracts and the required obligations. It is the proposed Receiver's understanding that Liberty also held discussions with the three interested parties.
27. At the time of the bid deadline, Liberty received two offers from the interested parties, including Atwill. One offer was disqualified as the party was not able to secure suitable replacement bonding. This left the Atwill offer as the only suitable offer that would satisfy Liberty.
28. Several days following the proposed bid deadline, a late offer was received, but this offer was rejected by Liberty on the basis of pricing, lack of qualifications and the fact that the proposal did not address all of the Bonded Contracts as required by Liberty.
29. The proposed Receiver understands that Brook attempted to work with the late bidder to address the deficiencies in their offer as it would have resulted in a higher overall recovery for NBC, but was advised that the proposed changes were still not satisfactory to Liberty.
30. Atwill was able to demonstrate the ability to secure the required bonding in order to assume the Bonded Contracts and their overall proposal was acceptable to Liberty.
31. On or about November 28, 2025, Liberty entered into an agreement with Atwill for it to step in and replace Brook as the contractor under the Bonded Contracts and to complete Brook's obligations thereunder. Subsequently, on December 1, 2025, Liberty delivered Bond Default Letters to the project owners, which consequently terminated the Standstill Agreement.

32. The proposed Receiver understands that Liberty was within its rights to issue the default letters under the surety bonds and replace Brook as the contractor.
33. With an agreement in place to transfer the Bonded Contracts from Brook to Atwill and the issuance of the Bond Default Letters, the only option for NBC to recover on its indebtedness was to sell the Equipment and remaining assets of Brook. As a result, on December 2, 2025, NBC issued demand letters to each of Debtors and issued the 244 Notices in accordance with the BIA. The 10-day notice period has expired and we understand that the Debtors have, in connection with the Minutes of Settlement, consented to the issuance of the Receivership Order.

THE APA

34. At the time of the transfer to Atwill, Brook was operating 14 larger sites across the GTA and 4 smaller contracts each with varying inventory and equipment. The proposed Receiver has been advised that in the period following the notice of the transfer of the Bonded Contracts to Atwill, Liberty reached an agreement with Brook to pay for the use of the inventory and equipment located at each construction site (the “**Site Assets**”).
35. In addition to the Site Assets, there is additional inventory and equipment stored at the Leased Property and the Real Property (the “**Warehoused Assets**”). NBC and the Debtors have negotiated and executed the APA with Atwill to purchase the Purchased Assets, as described below, which includes the Site Assets, the Warehoused Assets and the Real Property.
36. The proposed Receiver is of the view that the most commercially reasonable solution with respect to the Purchased Assets is to close the transaction contemplated by the APA.

Summary of the Terms of the APA

37. An unredacted copy of the APA is attached as **Confidential Appendix “1”**. The key terms and conditions of the APA (with the exception of the financial terms) are provided below. Terms not defined in this paragraph are as defined in the APA.

- (i) **Purchased Assets**: The Purchased Assets include:

- i. all construction equipment used in or related to the operation of the Purchased Business, including vehicles owned by the Debtors, located at the Real Property, the Leased Property, 94 Brockport or the Construction Sites and listed on Schedule “D” to the Purchase Agreement;
 - ii. the Real Property;
 - iii. the contracts listed on Schedule “E” of the Purchase Agreement;
 - iv. inventory;
 - v. all information technology equipment, hardware, and related tangible technology assets owned, leased or used by the Debtors in connection with the Purchased Business, including without limitation all computers, laptops, servers, networking equipment, storage devices, mobile devices, telecommunications equipment, point-of-sale hardware, peripherals, backup systems, and all other associated equipment, together with any related warranties, maintenance rights, service contracts, and licenses to embedded software; and
 - vi. the Books and Records.
- (ii) **Purchase Price:** NBC is seeking to seal the purchase price (the “**Purchase Price**”).
- (iii) **Deposit:** Atwill has paid a deposit representing 5% of the Purchase Price.
- (iv) **Closing Date:** One (1) Business Day after the date the Approval and Vesting Order is issued by the Court or such other date as the Parties may agree to in writing, acting reasonably (the “**Target Closing Date**”).
- (v) **Outside Date:** Ten (10) days after the Target Closing Date, or such other date as the Parties may agree to in writing.
- (vi) **Assumed Liabilities:** Liabilities solely in respect of the Purchased Assets and solely in respect of the period from and after Closing and not relating to any default existing prior to or as a consequence of Closing.
- (vii) **Excluded Assets:** The Excluded Assets include:
 - i. cash and cash equivalents;
 - ii. the minute books and corporate records of the Debtors, along with any books, files, documents, information, data and other records and embodiments thereof that are required by Applicable Law to be retained by the Debtors or which primarily relate to the Transaction;
 - iii. the Contracts that are not Assumed Contracts;

- iv. accounts receivable;
 - v. accounts payable;
 - vi. commercial leases, real property leases, or other similar agreements for the rental or lease of real property by the Debtors, including leases in respect of the Leased Property;
 - vii. bank accounts of the Debtors, wherever situated;
 - viii. shares of any subsidiary entities of the Debtors; and
 - ix. income tax refunds and other Tax refunds receivable by the Debtors and all tax returns of the Debtors.
- (viii) **Employee Matters:** Atwill is entitled to make offers of employment to employees as it so chooses prior to the Closing Date.
- (ix) **Representations and Warranties:** Consistent with the standard terms of an insolvency transaction, i.e. to be sold on an “as is, where is” basis, with limited representations and warranties.
- (x) **Conditions to Closing:** The remaining material conditions to closing are that the Receiver is appointed, and the Approval and Vesting Order shall have been issued and entered by the Court.
- (xi) **Termination:** The APA can be terminated by the Debtors and/or Atwill:
- i. the conditions in Section 5.1 of the APA are not performed or fulfilled by the Outside Date; or
 - ii. the Debtors terminate the APA by notice to Atwill.

The APA as Compared to Liquidation Value

38. The proposed Receiver was provided access to various appraisals and valuation reports in order to form a view as to the liquidation value of the Equipment and Real Property which are included in the APA. Attached as Confidential Appendix “2” is a copy of the proposed Receiver’s analysis of the valuation of the Purchased Assets.

The Soundair Principles

39. The proposed Receiver was not involved in the marketing process or the search for a replacement contractor. However, as the Receivership Proceeding requests the approval of

the appointment of the proposed Receiver to conclude the sale and transfer of the assets and to obtain the Approval and Vesting Order, the proposed Receiver has assessed the considerations set out in Soundair with respect to a sale through a receiver.

40. These considerations are as follows:

- (a) Whether the debtor made sufficient effort to obtain the best price and has not acted improvidently;
- (b) The interests of the parties;
- (c) The efficacy and integrity of the process by which offers were obtained; and
- (d) Whether there was unfairness in the working out of the process.

41. The proposed Receiver is of the view that Brook took appropriate steps to identify multiple parties that could act as a replacement contractor and assume the contracts, secure the necessary bonding and be satisfactory to Liberty. Ultimately, only one party met all of those criteria.
42. The proposed Receiver understands that Liberty was within their rights under performance bonds to select a replacement contractor that was satisfactory to them.
43. Once Liberty had selected Atwill as the replacement contractor, Atwill also became the logical purchaser of the Purchased Assets to the extent that those assets are used in the operation of Brook's business. While it would have been possible to canvass other parties to determine their interest in certain of the Equipment, it was more timely and cost effective to negotiate a universal asset purchase agreement, particularly as it relates to the Site Assets.
44. The proposed Receiver understands that NBC is aware that they will suffer a shortfall on the Indebtedness from this transaction. There will also be no assets or value available for unsecured creditors. Nonetheless, it is the position of the proposed Receiver that it is unlikely, given the current weaknesses in both the construction and real estate sectors, that waiting to sell the Purchased Assets in lots would yield a higher overall recovery than the Purchase Price or reduce the costs incurred by NBC to conclude the transaction. The Purchase Price exceeds

the estimated liquidation valuation prepared by the proposed Receiver of the Purchased Assets.

45. The proposed Receiver, if so appointed, will seek to administer the claims of certain employees under the *Wage Earner Protection Program Act* to seek payment in partial satisfaction of any eligible employee claims.
46. The proposed Receiver is of the view that NBC has not acted improvidently and that the process to find a buyer for the Purchased Assets in the unique circumstances appears to be the best that could be undertaken within the tight time constraints.
47. The proposed APA, which would transfer all of the Site Assets to Atwill to conclude the Bonded Contracts, is a cost-effective measure for Atwill. The APA contemplates providing Atwill with the opportunity to make offers of employment to employees of Brook at the conclusion of the transaction. Furthermore, the APA provides a complete solution for NBC in terms of the further administration of the loans to Brook. It is the proposed Receiver's view that the APA is in the best interests of the stakeholders.
48. The proposed Receiver has discussed with Brook the late offer received by Liberty, the efforts by Brook to remedy the defaults contained in the offer and the rejection of the late offer by Liberty. The Proposed Receiver notes that each party has acted in their own interests and, in the case of Liberty, within its rights as surety, such that the proposed Receiver does not believe that there has been unfairness within the process.

THE BANKRUPTCY ASSIGNMENT

49. The proposed Receivership Order authorizes the proposed Receiver to make an assignment in bankruptcy on behalf of the Debtors or to consent to a bankruptcy order against the Debtors, and that Deloitte would act as trustee in bankruptcy. If appointed, the proposed Receiver expects to make a bankruptcy assignment on behalf of Brook on the date that the Court grants the Receivership Order. Deloitte, in its capacity as trustee in bankruptcy, is expected to administer the assets of Brook that are not the "Property" as defined under the Receivership Order, including any priority claims to funds in the bank accounts held by Brook, such as trust claims in respect of restoration contracts. The bankruptcy of Brook will also have the effect

of reversing the priority for the deemed trust in respect of Brook's outstanding HST remittances.

SEALING

50. NBC seeks to seal the Confidential Information containing the unredacted APA and the liquidation analysis. For the reasons that follow, among others, the proposed Receiver agrees that sealing the Confidential Information is necessary and appropriate in the circumstances.

51. The Confidential Information contains detailed and competitively sensitive information regarding the APA, including the Purchase Price, the amount of the deposit, certain lease payments that make up the Purchase Price, and the proposed Receiver's liquidation analysis in respect of the Purchased Assets. The disclosure of this information prior to closing could prejudice NBC's ability to maximize value for its stakeholders by hindering its ability to pursue alternative transactions, if required.

52. The proposed Receiver's view is that sealing the Confidential Information is necessary to promote the efficient and expedient closing of the Transaction.

53. A redacted copy of the APA has been filed as part of NBC's application materials. NBC seeks to seal the Confidential Information only until closing of the transaction or until further order of the Court, which is appropriately limited in the circumstances.

THE SECURITY OPINION


54. In advance of the Receivership Application, the proposed Receiver instructed its legal counsel, TGF, to provide an opinion on the validity and enforceability of NBC's security. TGF's opinion dated January 28, 2026, provides that, subject to the customary assumptions and qualifications contained therein, the security granted to NBC is valid and enforceable against the Debtors in accordance with its terms. A copy of the security opinion can be made available to the Court upon request.

THE PROPOSED RECEIVER'S RECOMMENDATIONS

55. For the reasons set out above, the Receiver respectfully recommends that this Court grant the relief set out in Paragraphs 2 and 3 of this Pre-filing Report.

All of which is respectfully submitted at Toronto, Ontario this day of January 28, 2026.

DELOITTE RESTRUCTURING INC.,
solely in its capacity as the Court-appointed
Receiver of Brook Restoration Ltd., E G 869
Rest Acres Ltd., and Swinfin Properties Inc.
and without personal or corporate liability

Per: 
Toni Vanderlaan, CPA, CA, CIRP, LIT
Senior Vice-President

NATIONAL BANK OF CANADA

and

**BROOK RESTORATION LTD., EG 869 REST ACRES
LTD., and SWINFIN PROPERTIES INC.**

Applicant

Respondents

Court File No. CL-26-00000027-0000

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PROCEEDINGS COMMENCED AT TORONTO

PRE-FILING REPORT

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