

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

and

CONACHER KINGSTON HOLDINGS INC. and 5004591 Ontario Inc.

Respondents

**AID MEMORANDUM OF AJGL GROUP INC. AND 1001079582 ONTARIO
INC.**

.

December 9, 2024

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1. This memorandum is filed on behalf of AJGL Group Inc. and 1001079582 Ontario Inc (“**100 Inc**”), collectively referred to as AJGL.

AJGL’s Status as Owner of the Property

2. AJGL Group Inc. (“**AJGL Inc.**”) is the beneficial owner of the shares in 5004591 Ontario Inc. (“500 Corp.”) and beneficial owner of 2849, 2851, 2853, 2855, and 2857 Islington Avenue, Toronto, Ontario (the “Properties” or “Property”).

3. 100 Inc is a wholly owned subsidiary of AJGL Inc. and is the corporation which submitted offers to purchase the Property, including the offer (the “**100 Inc. Offer**”) referenced in paragraphs

28 and 29 of the Third Supplement to The Report of the Receiver, dated December 7, 2024 (the “**Report**”).

4. There is no uncertainty that the 100 Inc Offer will not close because:

i) As set out in paragraph 29 of the Report:

“(a) the only condition to the offer is that the Receiver obtain an approval and vesting order (“AVO”) in favour of the purchaser;

(b) the purchaser does not require any due diligence or access to any of the documentation relating to the Toronto Property;

(c) closing is to occur 6 business days after obtaining an AVO.”; and

ii) As set out in a letter dated December 8, 2024, from real estate counsel for 100 Inc., 100% of the purchase price is in his trust account (to be added to the \$300,000 deposit in the Receiver’s trust account) and he has provided a written confirmation that he has instructions to pay the funds to the Receiver provided the Receiver complies with its obligations under the purchase agreement.

Particulars Regarding AJGL’s Status as an Owner

5. AJGL is an owner of the Properties. AJGL’s status as owner of the Properties is set out in:

A) the affidavit of AJGL’s lawyer, Mario Kalemi in his affidavit sworn July 19, 2024, at paragraphs 6 (B-9-389), 10 (B-9-390), 15 (B-9-391), 25 (B-9-393), 31 (B-9-394);

B) The affidavit of a director of AJGL, Simion Kronenfeld, in his affidavit sworn October 8, 2024 at paragraphs 8, 9 and 11. Paragraphs 9 and 11 set out 5004591 Ontario Inc.’s status of nominee holding title to the Property (A610 and A611).

C) The affidavit of AJGL's former co-venturer in the ownership and development of the Properties, Jamie Erlick, as set out Mr. Erlick's affidavit sworn October 3, 2024.

6. AJGL assembled the Five Properties and developed these properties over a number of years, ultimately obtaining the planning approval for the 110-unit mid rise condo building which Colliers marketed for sale in this receivership. [December 3, 2024 Affidavit of Mr. Kronenfeld (A155).

Significance of AJGL's Status as an Owner

7. As owner of the Property seeking to acquire ownership back from the Receiver by submitting the highest bid, AJGL respectfully submits that its position is analogous to that of a borrower seeking to redeem a mortgage.

8. AJGL's status as an owner seeking to reclaim – essentially redeem - its ownership interest in the Property (by paying substantially more than a non owner), puts AJGL in a unique position, one which is different than the competing bidder in all cases relied upon by the Receiver. The cases in the Receiver's factums involve disinterested third-parties as bidders, and are distinguishable for purposes of analyzing the request and position of AJGL and 100 Inc.

9. AJGL and 100 Inc. hear the Receiver saying it wants relief which deprives AJGL of the ownership of the Islington Property and sell it to a third-party. The Receiver's position is that AJGL should not be permitted to effectively redeem the Islington Property by paying a significantly higher amount to the Receiver than what the third-party is paying. There is no prejudice to the Receiver in it receiving 37% more money than it is willing to accept to give clear title to the Islington Property. All that AJGL is seeking is to pay more to the Receiver and similarly

get and keep clear title to the Islington Property. This is not the case of a disinterested third-party opportunistically seeking to put in a bid at the last minute. This is the beneficial owner of the Islington Property seeking to have its equitable right to redeem the Islington Property recognized and protected by the Court. And it is the Receiver who has set the redemption value, by stating that its preferred bid amount is all that is needed to discharge the Islington Property and give clear title to it.

10. 100 Inc. is not an opportunistic bidder – it seeks to present for approval a request to redeem that is in the form of a bid which is “significantly higher” than the Toronto Purchaser or to elicit third party bids which deliver a “provident” purchase price for the Properties. Courts have consistently recognized that it is appropriate to consider “significantly higher” offers at the approval hearing (even from third parties). 100 Inc. has proceeded under the assumption that, accordingly, it is appropriate to submit a “significantly higher” offer and to encourage others to do so as well. 100 Inc.’s offer was prompted by AJGL’s understanding that there was a flaw in the sales process; AJGL also knew that, in making its request to redeem (by way of an offer to purchase), it might also elicit other offers, such that its actions could help remediate the impact of an improvident offer.

11. 100 Inc. cannot fairly be described as a typical ‘late bidder’ because, as a wholly owned subsidiary of AGJL, the 100 Inc Offer is effectively submitted on behalf of the beneficial owner of the Toronto Property, the entity which assembled the five properties when AJGL purchased same over 10 years ago in 2014, and has since then been the driving force in the planning and development of the Property.

12. AJGL's status as an owner impacts the issue whether accepting the offer of 100 Inc. would impact the integrity of the sales process because the acceptance would impact the reasonable expectation of the bidder (the Toronto Purchaser) and any bidder faced with a substantially higher competing bid of an owner.

13. The reasonable expectation of a bidder, like the Toronto Purchaser, is that its offer would be subject to an approval hearing where the Court would have regard to balancing competing interests, including the interest of the bidder, creditor, debtors and the owner.

14. The reasonable expectation of the Toronto Purchaser was that the owner may seek to reclaim ownership.

15. The concept of "the integrity of the sales process" is a concept that, in the cases relied upon by the Receiver, applies as between disinterested third-party offerors, with the goal that one disinterested third-party offeror not have an inappropriate advantage over another disinterested third-party offeror, or permitted to avoid certain rules of bidding. However, the application of the concept is different in the context of a redemption request by the owner or someone claiming through the owner of the Islington Property. The owner and those claiming through the owner have an equitable right to seek redemption because of their status as owner. With respect to an owners right to redeem, they are not part of the sales process and the request to redeem does not enter into or affect the actions that were undertaken as regards to a sales process directed to third-party offerors. The protection of the right to redeem does not impugn the Receiver's sales process.

16. An owner, like AJGL, which has spent years of sweat equity and costs to take the Properties through the planning and development process over a number of years, ultimately achieving

approval of a 110-unit multi story condominium, is, in addition to having a substantial financial interest (like the creditor and debtors who also benefit from an increased sale price), has all of the equities which the Courts recognize - whether under the realm of constructive trust, equitable right to redeem, relief from forfeiture and other equitable grounds.

17. It is respectfully submitted that the reasonable expectation of any bidder should be that the owner may be afforded the opportunity to reclaim its ownership interest. Affording an owner an opportunity to reclaim ownership, especially by substantially outbidding a competing bidder, achieves the same equities as recognizing a mortgagee's right to redeem.

18. AJGL has explained why its offer was not submitted before the bid deadline. AJGL believed (although it was wrong) that there was no need to put in an offer because the Kingston Property would be sold first and there would be sufficient proceeds such that the Toronto Property would not be sold, in part because the two second and third mortgagees on the Kingston Property had yet to provide proof of funds advanced, despite repeated requests by the Receiver ([paragraph 8 of the December 3 Kronenfeld Affidavit, A156](#)). It would not have been necessary to request to redeem the Property. This belief is not a challenge to the law and power of the Receiver regarding the order of selling the Kingston and Toronto properties, it was a business judgment of AJGL of what would practically take place (versus what could legally occur). AJGL is not arguing that the sale of the Property should not have taken place before the sale of Kingston was completed. AJGL is merely setting out why its conduct was taken in good faith, it was not waiting in the wings. While its belief that Kingston would be sold first was wrong, it is a reasonable commercial reason, a business judgment, why AJGL first submitted a bid (and in effect sought the right to redeem) after November 29, 2024.

19. The other reason why AJGL submitted an offer for consideration at the approval hearing is its concern that the Receiver's Report dated November 25, 2024 did not contain any information, other than Colliers' judgment, and the Receiver's reliance upon same, about the proposed sale price. (paragraph 11, 13, 16 to 20 of the December 3 Kronenfeld Affidavit, A554, A555). AJGL is not submitting that the sale price had to be disclosed, just that the limited information which was disclosed caused AJGL, in the circumstances of the recent termination of the Kingston sale, to conclude that it should submit a bid to protect its interests as an owner (and its ability to redeem as an owner) and the interest of all stakeholders in obtaining a provident sale price.

20. The Receiver's process of: 1) preventing a party who signs the Non Disclosure Agreement from submitting a bid at the approval hearing, and 2) presenting material in support of the approval hearing which is entirely based on reliance on Colliers' judgment (ie. with no third- party support like an appraisal), only leaves one option open for an owner who is concerned about the (unknown) price in the offer recommended by the receiver – to try to redeem its land and submit an offer for consideration which, if lower than the Toronto Purchaser's offer is of no moment. However, if higher the owner should be entitled to redeem, especially if the delta between the consideration in the two bids is “substantially higher.”

21. The above referenced term of the NDA states:

“The Receiving Parties hereby confirm that they will not make or otherwise participate, directly or indirectly, in any offer that any person or company may try to make for the Islington Property whether: (i) at or before the Sale Approval Motion; and/or (b) unless the prior written approval of the Receiver is first obtained or with leave of the Court, in any future sales process carried out by the Receiver in the event that the transaction for which approval is being sought is not approved and/or does not close.”

22. The submission in the above paragraph is not a criticism of the sales process, it is simply recognition that the sales process necessarily requires, if an owner is to **respond to the Receiver's material** filed for the approval hearing, if the owner has concerns about the uncertainty regarding the price the Receiver is recommending, and also if an owner wants to redeem its land, an owner necessarily, in response to the Receiver's November 25, 2024 Report, has to submit a bid in order to determine the relative range of price recommended by the Receiver. There is no other way for an owner to guard against an improvident price while seeking to reclaim its ownership interest – **in response** to the Receiver's approval material. Yes, an owner can submit an offer before the Receiver deliver's its material for the approval hearing (and before the bid deadline set by the Receiver) however, when the owner has concerns about the Receiver's material – or concerns about recent events, such as the November 29, 2024 revelation by the Receiver that the Kingston sale fell through – the owner's only recourse if it wants to reclaim ownership in response, is to bid at or immediately before the approval hearing. Thus, it is a reasonable expectation of all participants that AJGL would **respond** to the Receiver's November 25, 2024 Report, respond to the November 29 Supplementary Report, with a competing bid.

23. The above paragraphs are not a criticism of the Receiver, or its process, just pointing out that AJGL's request to redeem by way of a bid is an inherent and expected part of that process.

An aside about fairly characterizing AJGL's Current Position

24. At this approval hearing, AJGL is not relying on every concern expressed in Mr. Kronenfeld's December 3rd affidavit, only that the evidence is that Mr. Kronenfeld had an honest belief that AJGL should respond by submitting a bid in order to protect its ownership interest and guard against an improvident sale price. For example, with respect to Mr. Kronenfeld's concern

that a four-week time period for relisting the property is too short, AJGL accepts that the time frame is subject to deference to the Receiver, it is not a ground relied upon at this hearing regarding the conduct of the sales process. AJGL also accepts that it is within the Receiver's discretion whether to obtain an appraisal.

25. As set out below, AJGL's current criticism about the sales process is focused on Colliers' response to AJGL's December 3rd motion material. AJGL has admitted that it was wrong about the cost to renovate the homes, as set out in the December 5, 2024 "Kronenfeld Email" cited at paragraph 4, a I, 3 of the Report. The renovation costs of the homes, and the issue whether the five properties should now be marketed as five residential homes, is not an issue in this proceeding. AJGL accepts that whatever disagreement it has about the actual projected construction costs is not relevant, they are too high, AJGL was mistaken to believe otherwise.

26. AJGL's concerns, as expressed in Mr. Kronenfeld's December 3rd Affidavit, are relevant to why AJGL only submitted a bid shortly before the approval hearing. The issue here is that the Toronto Purchaser should reasonably expect that an owner who has bone fide concerns or wishes to redeem will submit a bid at or before the approval hearing.

Back to the issue of Reasonable Expectations regarding the Sale's Process

27. It is submitted that the reasonable expectation of the Toronto Purchaser, and the Receiver, is that the response of AJGL, of any owner, would be exactly what happened on December 3rd when AJGL submitted an offer and again on December 6 when AJGL submitted a revised offer,

in response to events after the closing of the bid process and in response to the Receiver's material served on November 25, 2024.

28. It is respectfully submitted that, with respect to the two-part test applied by the Receiver – process and price – where an owner submits a substantially higher price (in this case before the approval hearing but after the bid deadline), such an offer **by an owner** is an expected and appropriate part of the process implemented by the Receiver.

29. A third-party bidder (ie. a non owner) should reasonably expect that an owner will seek to protect its interests against a, potentially, substantially lower bid.

30. A third-party bidder should reasonably expect that, even if the sales process has been perfect, while it can pay substantially less than a non owner, if the owner offers substantially more, then its status as owner, and its bid offering substantially more, are akin to exercising an ability to redeem and are sufficient grounds for the Court to reject the substantially lower bid.

31. In the alternative, if - despite the two factors that an owner has offered a substantially higher price - the factor of a flaw in the Receiver's sales process is still required, then it is respectfully submitted that the type of flaw in the sales process ,or the degree of concern about the sales process, which will tip the scale in favor of the owner's bid, is lower.

Time, Costs, Incurred by the Toronto Purchaser

32. The status of the Toronto Purchase as a bidder which submitted a bid within the bid deadline is a relevant factor to consider in its favour, having regard to the integrity of the sales process.

Soundair, Crown Trust, Decisions

33. The extent of the Toronto Purchaser's participation in the sales process is also a relevant factor. The cases relied upon by the Receiver involved extensive, complicated and costly sales process. *Crown Trust Co. v. Rosenberg* involved the disposition of the bankrupt company's extensive properties in accordance with a specified strategy, the Receiver in this case conducted the sale of one Property, vacant development land. In *Soundair*, a regional airline was to be sold. In neither case was the competing bid from an owner.

Terrace Bay Decision - Paragraph 10 b of the Receiver's Supplemental Factum

34. In Terrace Bay, the sale before Justice Morawetz involved the sale of a complex commercial operation, a pulp mill and a sale process involving:

- a) "significant employment in the region" [para 36 c] including "75 employees additional employees" [para 13 d] and the Purchaser had "made progress in satisfying the conditions to closing, including meeting with the Applicant's employees and negotiating collective bargaining agreements with the unions" [para 30 (h)];
- b) The participation of the United Steelworkers, the Township of Terrace Bay, the Ministry of Northern Development and Mines [para 7];
- c) "The impact on the Township of Terrace Bay, the community and other stakeholders" [para 23 d];
- d) "the Purchaser had incurred... significant expenses in negotiating and fulfilling the conditions under the Purchase Agreement" [para 30 c];
- e) "the bidder's intended use for the mill site including any future capital improvement into the mill" [para 23 e]

35. In *Terrace Bay*, the value proposition did not only involve a comparison of price; many other factors involved other components of economic value, such as numerous jobs and the economic prosperity of the region.

36. It is respectfully submitted that the above-noted facts about the complexity of the *Terrace Bay* transaction, and the interests of (and benefits to) the employees, the township, the Ministry of Development and Mines, among others, reduced the probative impact of the price differential in *Terrace Bay*, which the Receiver describes in paragraph 10 b of its Supplementary Factum as “a non binding offer that was 30% higher than the offer that was subject to approval”. In *Terrace Bay*, price was one of many important financial factors considered when weighing which bid was more favorable or improvident. In our case, the only financial consideration at issue in the competing bids is the price.

37. Unlike the complex agreement negotiated in *Terrace Bay*, which had “taken many weeks to negotiate various issues” [Terrace Bay, paragraph 36 g] the Purchase agreement is in a prescribed form, the terms of which were not, in any material respect, negotiable. The only material negotiation was about the price.

38. With respect to any issue of the expenses incurred by the Toronto Purchaser, and in contrast to the other extensive work and efforts expended by the purchaser in *Terrace Bay*, The Toronto Purchaser has not led any such evidence in this matter.

39. In *Terrace Bay*, the competing bid was not from an owner.

Smith Street Lands Decision - Paragraph 10 c of the Receiver’s Supplemental Factum

40. The *Smith Street Lands* case, like the facts in *Terrace Bay*, is distinguishable because the value proposition also did not only involve a comparison of price as follows:

“[18] ...The Smith Street Offer also contained some terms and conditions that differed from both the Royalty Offer and the JYR Offer. It is a contentious issue which of the three offers is commercially superior”. [bold emphasis added]

41. As a result, the “other contentious issues “which impacted “which of the three offers is commercially superior” reduced the probative impact of the price differential, which the Receiver describes in paragraph 10 c of the Receiver’s Supplemental Factum as “27.3 % higher” than the competing bid.

42. Like *Terrace Bay*, in *Smith* the price difference was only one of an unknown number of factors (ie. the unstated “terms and conditions”) considered when weighing which bid was more favorable or improvident. The Court in *Smith* did not find that a “27.3 % higher” price was not “substantially higher”. Such a finding is not set out in the decision, nor can it be inferred in circumstances where the Appeal Court held that the Court below considered other (unstated) commercial factors, regarding unstated “terms and conditions. Again, the only financial consideration at issue in the competing bids is the price – even though the actual terms of the 100 Inc Offer are more favourable, because 100% of the price is in lawyers trust accounts, committed for use to close the purchase, if the 100 Inc. Offer is approved.

43. In *Smith*, the competing bid was not from an owner.

44. Another distinguishing fact in *Smith* is that the competing bidder (Smith) jumped in after the details of the public auction were made public [paragraph 34]. In contrast, AJGL’s response

was not after a public release of information, but rather was in response to: 1) an event arising only two days before the approval hearing (notice that the Kingston sale was terminated) and, 2) its concerns based on the content of the Receiver's Third report of November. Unlike in *Smith*, The Receiver's bid process has involved sealed bids.

45. In *Smith*, the Court of Appeal noted, as a factor against accepting Smith's competing bid, that it did not have an interest in the equity of redemption [Para 2]. By analogy, AJGL submits that its status as owner should be given the same consideration to a party with the equity of redemption, or if not the same weight, then considerable weight.

46. The relief sought in *Smith*, which the Court below and the Court of Appeal denied (that Smith be "substituted as the purchaser" [para 28], in a situation where the approved offer had not closed [para 27], is different from the alternative relief sought by AJGL that the bid process be opened for a brief period.

1730960 Ontario Inc - Paragraph 10 a of the Receiver's Supplemental Factum

47. While the asset in *Re 1730960 Ontario Inc* was three properties sold on MLS, the price differential was only 8% and the competing bid was not from an owner, the bidder was a large commercial/industrial lender.

The Toronto Purchaser

48. We can infer from the nature of the asset which the Receiver marketed, being development land, that the reliance interest and participation of the Toronto Purchaser was very much less than that of the bidders in the cases relied upon by the Receiver.

49. Unlike the cases relied upon by the Receiver, on this approval motion there is no evidence before this court of any detrimental reliance arising from the Toronto Purchaser's participation in the sales process. There is no evidence that the participation of the Toronto Purchaser involved any unfairness because they expended material time or money in reliance on their participation in the sales process. There is no evidence of any unfairness to the Toronto Purchaser with respect to what the Toronto purchaser expended or risked.

50. We can infer that the Toronto Purchaser has a relatively small amount of out-of-pocket costs. With respect to any out-of-pocket costs of the Toronto Purchaser, the amount could be disclosed and subject to reimbursement as a condition to approving the 100 Inc Offer.

PRICE IN THE 100 INC OFFER

51. Even if the 100 Inc. Offer is evaluated only as a third-party offer and not as a request to redeem, the price/consideration in the 100 Inc. Offer is "significantly higher" than the Toronto Purchaser with the result that a sale on the basis of the offer of the Toronto Purchaser would be improvident.

52. It is assumed (and informed by the math in the Receiver's Supplementary factum and disclosure by the Receiver that the December 3rd AJGL offer was the highest of the two offers, at 14.2 % higher) that AJGL's most recent offer is 37% higher.

53. It is respectfully submitted that if the price in the 100 Inc Offer is an amount approximately \$1 million higher, representing an increase in consideration of 37%, then the 100 Inc Offer is "substantially higher" than the sale recommended by the Receiver.

54. It is respectfully submitted that if the 100 Inc Offer is for a “substantially higher” price, then there is sufficient proof before this honourable Court that the offer recommended by Colliers and the Receiver is improvident.

55. There is no binding precedent which sets the price differential which meets the test of “substantially higher”. In *Toronto Dominion Bank v. Eastern Gypsum Inc.*, a 1992 decision of the New Brunswick Queen’s Bench, the Court held that the difference in price of 25% (\$791,000) was “so substantial that a sale on the basis of Universal’s offer would be improvident.” However, AJGL acknowledges that each case turns on its particular facts.

THE SALES PROCESS

56. On December 3, 2024, AJGL submitted two affidavits which challenged the sales process on the basis that Colliers made the mistake of failing to market the individual homes for sale.

57. This challenge was premised on AJGL’s reasonable belief that the homes had not been damaged and looted, that the cost to put all five homes into a saleable condition was reasonable.

58. It is respectfully submitted that Collier’s response in the Collier’s Letter, specifically the third last paragraph of Colliers letter dated December 6, 2024, supports a finding that the expert who the Receiver relied upon (Colliers) is not now providing a fair, accurate or reliable description of their past conduct. It is respectfully submitted that such conduct of Colliers calls into question the Receiver’s reliance on Colliers, **throughout the entire sales process**, and, accordingly, there are sufficient grounds to conclude that the Receiver (because of its reliance on Colliers) has not properly conducted the sale.

59. At some point the issue is not about whether a mistake was made, the issue is whether, in addressing allegations about the alleged mistake, has the expert revealed that its judgment, its recommendations and statements in the past regarding the sales process, could not be relied upon. The risk of impeachment is not just about the initial act - separately, the issue is how one responds to an inquiry.

60. AJGL does not challenge the *bona fides* of the Receiver, nor allege that the Receiver has done anything inappropriate. However, once Collier's judgment is called into question, then the entire sales process founded upon Collier's judgment is a flawed sales process, regardless of the otherwise exemplary conduct of the Receiver.

61. With deference comes responsibility. Colliers has by its response to the challenge to its conduct, demonstrated that Collier's cannot be relied upon as a responsible or reliable participant in this receivership process.

62. The loss of confidence in Colliers is particularly impactful because of the Receiver's reliance on Colliers to conduct the sales process and advise the Receiver, including about whether the purchase of the Toronto Purchaser is improvident.

63. An example of the Receiver's reliance on Colliers is the fact that the Receiver did not obtain an appraisal from an independent certified appraiser. While the lack of an appraisal is appropriate in certain cases, in the within proceeding, the lack of an appraisal is now highly relevant, because if confidence in Colliers is compromised, there is no appraisal report to fall back on.

64. The purpose of the December 8, 2024 Erlick Affidavit is not to support the belief set out in the December 3rd affidavits that the sale process was flawed because the sale of individual homes should have taken place – the purpose is to present facts relevant to the Colliers' Paragraph. For example, the fact that a residential purchaser and their agent would not come across the MLS listing cited in the Collier's Paragraph, because the TREB database is divided into a commercial section and a residential section.

65. The third last paragraph (the "**Paragraph**") of the December 6, 2024 letter from Colliers (the "**Colliers' Letter**"), which is attached as Appendix C to the Report, refers to material on "MLS" and "realtor.ca".

66. The Paragraph in the Colliers Letter states, states:

"While Colliers originally recommended in our listing proposal that the Property be marketed together as a whole, as we believed that the highest and best use of the Property was for a midrise project as-approved by the City of Toronto, we were still clear throughout our marketing materials, on MLS and on realtor.ca, that the Property consisted of four semi-detached homes and a detached home. We highlighted each lot's separate legal descriptions and municipal addresses and provided photos that clearly delineated each lot. Any individual home buyer, or renovator/builder could always have come forward throughout our two public marketing campaigns if they saw value in any of the existing houses."

66. Real estate agents have access to the Toronto Real Estate Board ("TREB") database. The TREB data base is divided into separate categories. If an agent is searching the TREB data base

for a residential property, the agent will log into and search the TREB residential data base (and not search the TREB commercial data base). [Dec. 9 Erlick Affidavit para 10 (B-1-584)]

67. Development lands fall within the category of commercial properties. If an agent is searching for a commercial property, the agent will log into and search the TREB commercial data base (and not search the TREB residential data base). It is only in the commercial TREB data base where one can find the “MLS” listing (exhibit 1 hereto). [Dec. 9 Erlick Affidavit para 11 (B-1-584)]

68. A search of the TREB residential data base will not result in finding any listing that the Properties are for sale. [Dec. 9 Erlick Affidavit para 12 (B-1-584)]

69. Only a search of the TREB commercial data base will result in finding the MLS listing of the Property (exhibit 1 hereto). [Dec. 9 Erlick Affidavit para 13 (B-1-584)]

70. None of the listings relied upon by Colliers, and referenced in the Paragraph are listings of individual homes. This is self-evident by comparing the two listings cited in the Paragraph with any listing of a residential home on MLS. For example, this is clear when one compares the MLS, Colliers and realtor.ca listings with the listings of the residential homes which are attached as Exhibit 4 to Mr. Erlick’s December 9th Affidavit. [Dec. 9 Erlick Affidavit para 14 (B-1-584)]

71. With respect to the last sentence of the Paragraph (“Any individual home buyer, or renovator/builder **could always have come forward** throughout our two public marketing campaigns if they saw value in any of the existing houses.”), if an individual agent, or home buyer, did somehow come across and review the “MLS” listing, “realtor.ca” listing or the Colliers listing (Exhibit 1, 2 and 3 hereto) they would certainly not have thought that the

individual homes were being offered for sale. Apart from the fact that there was no listing whatsoever of the individual homes, a review of the Colliers listing, MLS listing or realtor.ca listing **would not have caused an agent or homeowner to “come forward”** to inquire about whether an individual home was for sale. [\[Dec. 9 Erlick Affidavit para 16 \(B-1-585\)\]](#)

72. The Colliers Letter does not fairly respond to the issue whether any agent or buyer looking for an individual home, **would** come forward, and specifically the issue whether Colliers marketed the Properties to individual home buyers and their agents **so that they would** come forward, or could come forward.

73. With respect to the statement in the second sentence of the Paragraph, a listing of a residential home includes much more information than: “each lots separate legal descriptions and municipal addresses and include a photo which delineates the lot”. [\[Dec. 9 Erlick Affidavit para 18 \(B-1-586\)\]](#)

74. Further, when this information (legal description, address) is provided, with respect to the listing of an individual home, it is not set out in a listing which clearly is offering only development lands for sale. [\[Dec. 9 Erlick Affidavit para 1 \(B-1-586\)\]](#)

75. The following language in the Colliers Listing and MLS Listing clearly states that the only thing being offered for sale is the five lots together as development lands:

Quoting the Colliers Listing attached hereto as exhibit 3:

- “Approved Mid-Rise Redevelopment Land”;
- “redevelopment opportunity”;

- “this future development”;
- “0.84 acres of Prime Development Land Across 5 Adjacent Parcels”

Quoting the MLS listing:

- “Land Designated Residential”
- “Client remarks: Court-appointed receivership sale: 2849, 2851, 2853, 2855 and 2857 Islington Avenue (collectively the “Property” is approximately 0.80 acres of land, approved and rezoned for a 6 - storey, 110 unit, mid-rise apartment building and 74,971 SF of buildable GFA. The property, currently improved with four semi-detached homes and one detached home is located...”. [\[Dec. 9 Erlick Affidavit para 19 \(B-1-586\)\]](#)

76. While the MLS listing, quoted in the immediately preceding subparagraph, states: “The property, currently improved with four semi-detached homes and one detached home is located..”, it is clear from this listing that the “Land” and “Property” which is being offered for sale are all five lots as a bulk sale, not a sale of any of the individual homes. [\[Dec. 9 Erlick Affidavit para 20 \(B-1-587\)\]](#)

77. It is respectfully submitted that reliance on Colliers judgment is called into question because of the omissions in the Colliers Letter, when read in context with the content of the Paragraph.

78. It is respectfully submitted that if Colliers were being candid and fair to the Receiver and the Court, Colliers would have expressly stated and disclosed in the Colliers Letter (**and not state or infer otherwise**) that, among other things:

- A) The MLS listing of the Property is contained only in the TREB commercial data base;

- B) Because the listing of the Properties is not contained in the TREB residential data base, an agent searching TREB for a residential property would not obtain, as a search result, a listing of the Properties;
- C) Colliers did not market the individual homes at all;
- D) Colliers did not prepare or distribute the type of listing which is always utilized when a broker/agent is offering an individual home for sale;
- E) Although Colliers was clear in its marketing material (for the offering of the Property as development lands) that the Property contained “four semi detached homes and a detached home”, the marketing material was marketing material for the sale of only the combined development lands, and was not marketing material for the sale of individual homes;
- F) Because of the content of the Colliers, MLS and realtor.ca listings, if a buyer of residential property or their agent reviewed these listings, the content of same would not have caused them to believe that the individual homes were being offered for sale or lead them to inquire if that was the case.

ORDER REQUESTED

79. Therefore, the applicant, AJGL Group, Inc., seeks the following relief from the Court on this motion:

(a) an Order of the Court stating that the agreement of purchase and sale submitted by the Toronto Purchaser, is not approved by the Court, and that instead the agreement to purchase the Islington

Property as submitted to the Receiver by email by 100 Inc. on December 6, 2024 at 1.43 p.m. (the “100 Inc. Agreement”), is approved by the Court, and shall forthwith be accepted, executed, and delivered by the Receiver to 100 Inc., and that the Receiver shall forthwith proceed to comply with and complete the terms and provisions of the 100 Inc. Agreement.

(b) in the alternative to subparagraph (a) above, an Order of the Court stating that the agreement of purchase and sale submitted by the Toronto Purchaser, is not approved by the Court, and that instead the Receiver shall make known to all interested persons who have submitted offers or bids for the Islington Property to date, including 100 Inc., that all such persons shall have a final opportunity to submit a final bid for such purchase price as each person shall determine for themselves, which may be the same as, less than, or higher than the amount in any of their previous bids, all such final bids to be received by the Receiver no later than 5 p.m. on December 18, 2024. And following the receipt by the Receiver of such final bids, the Receiver shall determine which of such final bids the Receiver intends to recommend to the Court for acceptance and approval. The Receiver shall then schedule a motion on notice to be heard by this Court for approval of such agreement and for approval of a form of vesting order, and also such other matters requiring Court approval as may be appropriate for purposes of finalizing, and then completing the sale transaction pursuant to the particular final bid, provided same is ultimately approved by the Court.

c) in addition to subparagraph (a) and subparagraph (b) above, or also if the Court determines not to give any order substantially in accordance with either of subparagraph (a) or subparagraph (b)

above, AJGL Group Inc. seeks a revision to the form of Approval & Vesting Order to be used for any sale of the Islington Property, as requested by the Receiver in the within motion, such revision to consist of the addition of a paragraph to protect the rights of subrogation and other rights of any one or more of AJGL Group Inc., and 5004591 Ontario Inc, immediately following Paragraph 5 of the Receiver's draft Approval & Vesting Order, in the following form:

“THIS COURT ORDERS THAT the distribution to Cameron Stephens Mortgage Capital Ltd. (as contemplated as part of the Toronto Distribution) is without prejudice to any arguments, positions, claims, rights or entitlements that any person may now have, or could have or has made to date or may hereafter decide to make in relation to either Property, and without limiting the generality of the foregoing, does not prejudice any claims or rights that any person has or may have under the foregoing general wording as well as (i) to claim to subrogate to any of the security or loan debt held by Cameron Stephens, or in relation to duties and obligations relating thereto or claims under Section 2 of the Mercantile Law Amendment Act or otherwise, (ii) to claims relating to rights arising from Section 2 of the Mortgages Act, (iii) to claim contribution and indemnity from any person (other than, for certainty, against the Receiver); and (iv) to assert any marshalling arguments provided that, for certainty, no party may make any claim against any recipient on account of proceeds received from the Interim Distribution.”

80. **ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 9th day of December, 2024



CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and- CONACHER KINGSTON HOLDINGS INC. et al.
Respondents

Court File No. CV-23-00701672-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
TORONTO

AIDE MEMORANDUM OF INTERESTED PARTY
AJGL GROUP INC. AND 1001079582
ONTARIO INC.

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