

Court of Appeal File No. COA-24-CV-1328
Court File No. CV-23-00701672-00CL

COURT OF APPEAL FOR ONTARIO

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant/
Respondent in Appeal

and

CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC.

Respondents/
Respondents in Appeal

**COMPENDIUM OF THE RESPONDENTS,
AJGL GROUP INC. AND 1001079582 ONTARIO INC.**

March 24, 2025

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IN THE MATTER OF THE RECEIVERSHIP OF
311 CONACHER DRIVE, KINGSTON, ONTARIO AND
2849, 2851, 2853, 2855 AND 2857 ISLINGTON AVENUE, TORONTO, ONTARIO

THIRD REPORT OF THE RECEIVER

NOVEMBER 25, 2024

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

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

BETWEEN:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC.

Respondents

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1.0 INTRODUCTION

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on December 6, 2023, which order was effective December 22, 2023 (the “**Appointment Order**”), RSM Canada Limited was appointed receiver (the “**Receiver**”), without security, of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario (the “**Kingston Property**”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**” and together with the Kingston Property, the “**Properties**”). A copy of the Appointment Order is attached hereto as **Appendix “A”**.
2. On March 1, 2024, the Court granted an order substituting the name TDB Restructuring Limited in place of RSM Canada Limited as Receiver (the “**Omnibus Order**”). A copy of the Omnibus Order is attached hereto as **Appendix “B”**.
3. On June 12, 2024, the Receiver entered into an agreement of purchase and sale for the Toronto Property (the “**Terminated APS**”) with Lakeshore Lux and Design Build Group Inc. (“**Lakeshore Lux**”), in trust for 1000944028 Ontario Inc. and sought an Order of the Court approving the transaction and vesting title to the Toronto Property in the purchaser (the “**Lakeshore Lux AVO**”). The Receiver set out in its report dated July 16, 2024 (the “**First Report**”) the Receiver’s marketing efforts and other details in connection with the sale process for the Toronto Property. On July 24, 2024, the Court granted, among other things, the Lakeshore Lux AVO. A copy of the First Report, without appendices, is attached hereto as **Appendix “C”**.
4. The transaction with Lakeshore Lux was scheduled to close on July 30, 2024. As set out in greater detail in the Receiver’s second report dated September 26, 2024 (the “**Second Report**”), after a series of extensions, Lakeshore Lux was unable to close the transaction. On August 27, 2024, the Receiver’s real estate counsel, Garfinkle Biderman LLP, wrote to counsel for Lakeshore Lux to advise that the transaction had been terminated and the deposit paid by Lakeshore Lux, including various extension fees, had been forfeited. The Receiver had its real estate Broker, Colliers Macaulay Nicholls Inc., Brokerage (“**Colliers**”) re-market the Toronto Property for sale. A copy of the Second Report, without appendices, is attached hereto as **Appendix “D”**.

5. On August 13, 2024, the Receiver entered into an agreement of purchase and sale with respect to the Kingston Property (the “**Kingston APS**”). The Receiver sought, among other things, an approval and vesting order in respect of the sale of the Kingston Property (the “**Kingston AVO**”) and the matter was heard on October 9, 2024. On October 31, 2024, the Court released its endorsement (the “**October 31st Endorsement**”) and granted the Kingston AVO. A copy of the October 31st Endorsement and the Kingston AVO are attached hereto, together, as **Appendix “E”**.
6. The Receiver retained the firm of Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”) as the Receiver’s independent legal counsel. The Receiver retained the firm of Garfinkle Biderman LLP (“**Garfinkle Biderman**”) as the Receiver’s real estate counsel.
7. Terms not defined herein are defined in the First Report and the Second Report.
8. The Appointment Order, together with Court documents related to the receivership proceeding, has been posted on the Receiver’s website, which can be found at <https://tdbadvisory.ca/insolvency-case/311-conacher-drive-kingston-ontario2849-2851-2853-2855-and-2857-islington-avenue-toronto-ontario/>.

1.1 Purpose of Report

9. The purpose of this third report to Court (the “**Third Report**”) is to:
 - (a) provide the Court with an update on the sale of the Kingston Property;
 - (b) specifically with respect to the Toronto Property:
 - i. report to the Court on the results of the re-marketing of the Toronto Property and subsequent offers received for same;
 - ii. provide to the Court support for the relief sought by the Receiver, namely the request for an approval and vesting order in respect of the Toronto Property, and the sealing of certain confidential information pending completion of the sale transaction for the Toronto Property. In addition to the information contained herein for the benefit of the

creditors of the Respondents and other stakeholders, the Third Report is also intended to provide the Court with the following confidential information, for which a sealing Order is sought:

1. a summary of the terms of all offers received for the Toronto Property based on the re-marketing of same;
 2. an unredacted copy of the executed Agreement of Purchase and Sale for the Toronto Property dated September 26, 2024 (the “**Toronto APS**”) between the Receiver and the purchaser of the Toronto Property, or its permitted assignee or as it may direct, as purchaser (the “**Toronto Purchaser**”);
- iii. provide the Court with information relating to the Receiver’s Borrowings Charge;
 - iv. provide the Court with information relating to the secured creditors in respect of the Toronto Property;
- (f) provide the Court with a summary of the Receiver’s cash receipts and disbursements in respect of the Toronto Property for the period December 22, 2023 to November 20, 2024 (the “**Toronto Property Interim R&D**”);
- (g) provide the Court with a summary of the Receiver’s cash receipts and disbursements in respect of the Kingston Property for the period December 22, 2023 to November 20, 2024 (the “**Kingston Property Interim R&D**”);
- (h) request that the Court grant orders:
- iii. approving the Third Report and the activities of the Receiver set out herein;
 - iv. authorizing and directing the Receiver to enter into and carry out the terms of the Toronto APS, together with any further amendments thereto deemed necessary by the Receiver in its sole opinion, and vesting title to the Toronto Property in the Toronto Purchaser upon the

closing of the purchase and sale transaction contemplated in the Toronto APS;

- v. approving the Proposed Interim Distribution of Proceeds from the sale of the Toronto Property;
- vi. sealing Confidential Appendices 1 and 2; and
- vii. approving the fees and disbursements of the Receiver and of the Receiver's independent and real estate counsel.

1.2 Terms of Reference

10. In preparing the Third Report and making the comments herein, the Receiver has relied upon information from third-party sources (collectively, the "**Information**"). Certain of the information contained in the Third Report may refer to, or is based on, the Information. As the Information has been provided by other parties or obtained from documents filed with the Court in this matter, the Receiver has relied on the Information and, to the extent possible, reviewed the Information for reasonableness. However, the Receiver 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 pursuant to the Chartered Professional Accountants Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance in respect of the Information.
11. Unless otherwise stated, all dollar amounts contained in the Third Report are expressed in Canadian dollars.

2.0 KINGSTON PROPERTY UPDATE

12. As set out in the Second Report, the Receiver entered into a purchase and sale agreement with 2349891 Ontario Inc. (the "**Kingston Purchaser**") and the Court issued the Kingston AVO.

13. Pursuant to the terms of the Kingston APS, closing of the transaction was to occur on the later of: (i) three (3) days immediately following the issuance of the Kingston AVO, or the next business day, as applicable; or (ii) October 2, 2024, or such other date as the parties may mutually agree upon. The Receiver agreed with the Kingston Purchaser to closing the transaction for the Kingston Property on November 20, 2024.
14. On November 20, 2024, the Kingston Purchaser advised that it required a 45-day extension to close the transaction. After some negotiation with the Kingston Purchaser, the Receiver agreed to an extension to January 6, 2025 on the basis that an additional deposit of \$500,000 towards the purchase price would be paid by the Kingston Purchaser by noon on November 27, 2024.
15. The second mortgagee, 2462686 Ontario Inc. (“**246**”) has not yet provided the Receiver with its security documentation as at the date of this report and as a result, counsel for the Receiver has been unable to complete its opinions on the validity, enforceability and priority of 246’s charge against the Kingston Property.
16. The third mortgagee, 2478659 Ontario Ltd. (“**247**”), has recently provided the Receiver with its security documentation. The Receiver’s counsel is currently reviewing the documentation provided by 247.

3.0 RE-MARKETING AND SALE OF THE TORONTO PROPERTY

17. After the Receiver terminated the Terminated APS, the Receiver requested that Colliers re-market the Toronto Property. The details of the remarketing and sale of the Toronto Property are described below.

3.1 Toronto Property

3.1.1 Re-marketing process

18. On August 29, 2024, the MLS listing for the Toronto Property was changed from sold firm back to available and Colliers sent out an e-mail blast to its database of approximately 3,000 parties.

19. Colliers also contacted all previous bidders and those that signed a confidentiality agreement and had access to Colliers' data room to advise that the Toronto Property was back on the market.
20. With the concurrence of the Receiver, Colliers set a bid deadline date of September 26, 2024 at 3:00 pm.

3.1.2 Offers received

21. Colliers did not receive any additional signed confidentiality agreements from new parties with interest in the property for access to Colliers' data room.
22. On September 26, 2024, Colliers received two (2) offers and one (1) letter of intent for the Toronto Property. A subsequent offer was received on September 28, 2024. The Receiver reviewed the offers from Colliers' re-marketing process with Cameron Stephens, in its capacity as secured lender and mortgagee of the Toronto Property. Based on the offers submitted on September 26, 2024 and the offer submitted on September 28, 2024, the Receiver determined that the offer from the Toronto Purchaser, which was received on September 26, 2024, was the highest and best available offer given, among other things, current market conditions, and should be accepted. A summary of the offers received for the Toronto Property will be filed with the Court as **Confidential Appendix "1"**, under seal.
23. On October 7, 2024, the Receiver and the Toronto Purchaser entered into the Toronto APS. The Toronto APS was conditional on the Toronto Purchaser's due diligence, which condition was to be waived or satisfied by November 6, 2024.
24. On October 27, 2027, the Toronto Purchaser indicated that it was waiving its due diligence condition. On October 29, 2024, both the Toronto Purchaser and the Receiver executed a waiver formalizing same.

3.1.3 The agreement of purchase and sale

25. Salient terms of the Toronto APS and matters relating thereto include:
 - (a) the purchased assets include the Toronto Property;

- (b) the deposit to be provided under the Toronto APS has been received from the Toronto Purchaser;
 - (c) the offer is firm as the Toronto Purchaser has waived all conditions to closing except the issuance of the AVO (as defined below);
 - (d) the Toronto APS is conditional on Court approval and the issuance of an order vesting the Purchased Assets in the Toronto Purchaser free and clear of claims and encumbrances, other than those specifically itemized in the APS (the “**AVO**”);
 - (e) the Toronto Purchaser is buying the Toronto Property on an “as is, where is” basis; and
 - (f) closing of the sale provided for in the APS is scheduled to occur within 10 business days immediately following the date on which the AVO is granted, or the next business day or such other date as the Receiver and the Toronto Purchaser may mutually agree upon.
26. A copy of the Toronto APS, with the purchase price and deposit amount redacted, is attached hereto as **Appendix “F.”** An unredacted copy will be filed as **Confidential Appendix “2”** with the Court, under seal.

3.1.4 Toronto Property sale approval

27. The Receiver believes that the re-marketing process undertaken by Colliers and the Receiver was appropriate. The Sale Process allowed for sufficient exposure to market for the Toronto Property for the following reasons, among others:
- (a) during the initial sales process for the Toronto Property:
 - i. notice of the sale was sent to approximately 3,000 parties;
 - ii. the Toronto Property was listed for sale on MLS for a period of approximately 10 weeks; and
 - iii. the Toronto Property was listed on Colliers’ website.

- (b) during the re-marketing of the Toronto Property:
 - i. Colliers sent an email blast to the same 3,000 parties;
 - ii. the Toronto Property was re-listed for sale on MLS for a 4-week period;
 - iii. the Toronto Property was re-listed on Colliers's website; and
 - iv. Colliers reached out to all parties that had executed a confidentiality agreement and to the parties that submitted offers during the initial listing.
28. Accordingly, based on the above, the Receiver is of the view that the market was widely canvassed and given the length of time on the market, it is unlikely that exposing the Toronto Property to the market for additional time will result in a superior transaction than the one contemplated by the Toronto APS.
29. The Receiver recommends the approval of the Toronto APS by the Court. The transaction contemplated by the Toronto APS provides for the greatest recovery available for the benefit of the secured creditors in the circumstances, including Cameron Stephens as first mortgagee on the Kingston Property and Toronto Property. The Receiver understands that Cameron Stephens supports the AVO and the completion of the transaction contemplated in the Toronto APS.

4.0 RECEIVER'S BORROWINGS

30. Pursuant to paragraph 20 of the Appointment Order, the Receiver was empowered to borrow up to \$500,000 at any time for the purpose of funding the exercise of the Receiver's powers and duties. The Appointment Order charged the Properties with a priority charge (the "**Receiver's Borrowings Charge**") subject only to the Receiver's Charge (defined below) and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
31. The Receiver borrowed from and issued a Receiver's certificate totaling \$100,000 (the "**Toronto Receiver's Certificate**") against the Toronto Property in favour of

Cameron Stephens. On November 20, 2024, the Receiver repaid the principal of \$100,000 and paid accrued interest thereon of \$6,747.17 to Cameron Stephens.

32. To date, the Receiver has borrowed and has issued a Receiver's Certificate totaling \$150,000 against the Kingston Property (the "**Kingston Receiver's Certificate**"). The Receiver intends to repay the principal and accrued interest thereon in respect of the Kingston Receiver's Certificate from the closing proceeds of the sale of the Kingston Property.

5.0 SECURED CREDITORS

5.1 Toronto Property Secured Creditors

33. As set out in the First Report, copies of the parcel register searches for the Toronto Property were obtained from the Ontario Land Registry Office (collectively, the "**Toronto PIN Reports**"). Copies of the Toronto PIN Reports, dated June 3, 2024, are attached hereto as **Appendix "G"**.
34. The only creditor with a registered charge against the Toronto Property is Cameron Stephens, whose charge is for the registered amount of \$15,600,000.
35. The Receiver has obtained a legal opinion from its independent legal counsel opining that, subject to usual assumptions and qualifications, Cameron Stephens' charge is a valid and enforceable first charge against the Toronto Property.

6.0 PROPOSED INTERIM DISTRIBUTION

6.1 Distribution of Toronto Property Proceeds

36. The Receiver intends to distribute the proceeds from the sale of the Toronto Property upon closing the transaction for the Toronto Property in the following order of priority (such scheme of distribution being the "**Toronto Distribution**"):
 - (a) payment to the City of Toronto for the property taxes owing on the Toronto Property of approximately \$202,488.80, as set out in the First Report, plus

any additional property taxes, further interest or fees owing at the time of closing;

- (b) pay any remaining unpaid fees and disbursements of the Receiver and its counsel relating to the Toronto Property.
- (c) retention of \$100,000 as a holdback amount for the further fees and disbursements of the Receiver and its counsel to close the sale of the Toronto Property and do all things necessary to wind up the receivership administration in respect of the Toronto Property;
- (d) payment of the remaining funds from the sale of the Toronto Property to Cameron Stephens towards the indebtedness owed to it. Cameron Stephens provided a statement setting out the amount of the indebtedness owed to it as at November 25, 2024 (the “**Payout Statement**”), which totals \$16,041,883.30 including fees and interest. A copy of the Payout Statement is attached hereto as **Appendix “H”**.

7.0 RECEIPTS AND DISBURSEMENTS

7.1 Toronto Property Interim R&D

- 37. The Toronto Property Interim R&D for the period from December 22, 2023 to November 20, 2024 sets out cash receipts of \$979,924, including advances made by the Cameron Stephens totaling \$100,000 pursuant to the Toronto Receiver’s Certificate against the Toronto Property, and cash disbursements of \$585,684, resulting in an excess of receipts over disbursements of \$394,240. A copy of the Toronto Property Interim R&D is attached hereto as **Appendix “I”**.

7.2 Kingston Property Interim R&D

- 38. The Kingston Property Interim R&D for the period from December 22, 2023 to November 20, 2024 sets out cash receipts of \$395,061, including advances made by the Cameron Stephens totaling \$150,000 pursuant to the Kingston Receiver’s Certificate against the Kingston Property, and cash disbursements of \$372,523,

resulting in an excess of receipts over disbursements of \$22,538. A copy of the Kingston Property Interim R&D is attached hereto as **Appendix “J”**.

8.0 SEALING

39. The Receiver respectfully requests that the Court seal Confidential Appendices 1 and 2 to this report, being the offer summary relating to the Toronto Property and an unredacted copy of the Toronto APS. The Receiver believes that the offer received and purchase price and deposit amounts contained in the Toronto APS for the Toronto Property should be kept confidential until the completion of sale efforts with respect to the Toronto Property.
40. The inclusion in the public record of the offer summary and an unredacted copy of the Toronto APS (which discloses the purchase price and deposit amount) would be prejudicial to, among other things, the integrity of sales process and any additional marketing efforts that may be needed for the Toronto Property if sale transaction for the Toronto Property fails to close for any reason.
41. The sealing order sought is limited in time and will automatically expire upon the closing of the transaction contemplated in the Toronto APS or further order of the Court. This will ensure that the offers and purchase price provided in the Toronto APS remains confidential until all sale efforts are completed. This is necessary and sufficient to reasonably protect the legitimate stakeholder interests in the circumstances.
42. A full copy of the Toronto APS is being publicly filed as Appendix “F” to this report, with the purchase price and deposit amounts redacted. As a result, the sealing order’s effect on the completeness of the public record, if any, will be minimal.

9.0 PROFESSIONAL FEES

43. The Appointment Order provides that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver were granted a charge (the

“Receiver's Charge”) on the Property, as security for such fees and disbursements. The Receiver's Charge is a first charge on the Properties in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

44. The fees and disbursements of the Receiver in relation to the Toronto Property for the period from January 1, 2024 to June 30, 2024 were previously approved by the Court pursuant to an order of the Court dated July 24, 2024.
45. The Receiver's accounts for the period from July 1, 2024 to October 31, 2024 total \$44,179.00 in fees and disbursements, plus HST of \$5,743.27, for a total amount of \$49,922.27. A copy of the Receiver's interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Arif Dhanani sworn on November 22, 2024 and is attached hereto as **Appendix “K”**.
46. The fees and disbursements of the Receiver's independent legal counsel, Paliare Roland, in relation to the Toronto Property for the period from January 25, 2024 to June 28, 2024 were previously approved by the Court pursuant to an order of the Court dated July 24, 2024.
47. The accounts of the Receiver's independent legal counsel, Paliare Roland, for the period from February 24, 2024 to October 31, 2024 total \$34,795.53 inclusive of fees, disbursements and HST. A copy of Paliare Roland's interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Beatrice Loschiavo sworn on November 22, 2024 and is attached hereto as **Appendix “L”**.
48. The accounts of the Receiver's real estate counsel, Garfinkle Biderman, for the period to August 27, 2024 total \$58,587.69 inclusive of fees, disbursements and HST. A copy of Garfinkle Biderman's interim accounts, together with a summary of the accounts, the total billable hours charged per account, and the average hourly rate charged per account, is set out in the Affidavit of Avrom Brown sworn on November 22, 2024 and is attached hereto as **Appendix “M”**.

10.0 RECEIVER'S REQUEST OF THE COURT

49. Based on the foregoing, the Receiver respectfully requests that the Court grant the orders described in paragraph 9(h) above.

All of which is respectfully submitted to this Court as of this November 25, 2024.

TDB RESTRUCTURING LIMITED, solely in its capacity as Receiver of 311 Conacher Drive and 2849, 2851, 2853, 2855 and 2857 Islington Avenue and not in its personal or corporate capacity

Per:



Arif Dhanani, CPA, CA, CIRP, LIT
Managing Director



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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
ONTARIO

THE HONOURABLE <u>Madam</u>)	WEDNESDAY, THE 6 TH
)	
JUSTICE <u>Conway</u>)	DAY OF DECEMBER, 2023

B E T W E E N:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND*
***INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE**
***COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

ORDER
(appointing Receiver)

THIS APPLICATION made by the Applicant for an Order pursuant to 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 "*CJA*") appointing RSM Canada Limited as receiver and manager (in such capacities, the "Receiver") without security, over the lands and premises described as:

PIN Nos. 36061-0475 through 36061-0734 - 311 Conacher Drive, Kingston, Ontario, Lots 1-256 and Blocks 257 to 260, all-inclusive, Plan 13M135 (collectively the “Kingston Properties”);

and

PIN No. 10306-0064 - 2849 Islington Avenue, Toronto; Pt Lot 22, Con 6 WYS TWP of York as in NY735134; Toronto;

PIN No. 10306-0032 – 2851 Islington Avenue, Toronto; Part Lot 1, Plan 9059 North York as in TR92058, City of Toronto;

PIN No. 10306-0033 – 2853 Islington Avenue, Toronto; Part Lot 1, Plan 9059 North York as in TB221318, City of Toronto;

PIN No. 10306-0034 – 2855 Islington Avenue, Toronto; Part Lot 2, Plan 9059 North York as in TB379984; City of Toronto;

PIN No. 10306-0035 – 2857 Islington Avenue, Toronto; Part Lot 2, Plan 9059 North York as in TB379983, City of Toronto (collectively, the “Toronto Properties”),

(which Kingston Properties and Toronto Properties are hereinafter collectively referred to as, the “Properties”)

owned by Conacher Kingston Holdings Inc.(“Conacher”) and 5004591 Ontario Inc., (“500 Inc.”) (hereinafter the “Debtors”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Curtis Jackson sworn June 26, 2023, and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, and on reading the consent of RSM Canada Limited to act as the Receiver,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, RSM Canada Limited is hereby appointed Receiver, without security, of the

Properties and of all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to the Properties, including all proceeds thereof.

RECEIVER'S POWERS

3. **THIS COURT ORDERS** that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Properties and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Properties and any and all proceeds, receipts and disbursements arising out of or from the Properties;
- (b) to receive, preserve, and protect the Properties, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Properties to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate and/or complete construction of the Properties including the powers to enter into any agreements, incur any obligations in the ordinary course of business, or cease to perform any contracts of the Debtors in respect of the Properties;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;

- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets in respect of the Properties or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors in respect of the Properties and to exercise all remedies of the Debtors in respect of the Properties in collecting such monies, including, without limitation, to enforce any security held by the Debtors in respect of the Properties;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors in respect of the Properties;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Properties, whether in the Receiver's name or in the name and on behalf of the Debtors, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtors in respect of the Properties or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Properties, including advertising and soliciting offers in respect of the Properties or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) to sell, convey, transfer, lease or assign the Properties or any part or parts thereof out of the ordinary course of business,

(i) without the approval of this Court in respect of any transaction not exceeding \$250,000.00 provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (l) to apply for any vesting order or other orders necessary to convey the Properties or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Properties;
- (m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Properties and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (n) to register a copy of this Order and any other Orders in respect of the Properties against title to any of the Properties;
- (o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors in respect of the Properties;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any Properties owned or leased by the Debtors;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have in respect of the Properties; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the Receiver of the existence of any property in such Person's possession or control, shall grant immediate and continued access to the property to the Receiver, and shall deliver all such property to the Receiver upon the Receiver's request.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtors relating to the Properties, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the

Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

6. **THIS COURT ORDERS** that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

NO PROCEEDINGS AGAINST THE RECEIVER

7. **THIS COURT ORDERS** that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

NO PROCEEDINGS AGAINST THE DEBTORS IN RESPECT OF THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtors in respect of the Properties shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtors in respect of the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against the Debtors, the Receiver, or affecting the Properties, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

10. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtors in respect of the Property, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtors in respect of the Properties or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtors in respect of the Properties are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names in respect of the Properties, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with

normal payment practices of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

12. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Properties and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "Post Receivership Accounts"). For certainty, all receipts in respect of the Properties shall be deposited into the Post Receivership Accounts and all Permitted Disbursements (defined below) shall be drawn from the Post Receivership Accounts. "Permitted Disbursements" shall include realty taxes, utilities, insurance, construction and related costs, maintenance expenses, other reasonable Properties'-specific expenses, and business expenses associated with the Properties. The monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. **THIS COURT ORDERS** that all employees of the Debtors shall remain the employees of the Debtors. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

14. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Properties

and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Properties (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Properties shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtors and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. **THIS COURT ORDERS** that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "Possession") of any of the Properties that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers under this Order, be deemed to be in Possession of any of the Properties within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

16. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for

any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

17. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "Receiver's Charge") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Properties in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

18. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

19. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

20. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not

exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Properties shall be and is hereby charged by way of a fixed and specific charge (the "Receiver's Borrowings Charge") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

22. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "Receiver's Certificates") for any amount borrowed by it pursuant to this Order.

23. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

24. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "Protocol") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 21 of the

Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL– <http://www.rsmcanada.com/conacher-kingston-holdings>.

25. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

26. **THIS COURT ORDERS** that the Receiver may retain solicitors to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation, those conferred by this Order. The Receiver is specifically authorized and permitted to use the solicitors for the Applicant herein as its own counsel in respect of any matter where there is no conflict of interest. In respect of any legal advice or issue where a conflict may exist or arise in respect of the Applicant and the Receiver or a third party, the Receiver shall utilize independent counsel.

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

28. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of each of the Debtors.

29. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give

effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

31. **THIS COURT ORDERS** that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Property with such priority and at such time as this Court may determine.

32. **THIS COURT ORDERS** that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.



SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that RSM Canada Limited, the Receiver of the properties known municipally as 311 Conacher Drive, Kingston, Ontario and the Toronto Properties owned by the Debtors, as such terms are defined in the Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ____ day of _____, 2023 appointing the Receiver (the "Order") made in an Application having Court file number CV-23- 00701672-00CL, has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly] not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Properties, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Properties as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the _____ day of June, 2023.

RSM Canada Limited, solely in its capacity
as Receiver of the Properties, and not in its
personal capacity

Per: _____

Name:

Title:

CAMERON STEPHENS MORTGAGE CAPITAL LTD. Applicant	and	CONACHER KINGSTON HOLDINGS INC., et al. Respondents
<hr/>		
<p style="text-align: center;">ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) APPLICATION UNDER SUBSECTION 243(1) OF THE <i>BANKRUPTCY AND</i> <i>INSOLVENCY ACT</i>, R.S.C. 1985, c. B-3, AS AMENDED AND SECTION 101 OF THE <i>COURTS OF JUSTICE ACT</i>, R.S.O. 1990, c. C.43, AS AMENDED Proceeding commenced at Toronto</p> <hr/>		
<hr/>		
<p style="text-align: center;">ORDER</p> <hr/>		
<p>Garfinkle Biderman LLP Barristers & Solicitors 1 Adelaide Street East, Suite 801 Toronto, Ontario M5C 2V9</p> <p>Wendy Greenspoon-Soer-LSO#:34698L wgreenspoon@garfinkle.com Tel: 416-869-1234</p> <p>Lawyers for the Applicants, Cameron Stephens Mortgage Capital Ltd</p> <p>File #6243-081.</p>		

Court File No. CV-24-00715515-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MADAM)	FRIDAY, THE 1 ST
)	
JUSTICE CONWAY)	DAY OF MARCH, 2024

B E T W E E N:

TDB RESTRUCTURING LIMITED

Applicant

and

RSM CANADA OPERATIONS ULC

Respondent

APPLICATION UNDER Rule 14.05(3)(h) of the *Rules of Civil Procedure***SUBSTITUTION ORDER**

THIS APPLICATION made by TDB Restructuring Limited (“**TDB**”) for an order, among other things, substituting the name of RSM Canada Limited with the name TDB Restructuring Limited on the Substituted Mandates (as defined below), was heard was heard this day by way of judicial video conference in Toronto, Ontario by Zoom videoconference

ON READING the Application Record of TDB, including the Affidavit of Bryan A. Tannenbaum sworn February 27, 2024, together with the exhibits attached thereto (the “**Affidavit**”), and on hearing the submissions of counsel for TDB, no one else appearing, although served as evidenced by the Affidavit of Service of Lynda Christodoulou sworn February 28, 2024

1. **THIS COURT ORDERS** that the time for service of the Notice of Application and the Application is hereby abridged and validated so that this application is properly returnable today and hereby dispenses with further service thereof.

BIA MANDATES

2. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name of RSM Canada Limited as Trustee in Bankruptcy (the “**Bankruptcy Trustee**”) of the estate files listed as bankruptcies on Schedule “A” hereto (the “**BIA Estates**”) and as Proposal Trustee (the “**Proposal Trustee**”) of the estate files listed as proposals on Schedule “A” hereto (collectively with the BIA Estates, the “**BIA Mandates**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such BIA Mandates or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

3. **THIS COURT ORDERS** that, for greater certainty all, real and personal property wherever situate of the BIA Estates shall be, remain and is hereby vested in TDB Restructuring Limited in its capacity as Bankruptcy Trustee, to be dealt with by TDB Restructuring Limited in accordance with the provisions of the *Bankruptcy and Insolvency Act* (Canada) (the “**BIA**”), pursuant to its powers and obligations as Bankruptcy Trustee of the BIA Estates.

4. **THIS COURT ORDERS** that TDB Restructuring Limited is authorized and directed to continue and to complete the administration of the BIA Mandates, to deal with the property in the BIA Mandates in accordance with its duties and functions as Bankruptcy Trustee or Proposal Trustee, as the case may be, as set out in the BIA and to receive all remuneration of the Bankruptcy Trustee or Proposal Trustee in the BIA Mandates for services performed from the commencement of each of the BIA Mandates until the discharge of the Bankruptcy Trustee or Proposal Trustee, as applicable.

5. **THIS COURT ORDERS** that that the requirement and responsibility for taxation of the Bankruptcy Trustee’s or Proposal Trustee’s accounts in respect of the BIA Mandates with respect to all work performed in respect of such BIA Mandate from the initial appointment of RSM Canada Limited or any other party, through to the completion of the administration of such BIA Mandates and discharge of TDB Restructuring Limited as Bankruptcy Trustee or Proposal Trustee, as applicable, shall be completed using the name TDB Restructuring Limited.

6. **THIS COURT ORDERS AND DIRECTS** that to the extent that security has been given in the name of RSM Canada Limited in cash or by bond of a guarantee company pursuant to section 16(1) of the BIA (the “**Security**”), such Security shall be transferred from the name RSM Canada Limited to the name TDB Restructuring Limited and any party holding such Security be and is hereby directed to take all steps necessary to effect such transfer. TDB Restructuring Limited shall retain all obligations respecting the Security.

RECEIVERSHIP PROCEEDINGS

7. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name RSM Canada Limited as the Receiver, Receiver and Manager, or Interim Receiver (collectively, “**Receiver**”) in respect of the mandates listed in Schedule “B” hereto (the “**Receivership Proceedings**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such Receivership Proceedings or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

CCAA PROCEEDINGS

8. **THIS COURT ORDERS** that the name TDB Restructuring Limited be and is hereby substituted in place of the name of RSM Canada Limited as Monitor of the estate files listed as CCAA restructuring proceedings on Schedule “C” hereto (the “**CCAA Estates**”) and any reference to the name RSM Canada Limited in any Court Order in respect of such mandates (the “**CCAA Mandates**”) or any schedule to such Court Order shall be replaced by the name TDB Restructuring Limited.

ESTATE TRUSTEE DURING LITIGATION PROCEEDINGS

9. **THIS COURT ORDERS** that: (i) the name TDB Restructuring Limited be and is hereby substituted in place of the name RSM Canada Limited as Estate Trustee During Litigation in respect of the mandate listed in Schedule “D” hereto; and (ii) the name Bryan A. Tannenbaum of TDB Restructuring Limited be and is hereby substituted in place of the name Bryan A. Tannenbaum of RSM Canada Limited as Estate Trustee During Litigation in respect of the mandate listed in Schedule “D” (collectively, the “**Estate Mandates**”), and any reference to the name RSM Canada Limited in any Court Order in respect of such Estate Mandates or any

schedule to such Court Order shall be replaced by the name TDB Restructuring Limited. Collectively, the BIA Mandates, the Receivership Proceedings, the CCAA Mandates and the Estate Mandates are referred to herein as the “**Substituted Matters**”).

SUBSTITUTED MANDATES

10. **THIS COURT ORDERS** that TDB Restructuring Limited (and its directors, officers, employees, agents, legal counsel and other representatives, as applicable) will continue to have all rights, benefits, protections and obligations granted to RSM Canada Limited (and its legal counsel and representatives, as applicable) under any order made in the Substituted Mandates or any statute applicable to the Substituted Mandates or any contract or agreement to which TDB Restructuring Limited is party under the name RSM Canada Limited in the Substituted Mandates. For greater certainty and without limitation, this includes the benefit of any indemnity, charge or priority granted in the Substituted Mandates and relief from the application of any statute including the Personal Information Protection and Electronic Documents Act (Canada) (“**PIPEDA**”).

11. **THIS COURT ORDERS** that to the extent required by the applicable Orders in the Substituted Mandates, the accounts of RSM Canada Limited and its legal counsel in respect of the Substituted Mandates shall be passed in accordance with the applicable Orders in the Substituted Mandates in the name and on the application of TDB Restructuring Limited.

ACCOUNTS

12. **THIS COURT ORDERS** that TDB Restructuring Limited be and is hereby authorized to transfer any and all accounts from the name RSM Canada Limited to the name TDB Restructuring Limited and, if the name on such accounts cannot be changed, to transfer all funds that remain in its trust bank accounts that belong or relate to the Substituted Mandates, or otherwise, to accounts in the name TDB Restructuring Limited, and TDB Restructuring Limited be and is hereby authorized to take all steps and to execute any instrument required for such purpose. Any bank, financial institution or other deposit-taking institution with which TDB Restructuring Limited banks be and is hereby authorized to rely on this Order for all purposes of

this paragraph and shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any of the foregoing actions.

13. **THIS COURT ORDERS AND DIRECTS** that TDB Restructuring Limited be and is hereby authorized to endorse for deposit, deposit, transfer, sign, accept or otherwise deal with all cheques, bank drafts, money orders, cash or other remittances received in relation to any of the Substituted Mandates where such cheques, bank drafts, money orders, cash or other remittances are made payable or delivered to the name TDB Restructuring Limited, in relation to the same, and any bank, financial institution or other deposit-taking institution with which TDB Restructuring Limited banks be and is hereby authorized to rely on this Order for all purposes of this paragraph and shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any of the foregoing actions.

GENERAL

14. **THIS COURT ORDERS** that this Order shall be effective in all judicial districts in Ontario which govern any of the Substituted Mandates.

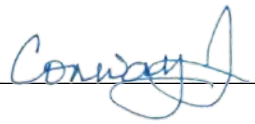
15. **THIS COURT ORDERS** that the requirement for a separate Notice of Motion and supporting Affidavit to be filed in the Court file of each of the Substituted Mandates be and is hereby waived.

16. **THIS COURT ORDERS** that TDB Restructuring Limited shall notify the parties on the Service Lists of the Substituted Mandates (if applicable) of the new website established for such Substituted Mandate and shall post a copy of this Order to the website of each Substituted Mandate and that such notice shall satisfy all requirements for service or notification of this motion and this Order on any interested party in the Substituted Mandates including, without limitation, proven creditors within the BIA Mandates, parties on the Service Lists of the Substituted Mandates (if applicable), the applicable bankrupts or debtors within the Substituted Mandates, and any other person, and any other requirements of service or notification of this motion be and is hereby waived.

17. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give

effect to this Order and to assist TDB Restructuring Limited in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to TDB Restructuring Limited as may be necessary or desirable to give effect to this Order, or to assist TDB Restructuring Limited and its agents in carrying out the terms of this Order.

18. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry or filing.



A handwritten signature in blue ink, appearing to read "Conway J.", is written over a horizontal line.

Schedule "A": BIA Mandates

Bankruptcies

	Name	Estate Number
1.	Carrington Homes Limited	31-457618
2.	Fernicola, George	31-457619
3.	D. Mady Investments Inc.	31-2281994
4.	Eco Energy Home Services Inc.	31-2502463
5.	Ontario HVAC & Water Inc.	31-2613545
6.	2305992 Ontario Inc.	31-2655918
7.	Fernwood Developments (Ontario) Corporation	31-2661061
8.	Legal Print and Copy Incorporated	31-2884436
9.	Commerce Copy Incorporated	31-2884438
10.	TDI-Dynamic Canada, ULC	31-2903815
11.	Limestone Labs Limited	31-2907613
12.	2465409 Ontario Inc.	31-2939766
13.	Creative Wealth Media Finance Corp.	31-3003083
14.	Knight-Pro Inc.	31-3013900
15.	Ulmer, Blair	32-159136

Division 1 Proposals

	Name	Estate Number
1.	Vaughn Mills Packaging Ltd.	31-2895096
2.	RLogistics Limited Partnership	31-3040679
3.	RLogistics Inc.	31-3042209
4.	1696308 Ontario Inc.	31-3042213

Schedule “B”: Receivership Proceedings

Name	Court / OSB Number
1. Z. Desjardins Holdings Inc.	CV-23-00706607-00CL
2. 485, 501 and 511 Ontario Street South, Milton, ON	CV-23-00696349-00CL
3. Eco Energy Home Services Inc.	CV-19-614122-00CL
4. 3070 Ellesmere Developments Inc.	CV-19-00627187-00CL
5. Fernwood Developments Ontario Corporation	CV-20-00635523-00CL
6. Utilecredit Corp.	CV-20-00636417
7. 134, 148, 152, 184/188, 214, 224 and 226 Harwood Avenue, Ajax, ON	CV-20-00651299-00CL
8. Greenvilla (Sutton) Investment Limited (private receivership)	31-459273
9. 2088556 Ontario Inc. (private receivership)	31-459274
10. 935860 Ontario Limited (private receivership)	31-459275
11. Areacor Inc.	CV-22-00674747-00CL
12. Limestone Labs Limited and CleanSlate Technologies Incorporated (private receivership)	31-459498
13. 12252856 Canada Inc.	CV-22-00691528-00CL
14. Harry Sherman Crowe Housing Co-operative Inc.	CV-22-00688248-00CL
15. Richmond Hill Re-Dev Corporation	CV-23-00695238-00CL
16. Stateview Homes (Hampton Heights) Inc.	CV-23-00700356-00CL
17. 142 Queenston Street, St. Catharines, ON	CV-23-00705617-00CL
18. 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, ON	CV-23-00701672-00CL
19. 311 Conacher Drive, Kingston, ON	CV-23-00701672-00CL
20. Real Property owned by King David Inc.	CV-23-00710411-00CL
21. CBJ Developments Inc. et al.	CV-23-00707989-00CL
22. 25 Neighbourhood Lane, Etobicoke, ON M8Y 0C4	31-459784

Schedule “C”: CCAA Proceedings

Name	Court Number
1. Quality Sterling Group, comprising Quality Rugs of Canada Ltd., Timeline Floors Inc., Ontario Flooring Ltd., Weston Hardwood Design Centre Inc., Malvern Contact Interiors Ltd., Timeline Floor Inc. Ontario Flooring Ltd. Weston Hardwood Design Centre Inc. Malvern Contract Interior Limited Quality Commercial Carpet Corporation Joseph Douglas Pacione Holding Ltd. John Anthony Pacione Holding Ltd. Jopac Enterprises Limited, and Patjo Holding Inc.	CV-23-00703933-00CL

Schedule “D”: Estate Trustee During Litigation Proceedings

Name	Court Number
1. The Estate of Sarah (Sue) Turk *	01-3188/14
2. The Estate of Sarah (Sue) Turk *	05-35/14
3. The Estate of Lev Alexandr Karp – <i>discharge</i> <i>pending</i>	05-100/17 05-265/17
4. The Estate of Peter Trezzi	01-4647/16
5. The Estate of Florence Maud Anderson *	05-159/19
6. Estate of Murray Burke	2988/19
7. Estate of Robert James Cornish	CV- 23-00693852-00ES
8. Estate of Anne Takaki *	CV-22-00011105-00ES
9. Estate of John Takaki *	CV-22-00011105-00ES
10. Estate of James Frederick Kay **	06-006/14
11. Klaczkowski Family Trust **	CV-21-00659498-00ES
12. Estate of Ethel Ailene Cork **	CV-23-00710309-00ES
13. Estate of Justin Milton Cork **	CV-23-00710291-00ES

* In the name of Bryan A. Tannenbaum of RSM Canada Limited.

** In the name of Bryan A. Tannenbaum only.

TDB RESTRUCTURING LIMITED**and****RSM CANADA OPERATIONS ULC**

Court File No. CV-24-00715515-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at TORONTO

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IN THE MATTER OF THE RECEIVERSHIP OF
311 CONACHER DRIVE, KINGSTON, ONTARIO AND
2849, 2851, 2853, 2855 AND 2857 ISLINGTON AVENUE, TORONTO, ONTARIO

THIRD SUPPLEMENT TO THE THIRD REPORT OF THE RECEIVER

DECEMBER 7, 2024

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

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

BETWEEN:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. AND 5004591 ONTARIO INC.

Respondents

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1.0 INTRODUCTION

1. TDB Restructuring Limited (the “**Receiver**”), in its capacity as receiver over the real property known municipally as 311 Conacher Drive, Kingston Ontario (the “**Kingston Property**”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**”), filed its Third Report to the Court dated November 25, 2024 (the “**Third Report**”) in connection with a motion by the Receiver seeking, inter alia, an order approving the sale of the Toronto Property.
2. The Receiver filed its supplement to the Third Report to the Court dated November 28, 2024 (the “**Supplement to the Third Report**”).
3. The Receiver filed its confidential second supplement to the Third Report to the Court dated December 3, 2024 (the “**Confidential Second Supplement to the Third Report**”).

1.1 Purpose of Report

4. The purpose of this third supplement to the Third Report (the “**Third Supplement to the Third Report**”), is to:
 - (a) provide the Court with the Receiver’s comments and observations and information in relation to:
 - i. materials filed with the Court from various parties and specifically:
 1. the affidavit of Jamie Erlick sworn December 3, 2024 (the “**Erlick Affidavit**”);
 2. the affidavit of Simion Kronenfeld sworn December 3, 2024 (the “**Kronenfeld Affidavit**”; and
 3. an email from Mr. Dale Denis dated December 5, 2024 in which he indicates that the Kronenfeld Affidavit will be revised to reflect the additional costs to renovate the houses based on an individual’s attendance at the Toronto Property (the “**Kronenfeld Email**”).

4. an email exchange between counsel for the Receiver and Mr. Dale Dennis regarding the attendance at the Toronto Property by an individual on December 5, 2024, who conducted an inspection as referenced in Mr. Dale Denis' email of December 5, 2024 (the "**Inspection Email Exchange**");
- ii. a further offer received by the Receiver on December 6, 2024.
- (b) seek an Order of the Court approving the Third Supplement to the Third Report and the Receiver's conduct and activities described therein.
5. The Third Supplement to the Third Report should be read in conjunction with the Third Report and the Supplement to the Third Report, including the Terms of Reference set out therein.
6. Unless otherwise defined, the defined terms in the Third Supplement to the Third Report have the same definitions as set out in the Third Report and the Supplement to the Third Report.

2.0 THE PROPERTY WAS MARKETED APPROPRIATELY

7. Mr. Erlick appears to suggest that the Toronto Property ought to have been marketed as five separate lots rather than as a whole.
8. At the outset of the sales process, the Receiver, in consultation with its agent Colliers, considered the highest and best use for the Toronto Property and in reliance on Colliers' expertise, determined that an 'en bloc' sale was most appropriate. The Receiver (and Colliers) maintain that this was the best way to market the Toronto Property.
9. In support of Mr. Erlick's bald contention otherwise, at paragraphs 10 – 17 of the Erlick Affidavit, a copy of which is attached hereto as **Appendix "A"**, Mr. Erlick states, among other things, that:
 - (a) a minimal amount of work would be needed to make each of the 5 houses comprising the Toronto Property liveable;

- (b) the Properties were marketed exclusively as a bulk sale, despite their apparent suitability for individual sale in the strong Toronto residential market and that the Properties might have been sold for undervalue;
 - (c) by grouping the Properties into a single sale, the Receiver limited the pool of prospective buyers to investors and developers;
 - (d) in Mr. Erlick's opinion, individually, he believes the floor price for each individual unit to be at least \$800,000, or a total of \$4,000,000;
 - (e) based on Mr. Erlick's analysis of market conditions, the Properties' characteristics, and recent comparable sales data, selling the units individually would have: (1) maximized exposure to the more competitive individual market, (2) attracted end-user buyers willing to pay premiums for ready-to-occupy homes (with minimal work required to make the Properties liveable), and (3) would demonstrate the aggregate minimum sale price of all the properties combined; and
 - (f) with respect to efforts to target developers, in Mr. Erlick's view an exposure time of four weeks to relist the Properties for sale is not sufficient.
10. Mr. Erlick's statement that a minimal amount of work would be required to make each of the 5 houses liveable is completely erroneous given that the dwellings are dilapidated and totally uninhabitable. Attached hereto as **Appendix "B"** are photographs of the condition of the interior of the 5 houses which make clear that a significant amount of work will be required simply to make the houses habitable (let alone desirable for a sale). The condition of the dwellings, and the cost to make them habitable, is discussed in greater detail below.
11. Upon reviewing the Erlick Affidavit, the Receiver contacted Colliers with a request for it to comment on the market conditions, target market and other comments made by Mr. Erlick to which a real estate expert's views would be most valuable. Colliers provided the Receiver with a report (the "**Colliers Report**"), a copy of which is attached hereto as **Appendix "C"**, which sets out, among other things, that:

- (a) Colliers confirmed its initial recommendation to the Receiver (as set out in its listing proposal) that the Property be sold 'en bloc' as, in Colliers' view, the highest and best use for the Property was as a combined development site. Colliers also has serious doubts that the individual lots would sell for \$800,000 per lot;
- (b) Colliers determined at the time of the initial listing that fully-renovated semi-detached homes in the immediate area had sold recently between approximately \$980,000 and \$1,050,000. That said, the transactions Colliers identified were not on Islington Avenue which is a busy street; accordingly, the comparable properties were superior to the Toronto Property. Colliers also reviewed older detached houses, as well as partially-renovated and renovated detached houses that sold in the immediate area (off Islington Avenue) and they all sold between \$950,000 and \$1,325,000. Finally, new and '0-5' year old custom built semi-detached and detached homes in the area sold for between \$1,545,000 and \$1,840,000;
- (c) given the end sale prices of renovated homes in the area (i.e. between \$950,000 - \$1,325,000 for more desirable locations off Islington Avenue, with the high end being achievable for detached homes), it is unlikely that a builder would incur the risk of acquiring the individual lots for \$800,000 per lot when considering all of the hard and soft costs and other contingencies and risks inherent in undertaking a substantial renovation; and
- (d) in Colliers' view, a total demolition of the homes, as an alternative to renovation, would be even more costly and less attractive to a potential buyer. A builder would need to build large homes (of between 2,500 and 3,500 square feet), with finished basements, in order to sell for between \$1,545,000 and \$1,840,000. The cost of this construction alone would be approximately \$600,000 - \$750,000 (based on the lowest end of the cost range per square foot provided by Altus' 2024 Canadian Cost Guide) plus soft costs. Accounting for an appropriate risk-adjusted profit margin, a builder would have to purchase each lot for significantly less than \$800,000 per lot and would likely be a riskier, less profitable venture than fully renovating the existing homes.

12. Finally, as the Court is aware, the duration of the Receiver's initial sale period was 10-weeks and its subsequent re-marketing of the Toronto Property was 4-weeks for a total of 14 weeks. Further details of the Receiver and Colliers' efforts in respect of the sale of the Toronto Property can be found in the First Report and the Third Report and are not repeated herein. Mr. Erlick's comment regarding the insufficiency of a 4-week sale period to market the Toronto Property is inaccurate.

3.0 KRONENFELD AFFIDAVIT AND KRONENFELD EMAIL

13. A copy of the Kronenfeld Affidavit and Kronenfeld Email are attached hereto as **Appendix "D"** and **Appendix "E"**, respectively. The Receiver's comments and observations in respect of same is set out below.
14. At paragraph 5, Kronenfeld asserts that the Receiver's motion record and supplementary was short served. This is not accurate. The Receiver's motion record, as confirmed in the Kronenfeld Affidavit, was served on November 25, 2024, which is 10 days prior to the date of the December 4, 2024 hearing.
15. Kronenfeld also complains that he was only advised on November 29, 2024 that the Kingston Property did not close. First, this is not relevant to the sale approval motion for the Toronto Property. Second, and in any event, the Receiver only found out that the purchaser of the Kingston Property could not close on November 27, 2024. Immediately after finding this out, the Receiver and its counsel prepared and served the Receiver's Supplement to the Third Report and supplementary motion record on November 29, 2024.
16. Kronenfeld also suggests at paragraph 8 of his affidavit that the marketing of the Toronto Property should be paused until the Kingston Property sale closed or was otherwise terminated. This matter was already addressed in the Court's Endorsement dated October 9, 2024 (the "**October 9th Endorsement**") at paragraph 28, where the Court states "First, as noted, there is no dispute about the validity of Cameron Stephens' charges over the properties, nor that Cameron Stephens is the first mortgagee in each case. The Receiver points to authority for the proposition that, even if the doctrine of marshalling is applicable, a fundamental principle of the doctrine is that "nothing will be done to interfere with the paramount

right of the first mortgagee to pursue his remedy against either of the two estates.” (807933 Ontario Inc. v. Allison (Trustee of) (1995) 22 O.R. (3d) 102 (Gen. Div.), appeal dismissed (1998) 38 O.R. (3d) 337 (C.A.).” A copy of the October 9th Endorsement is attached hereto as **Appendix “F”**.

17. Paragraph 9 of the Kronenfeld Affidavit sets out that Mr. Kronenfeld was not provided with any notice that the Receiver was evaluating and entertaining offers and evaluating same for acceptance.
18. AJGL could have participated in the Receiver’s sales process at any time by contacting the Receiver or Colliers, but chose not to do so until the eve of the December 4, 2024 hearing, which is approximately 10-weeks past the Receiver’s offer deadline of September 26, 2024 for submission of offers in connection with the remarketing of the Toronto Property.
19. At paragraph 15 of the Kronenfeld Affidavit, Mr. Kronenfeld states his concern that the Receiver’s sale to the Toronto Purchaser may very well be improvident. In the Kronenfeld Email, Mr. Denis states that his client estimates the costs to renovate the Toronto Property will be \$500,000 in aggregate.
20. To evaluate the state of the buildings at the Toronto Property, the Receiver retained Pronto General Contracting (“**Pronto**”), a general contractor that has been in business for over 30 years. After its detailed inspections of the Toronto Property over the course of the time the Toronto Property has been in the Receiver’s possession, Pronto has advised the Receiver that in order for the 5 houses comprising the Toronto Property to be lived in, they will require:
 - (a) new kitchens;
 - (b) new bathrooms;
 - (c) new plumbing;
 - (d) new furnaces;
 - (e) new electrical wiring (or possibly try to use/fix the existing wiring);

(f) landscaping; and

(g) certain homes require mould remediation/removal.

21. In addition, Pronto advised that although it did not test the structural integrity of the houses, there may well be structural issues that require attention, which would add to the costs. Pronto's estimate of the average cost per house to rectify the deficiencies, replace equipment and remediate the houses is \$250,000 - \$275,000 (excluding softs costs). Although Colliers, in the Colliers Report, states that it has serious doubts that the individual lots would sell for \$800,000 per lot for the reasons set out therein, even if the "floor price" of the houses was \$4,000,000 (\$800,000 x 5), the aggregate costs to renovate the houses, before soft costs and profit, would range between \$1,250,000 to \$1,375,000 with the net proceeds for the entire Property ranging between \$2,625,000 and \$2,750,000 or between \$525,000 to \$550,000 per house.

4.0 ATTENDANCE TO INSPECT THE TORONTO PROPERTY

22. The Inspection Email Exchange, a copy of which is attached hereto as **Appendix "G"**, sets out, among other things, that an individual ("**Sal**") attended at the Toronto Property to conduct an inspection of the 5 houses comprising the Toronto Property and followed the direction of an individual who was on site who Sal assumed was a representative of the Receiver.
23. Pronto attended at the Toronto Property on December 5, 2024 at the Receiver's direction to obtain fresh photographs of the interior of the 5 houses comprising the Toronto Property. At the conclusion of Pronto's attendance, Pronto noticed that a truck was parked on the curb on the east side of Islington Avenue just south of Milady Rd., adjacent to the Toronto Property.
24. Pronto re-entered the Toronto Property and saw an individual with a screw gun walking around. Pronto advised the Receiver of the following interaction between Pronto and Sal:
 - (a) Pronto questioned the individual, who identified himself as Sal, about his authorization to be on the Toronto Property. Sal indicated that he had the

Receiver's authorization to be on the property and when Pronto asked him who from the Receiver gave him authorization, Sal indicated that it was Simion;

- (b) Pronto attempted to call the Receiver, but could not get a hold of same at the time;
 - (c) Pronto advised Sal that it did not know who Simion was and that Sal should leave on the basis that he did not have the Receiver's authorization to be on the Toronto Property; and
 - (d) Sal refused to leave the Toronto Property claiming that he had the Receiver's authorization to be there and continued with his inspection.
25. Notwithstanding counsel to the Receiver's email to Mr. Denis asking who is Sal and what is his relationship to Mr. Kronenfeld, no response has been received to this enquiry.
26. The Receiver was not advised in advance and had no knowledge of Sal's attendance at the Toronto Property and did not authorize same. On the basis that the Toronto Property is in the possession and control of the Receiver, attending at the Toronto Property without the Receiver's express authorization constitutes trespass.
27. More significantly, it appears that Mr. Erlick has never even visited the Toronto Property notwithstanding his evidence about its condition and cost to repair.

5.0 FURTHER OFFER RECEIVED

28. On December 6, 2024, the Receiver received a further offer (the "**Further Offer**") from a potential purchaser. A copy of the Further Offer with correspondence from counsel to the potential purchaser will be filed with the Court as **Confidential Appendix 1** to the Third Report.
29. The salient terms of the Further Offer are set out below, without details of the purchase price or deposit paid.

- (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.

6.0 CONCLUSION AND RECOMMENDATION

6.1 Conclusion

- 30. While the Receiver recognizes that it is required to attempt to maximize realizations for the benefit of creditors, the Receiver continues to have concerns about the integrity of the sales process if it were to allow bids made on the eve of the sale approval motion (10 weeks after the bid deadline), and thereafter, to be considered and/or accepted.
- 31. This is particularly true given that in the Receiver’s view, the latest bid (which is now the bidder’s third bid since the eve of the sale approval motion) still does not suggest to the Receiver that the offer that is before the court for approval is unreasonable or improvident.

6.2 Recommendation

- 32. The Receiver’s recommendation remains that the Court should approve and authorize the sale of the Toronto Property to the Toronto Purchaser and issue the AVO requested by the Receiver in favour of the Toronto Purchaser.

All of which is respectfully submitted to this Court as of this 7th day of December, 2024.

TDB RESTRUCTURING LIMITED, solely in its capacity as
Receiver of 311 Conacher Drive and 2849, 2851, 2853, 2855 and 2857
Islington Avenue and not in its personal or corporate capacity

Per:



Arif Dhanani, CPA, CA, CIRP, LIT
Managing Director

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

and

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondent

AFFIDAVIT OF SIMION KRONENFELD

I, **SIMION KRONENFELD**, of the City of Toronto, MAKE OATH AND SAY:

1. I am a director of AJGL Group Inc. ("AJGL").
2. AJGL has for several years carried on business as, among other ventures, a property developer in various locations, including in the greater Toronto area, at times in association with other entities.
3. As set out in the Affidavit of Jamie Erlick sworn October 3, 2024 and in my first affidavit sworn in this matter on October 8, 2024, AJGL (through my efforts) assembled the five properties on Islington Avenue in Toronto (2849, 2851, 2853, 2855 and 2857 Islington Avenue, hereinafter the "**Toronto Lands**" or Properties) and developed these Properties over a number of years.

4. As such, I have personal knowledge of the facts and matters hereafter deposed, save and except where same are stated to be upon information and belief, and where so stated, I verily believe same to be true.
5. The Receiver has brought this motion on short notice. Specifically, my affidavit is being prepared in response to: the Notice of Motion of the Receiver dated November 25, 2024 served at 4:57 PM on November 25, 2024 for a motion returnable on Wednesday December 4, 2024 and with respect to the supplementary Motion record of the receiver dated November 29, 2024, served on Friday November 29, 2024, at 3 pm.
6. I note that the Receiver took a month (from the waiver of conditions by the purchaser on October 27, 2024 until service on November 25, 2024) to prepare and serve its motion record. In the circumstances, it is unfair that notice of only six business days was provided to me for the December 4, 2024 motion to sell my property. Further, it is unfair that notice of only two business days was provided that the Kingston sale had been terminated. We require additional time to prepare responding materials.
7. I was very surprised to learn late Friday night, November 29th, as set out in the Receiver's Supplementary Motion Record, that the Kingston sale fell through.
8. AJGL's submissions to the Court at the Motion heard on October 9, 2024, included the submission that the marketing of the Islington Properties should be paused until the Kingston Property sale closed or was otherwise terminated. I believe that the proceeds from the Court-approved Kingston sale would have been sufficient to repay in full the Cameron Stephens debt obligations, there would have been no reason to sell the Islington Properties, and also, no reason for me to consider offering to purchase the Islington

Properties. The Receiver was also aware, as set out in its motion material on the October 9, 2024 motion, that despite demands from the Receiver that the second and third mortgage on title to the Kingston Property produce proof that they had advanced any funds, neither the second nor third mortgage had provided any evidence that their mortgages were valid. In the circumstances, I did not think that the Receiver would entertain offers to sell the Properties.

9. I was not provided with any notice that the Receiver was entertaining offers and evaluating same for possible acceptance. The disclosure by the Receiver in its November 25th 2024 motion material that the Receiver had accepted a conditional offer to sell the Properties was very much a surprise to me.
10. In these circumstances, and for the other reasons set out herein, I am very concerned about the potential for offers which significantly undervalue the true market value of the Properties, being accepted by the Receiver.
11. As set out below, I am very concerned by certain omissions in the Receiver's motion material and reports regarding the sale of the Toronto Property to Arjun Anand in trust, (defined as the "Toronto Purchaser").
12. The December 4th motion materials of the Receiver do not state the proposed sale price of the Properties, with the result that I have no way to resolve my concerns (without precluding myself from presenting an offer).
13. My concerns have prompted me, in response to the Receiver's motion material for the December 4th motion, to submit an offer to purchase the Properties. Attached hereto as

“**Exhibit 1**” is a copy of a letter from my counsel, Paul Rooney, to the Receiver, attaching an offer to purchase for a cash, immediate payment and closing, for a purchase price of \$3 million.

14. I have attempted in this short time-period to set out particulars of my concerns, as follows.
15. In my view, the period of the re-listing of only four weeks (referenced in paragraph 27 b, ii of the Third Report) is much too short a time-period to expose the property to the market for a resale. Accordingly I am very concerned that the sale price (the “**Sale Price**”) to the Toronto Purchaser, may very well be improvident.
16. I cannot determine from a review of the Receiver’s motion material if the Sale Price is improvident because the Receiver’s motion material does not contain **any** information about the Sale Price, including any information about the relative Sale Price. Apart from when there is a “low ball offer” (see below), I understand why the receiver will not disclose the actual Sale Price, in the event the sale does not close. However, in my view, there is no valid reason why the receiver could not provide some information about the relative sale price. Further, as set out below, AJGL is in a unique position as a stakeholder who should be provided with an opportunity to respond to an offer to purchase, and, in any event to respond to a “low ball offer” (if the offer of the Toronto Purchaser is a “low ball offer”).
17. For example, I would have, at least, some information about whether the Sale Price is improvident if the Receiver were to disclose if the Sale Price is within a reasonable range (a certain percentage higher or lower) of:

- a) the sale price in the purchase agreement of Lakeshore Luxe Design and Build Group Inc, dated June 12, 2024, which was approved by the Honourable Justice Cavanagh pursuant to his honour's endorsement dated July 24, 2024;
- b) the price set out in recent offers to purchase, such as the following offers attached as exhibits to the affidavit of Mario Kalemi sworn July 19, 2024 (the "Kalemi Affidavit"):
 - i) As set out in Exhibit A of the Kalemi Affidavit, in early February 2022, we received an offer to purchase the Toronto Property for a purchase price of \$7,750,000. Pursuant to my instructions, the offer was signed back at a purchase price of \$8,250,000.
 - ii) As set out in Exhibit B of the Kalemi Affidavit, in late June 2022, we received an offer to purchase the Toronto Property for a purchase price of \$8,000,000. Pursuant to my instructions, the offer was signed back at a purchase price of \$8,300,000. The potential purchaser then signed back the offer for price of \$8,150,000.
 - iii) As set out in Exhibit I of the Kalemi Affidavit, in May of 2023 we received an offer to purchase the Toronto Property for the price of \$9.1 million.
- c) the total sale price of \$4 million which the five properties would generate if the five homes and Properties were sold individually to buyers of single family residential homes.

18. The Receiver's motion material does not provide a stakeholder with any information which would enable the stakeholder to determine if the Sale Price is improvident.
19. For example, there is no indication whether the sale price is reasonable relative to the appraised value of the Toronto Property. Neither the Receiver nor Colliers obtained any opinion of value of the Properties.
20. Accordingly, there is no indication in the Receiver's motion material whether the Sale Price is within a reasonable range of the appraised value of a certified appraiser.
21. There is no reference in the Receiver's motion material whether the sales agent, Colliers, is of the view that the Sales Price is reasonable or fair. There is no indication in the Receiver's motion material whether the Sale Price is within a reasonable range of a price which Colliers views as a reasonable or fair Sale Price.
22. In any event, because Colliers has, as set out below, only marketed the Properties as a bulk sale to a developer, I assume that Colliers must be of the opinion (if they turned their minds to the issue - and there is no indication in the Receiver's motion material that anyone has averted to this issue), that the sale price generated by a sale to a developer would exceed the \$4 million sale price generated by selling to individual home buyers. The fact that the Properties were only marketed and offered for sale as a bulk sale to a developer is evident from the two page listing on Colliers webpage (attached hereto as **Exhibit 2**), which describes the property as "Approved Mid-Rise Redevelopment Land" and "redevelopment opportunity" "this future development" and "0..84 acres of Prime Development Land Across 5 Adjacent Parcels". This is also evident from the fact that Colliers did not at any time list any of the homes/individual properties for sale. Simply,

none of the five homes/properties were marketed or offered for sale to individual residential home buyers.

23. There is no indication in the Receiver's motion material whether the Sale Price is within a reasonable range of recent sales of comparable properties. The receiver's motion material does not even identify whether the Receiver considered the sale price of comparable sales.
24. It appears that Colliers and the Receiver have not indicated to the market any expected price range, or asking price, for the relisting of the Property. My concern is that when a first offer has failed to close, market participants who have not submitted an offer because they thought the original asking price was too high, are no longer considering the property because they assume that the relisted price is in the same, original asking price range. In circumstances where a seller has an appetite for accepting a reduced price, the market should be given some indication of same, to keep bidders at the table who previously thought they were priced out of the market.
25. There is no indication in the Receiver's motion material, or in Colliers marking material, that offers for the property will be considered which are within a specified price range. For these Properties I would have expected Colliers to communicate that the expected price range is at least \$6.5 million.
26. There is no indication in the Receiver's motion material of what the Receiver considers to be comparable properties. In my view, comparable properties should consider the two separate value scenarios represented by the properties: 1) the properties are an assembly of five properties approved for development and suitable for development of multiple

units, and 2) the properties consist of five separate homes which could be marketed and sold as five residential homes. Colliers has only considered and marketed the property based on the value scenario as development property – I am fine with this as long as the sale price exceeds the sale prices (\$4 million) which would be realized if the five homes are sold separately.

27. Because the five homes could be sold separately as residential homes, the projected sale price of the five homes is in my view a “floor price” – the lowest possible price for the properties assuming they are sold to five separate residential home buyers. In my opinion the minimum total sale price if the properties were sold to five separate residential home buyers is \$4 million, based on an average sale price of \$900,000 per home. Further if between \$10 to 15 thousand were spent on each of 2851, 2853, 2855 and 2857 Islington Avenue then the sale price would be in the \$950,000 to \$1million sale price range for each of these properties. The property at 2849 Islington Avenue is the largest property with the largest home. If \$100,000 is spent fixing up this property, then I believe it would sell for approximately \$1.2 million.
28. There is no indication in the Receiver’s motion material whether the Sale Price is within a reasonable range of the sale proceeds which would be generated if the properties were sold to five separate residential home buyers.
29. There is no indication in the Receiver’s motion material if the Receiver determined a floor price for the Properties. That is, there is no indication in the Receiver’s motion material if the Receiver determined the price at which an offer is unreasonable and improvident.

30. We have disclosed to the Receiver the prices we paid to purchase the properties ten years ago, in 2014. The 2014 purchase prices of the properties are summarized in the chart at paragraph 117 of the Mr. Erlick's affidavit, copied here for ease of reference:

Date	Property	Price	Exhibits Hereto
2014-09-04 (Closing Date)	2849	\$1,253,000	11
2014-09-04 (Closing Date)	2851	\$650,000	20 (2851 APS) 22 (Assignment)
2014-09-04 (Closing Date)	2853	\$655,000	25 (2853 APS) 27 (Assignment)
2014-09-04 (Closing Date)	2855	\$473,000	30 (2855 APS) 32 (Assignment)
2014-03-26 (Closing Date)	2857	\$656,000	35 (2857 APS) 37 (Assignment)
		TOTAL	
		\$3,692,500	

31. There is no indication in the Receiver's motion material whether the Sale Price is within a reasonable range of the prices paid for the properties ten years ago.

32. I am very concerned that the short exposure time of four weeks, in circumstances where a previous offer recently did not close, is a recipe for attracting a “low ball offer”, also called a “stink bid”.
33. I am particularly concerned about a stink bid because I have been advised by a couple of my contacts in real estate that they are seeing a prevalence of stink bids to acquire properties, and that I should start making low ball offers. The theory is that properties are being sold without canvassing the interest of ‘patient money’, meaning buyers who have the appetite to buy and hold. To use a hypothetical example, a property which last year was valued at \$100 million and offered for sale at \$100 million is, when no offers of \$100 million come in, not being exposed to the market at a **disclosed reduced** price. I have heard comments like ‘I would have offered \$10 million more if I had known offers in this price range would be considered’. The end result is that the buyers with patient money are not at the table, and the property is scooped up by a stink bid.
34. In my view the integrity of the sales process by the Receiver requires that stink bids be disclosed to the stakeholders.
35. While there are good reasons why I should be able to purchase the Properties at a discount – as owner, assembler and developer who has worked hard over 10 years to develop the Properties and someone who is buying the same property twice – I acknowledge that my offer is at least \$1 million dollars less than the proceeds of sale if each of the five properties are sold as a residential home to individual purchasers.
36. I understand that if a stakeholder wants to obtain disclosure of the Sales Price they have to agree that they cannot offer to purchase the Properties. In my view, to guard against a


stink bid the opposite should prevail - the stakeholders should be provided with the stink bid sales price and be provided with an opportunity to bid against it.

37. The integrity of the sales process does not, in my view, warrant the protection of stink bids from competing bids. The consideration of stink bids should be an exception to the redaction/sealing of the document which sets out the price offered by a purchaser. At a minimum, disclosure of the relative sales price would put stakeholders on notice of a stink bid.
38. In my view the integrity of the sales process requires that notice of the proposed sale price be provided to all stakeholders, unconditionally, if the Receiver is considering accepting a sales price which is, percentage wise, significantly less than any of: 1) the prices paid to acquire the properties; 2) the prices which would be generated if the property was marketed differently (ex. as separate homes); 3) recent offers to purchase the properties; 4) a recent sale price approved by this honourable court.
39. Further and in any event, in my view the Receiver should notify stakeholders that it will entertain offers in a certain range. For example, if a Receiver has changed its position from the price in an accepted offer (ie. the Luxe offer) to where the Receiver is now willing to accept a significantly lower price, the stakeholders should be advised of same by the Receiver.
40. I believe that my price of \$3,000,000 is much less than the proceeds of sale which would be generated if the properties were marketed for more than four weeks or if the properties were marketed and sold as individual homes. By making an offer with a publicly disclosed price the other stakeholders can make an offer for a higher price. Simply, I am

inviting the other stakeholders to participate in an auction in response to the fact that the Receiver's motion material does not disclose any information which would assist any of us to determine if the Sale Price is improvident, and I am respectfully requesting that this honourable court adjourn the within motion to allow for the auction to occur, if the Sale Price to the Toronto Purchaser is less than \$4 million.

41. AJGL is in a unique position compared to the other stakeholders in this receivership. As an owner of the properties and the person/entity who assembled the lands and worked very hard over many years to take the properties through the planning and development stage, I believe that I should be provided with an opportunity to purchase the properties. Of course, another reason is that by making an offer to purchase, AJGL is essentially purchasing the same properties twice – my group's aggregate purchase price (the original price of \$3,692,500 plus my current offer of \$3 million) is \$6,692,500 – which is in the range of what I believe is fair market value for the properties.
42. Finally, I am respectfully requesting an adjournment of the December 4th motion to provide me, and the other stakeholders, with an opportunity to obtain and present opinions of value.

SWORN BEFORE ME at
the City of Toronto this 3rd day of
December, 2024.



Commissioner for Taking Affidavits (or as
may be)

Dean Christopher Ip Fung Chun
Barrister, Solicitor, Notary Public



SIMION KRONENFELD

**CAMERON STEPHENS
MORTGAGE CAPITAL LTD.**

**and CONACHER KINGSTON
HOLDINGS INC., *et al***

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

Applicant

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

APPLICATION UNDER SUBSECTION 243(1) OF
THE BANKRUPTCY AND INSOLVENCY ACT,
R.S.C. 1985, c.B-3, AS AMENDED AND SECTION
101 OF THE COURTS OF JUSTICE ACT, R.S.O.
1990, c. C.43, AS AMENDED

Proceeding commenced at Toronto

**AFFIDAVIT OF
SIMION KRONENFELD**

DENIS LITIGATION

Barristers
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Toronto, Ontario
M5H 2V1

S. Dale Denis (LSO #: 29452M)
Tel: (416) 479-3417
Email: dale@dilitigation.com

Lawyers for AJGL GROUP INC.

This is **Exhibit 5** to the affidavit
of Jamie Erlick, sworn before me
this 8rd day of December 2024.



.....
Commissioner for taking Affidavits (or as may
be)

DALE DENIS

From: rooney@paulfrooneyprofcorp.com <rooney@paulfrooneyprofcorp.com>
Sent: December 8, 2024 6:13 PM
To: ryan.shah@paliarerland.com
Cc: Jeff.Larry@paliarerland.com; Douglas.Montgomery@paliarerland.com
Subject: RE: Islington properties

Hello Ryan,

Regarding your questions below in relation to the request for access to the data room, my client no longer requires access to the data room, so it is unnecessary to respond to your questions, however to avoid any confusion regarding the identity of the party I am representing as beneficial owner, I can advise that I represent AJGL Group Inc. (and refer you to the several affidavits filed in this matter regarding AJGL's ownership interest in the five Islington Properties) and I represent the wholly owned subsidiary of AJGL, 1001079582 Ontario Inc., the entity on whose behalf I have submitted the recent offers to purchase the Islington Properties.

Yours very truly,

Paul F. Rooney

Paul F. Rooney Professional Corporation
Barrister & Solicitor,
121 King Street West, Suite 510
Toronto, ON M5H 3T9

Direct Line: 647-981-7838

Email: rooney@paulfrooneyprofcorp.com

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From: ryan.shah@paliarerland.com <ryan.shah@paliarerland.com>
Sent: December 5, 2024 4:55 PM
To: rooney@paulfrooneyprofcorp.com
Cc: Jeff.Larry@paliarerland.com; Douglas.Montgomery@paliarerland.com
Subject: RE: Islington properties [IMAN-PRIMANAGE.FID422513]

Hi Paul:

82

A few questions:

1. Please confirm the identity of the party you are representing as beneficial owner of the property;
2. Please confirm whether your client has accessed/viewed the confidential appendices to the receiver's report in connection with this sale approval;
3. Can you please confirm the reason for your client's request? Is the request being made to facilitate a making a bid?; and
4. Does your client not already have access to the books and records concerning the Islington property in its capacity as beneficial owner of the same?

Thanks very much,

Ryan Shah

647-865-4702

Paliare Roland Rosenberg Rothstein LLP

From: Paul Rooney <rooney@paulfrooneyprofcorp.com>

Sent: December 5, 2024 11:45 AM

To: Ryan Shah <ryan.shah@paliareroland.com>

Subject: Islington properties

Hello Ryan,

I would like to have access to the data room that was used for the marketing of the Islington property, for myself, my client and its representatives. Please provide the necessary link and authorization to do so. Given that my client is already the beneficial owner of this property, I would not expect that a confidentiality agreement would be necessary, however, if you have a different perspective on that, please briefly explain why and forward the proposed confidentiality agreement as soon as possible. We would like to have access to the data room today.

Thank you.

Yours very truly,
Paul F. Rooney

Sent from my iPhone

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

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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Dale Denis (LSO#: 29452M)

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Tel: 416.479.3417

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Lawyers for the Interested Party,
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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.**

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

A handwritten signature in blue ink, appearing to be "J. Dale", is written above a horizontal line.

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

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

NOTICE OF MOTION (RETURNABLE DECEMBER 4, 2024)

TDB Restructuring Limited, in its capacity as receiver and manager (in such capacity, the “**Receiver**”) of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario (the “**Kingston Property**”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**” and together with the Kingston Property, the “**Properties**”) will make a motion to a Judge presiding over the Commercial List on December 4, 2024 at 11:00 AM, or as soon after that time as the Motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard by videoconference.

THIS MOTION IS FOR:

- (a) an approval and vesting order (“**AVO**”):

- (i) approving the sale transaction (the “**Transaction**”) in respect of the Toronto Property, as contemplated by an agreement of purchase and sale between the Receiver and Arjun Anand in trust for a company to be formed (the “**Toronto Purchaser**”), dated September 26, 2024 (the “**APS**”);
 - (ii) following the Receiver’s delivery of the Receiver’s certificate substantially in the form attached as Schedule “A” to the proposed AVO, transferring and vesting all of the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the APS) in the Toronto Purchaser, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
 - (iii) approving the Toronto Distribution (as defined below);
- (b) an ancillary relief order, among other things:
 - (i) approving the Third Report of the Receiver dated November 25, 2024 (the “**Third Report**”) and the Receiver’s activities described therein;
 - (ii) approving the fees and disbursements of the Receiver and its counsel, as detailed in the Third Report and the Affidavit of Arif Dhanani sworn November 22, 2024, the Affidavit of Avrom Brown sworn November 22, 2024, and the Affidavit of Beatrice Loschiavo sworn November 22, 2024 (collectively, the “**Fee Affidavits**”);

- (iii) approving the Receiver's interim statement of receipts and disbursements for the Toronto Property, for the period from September 19, 2024 to November 20, 2024 (the "**Toronto SRD**"); and
 - (iv) approving the Receiver's interim statement of receipts and disbursements for the Kingston Property, for the period from September 19, 2024 to November 20, 2024 (the "**Kingston SRD**" and together with the Toronto SRD, the "**Interim SRD**"); and
 - (v) sealing Confidential Appendices 1 and 2 to the Third Report (together, the "**Confidential Appendices**") until the closing of the sale of the Purchased Assets (as defined in the APS)
- (c) Such further and other relief as counsel may advise and this Court deems just.

THE GROUNDS OF THIS MOTION ARE:

A. *The Receivership*

- (d) On December 6, 2023, RSM Canada Limited ("**RSM**") was appointed receiver and manager of the Properties (effective December 22, 2023), by order of Justice Conway (the "**Receivership Order**");
- (e) The Toronto Property is owned by 5004591 Ontario Inc. ("**500**");
- (f) The Kingston Property is owned by Conacher Kingston Holdings Inc. ("**Conacher**" and, together with 500, the "**Debtors**");

- (g) On March 1, 2024, the Court granted an order substituting the name TDB Restructuring Limited in place of RSM;

B. The Secured Creditor

- (h) On December 18, 2019, pursuant to a loan agreement (the “**Loan**”) between Cameron Stephens Mortgage Capital Ltd. (the “**Lender**”) and Conacher, 500 granted the Lender a collateral mortgage in the amount of \$15,600,000 on the Toronto Property to secure the Loan;
- (i) The Lender is the only creditor with a registered charge on title to the Toronto Property;

C. The Sales Process

- (j) The Receiver has engaged in a sales process for the Toronto Property (the “**Sales Process**”) as follows;
 - 1. **The Receiver retained Colliers**
- (k) The Receiver invited eight commercial real estate brokers to submit proposals for the marketing and sale of the Toronto Property, including Colliers Macaulay Nicolls Inc. (“**Colliers**”);
- (l) The Receiver received listing proposals from six of the eight brokerages and ultimately selected Colliers;
- (m) On March 22, 2024, the Receiver entered into an MLS listing agreement with Colliers;

- (n) After discussion with Colliers, the Receiver set an offer deadline date of June 3, 2024 as Colliers indicated that the period between March 22, 2024 and June 3, 2024 was more than sufficient time to appropriately market the Toronto Property;

2. Marketing Efforts

- (o) Colliers launched the listing on MLS on March 25, 2024 and commenced a marketing campaign for the Toronto Property on April 4, 2024;
- (p) The Receiver provided Colliers with a form of agreement of purchase and sale to be uploaded to an online data room maintained by Colliers, in order to facilitate purchaser due diligence. Colliers drafted a form of confidentiality agreement for interested parties to execute in order to be given access to the virtual data room and perform due diligence (the “**Confidentiality Agreement**”);
- (q) A summary of marketing activities undertaken by Colliers is set out below:
 - (i) e-mails were sent to Colliers’ distribution list of approximately 3,000 parties, which emails contained a marketing brochure, a website link to Colliers’ webpage for the Toronto Property and a link to the Confidentiality Agreement; and
 - (ii) an electronic data room was set up to provide access to confidential information pertaining to the Toronto Property to parties which had executed the Confidentiality Agreement;

3. The Terminated APS

- (r) Colliers received 18 signed Confidentiality Agreements by prospective purchasers or brokers, all of whom were given access to the electronic data room;
- (s) On June 3, 2024, Colliers received 3 offers and a letter of intent for the Toronto Property. The Receiver reviewed the offers with Colliers and the Lender. The Receiver requested of Colliers that it go back to the offerors that submitted bids on June 3, 2024 to ask them to resubmit their highest and best offers. Only Lakeshore Lux and Design Build Group Inc (“**Lakeshore Lux**”) made a revised offer;
- (t) Ultimately, the Receiver determined that the offer from Lakeshore Lux was the highest and best available offer and should be accepted;
- (u) On June 12, 2024, the Receiver and Lakeshore Lux entered into an agreement of purchase and sale for the Toronto Property on an “as is, where is” basis (the “**Terminated APS**”);
- (v) On July 24, 2024, the Court granted an AVO in respect of the Terminated APS, which was scheduled to close on July 30, 2024;
- (w) After a series of extensions, Lakeshore Lux was unable to close the transaction;
- (x) On August 27, 2024, the Receiver’s real estate counsel, Garfinkle Biderman LLP, wrote to counsel for Lakeshore Lux to advise that the transaction had

been terminated and the deposit paid by Lakeshore Lux, including various extension fees, had been forfeited;

4. Colliers Remarkets the Toronto Property

- (y) Following the termination of the Terminated APS, the Receiver requested that Colliers re-market the Toronto Property and details regarding same are described below;
- (z) On August 29, 2024, the MLS listing for the Toronto Property was changed from sold firm back to available and Colliers sent out an e-mail blast to its database of approximately 3,000 parties;
- (aa) Colliers also contacted all previous bidders and those that signed a confidentiality agreement and had access to Colliers' data room to advise that the Toronto Property was back on the market;
- (bb) With the concurrence of the Receiver, Colliers set a bid deadline date of September 26, 2024 at 3:00 pm;

5. Offers Received

- (cc) Colliers did not receive any additional signed Confidentiality Agreements from new parties with interest in the property for access to Colliers' data room;
- (dd) On September 26, 2024, Colliers received two offers and one letter of intent for the Toronto Property. A subsequent offer was received on September 28, 2024. The Receiver reviewed the offers from Colliers' re-marketing

process with the Lender, in its capacity as secured lender and mortgagee of the Toronto Property. Based on the offers submitted on September 26, 2024 and the offer submitted on September 28, 2024, the Receiver determined that the offer from the Toronto Purchaser, which was received on September 26, 2024, was the highest and best available offer given among other things current market conditions, and should be accepted;

- (ee) On October 7, 2024, the Receiver and the Toronto Purchaser entered into an APS, which was conditional on the Toronto Purchaser's due diligence, which condition had to be waived or satisfied by November 6, 2024;
- (ff) On October 27, 2027, the Toronto Purchaser indicated that it was waiving its due diligence condition. On October 29, 2024, both the Toronto Purchaser and the Receiver executed a waiver formalizing same;

6. The APS

- (gg) Salient terms of the Toronto APS and matters relating thereto include:
 - (i) the purchased assets include the Toronto Property;
 - (ii) the deposit to be provided under the Toronto APS has been received from the Toronto Purchaser;
 - (iii) the offer is firm as the Toronto Purchaser has waived all conditions to closing except the issuance of the AVO;
 - (iv) the Toronto APS is conditional on Court approval and the issuance of an AVO vesting the Purchased Assets in the Toronto Purchaser

free and clear of claims and encumbrances, other than those specifically itemized in the APS;

- (v) the Toronto Purchaser is buying the Toronto Property on an “as is, where is” basis; and
- (vi) closing of the sale provided for in the APS is scheduled to occur within 10 business days immediately following the date on which the AVO is granted, or the next business day or such other date as the Receiver and the Toronto Purchaser may mutually agree upon;

D. The Transaction should be approved

- (hh) The requested AVO approves the APS and vests the Toronto Property in the Toronto Purchaser, free and clear of any claims and encumbrances (other than as set out in the APS) upon closing of the Transaction;
- (ii) The Transaction is the product of a robust sales process. Colliers conducted a broad canvass of the market and the Toronto Property was listed on MLS for a cumulative period of approximately 14 weeks;
- (jj) The Receiver believes that the re-marketing process undertaken by Colliers and the Receiver was appropriate. The Sale Process allowed for sufficient exposure to market for the Toronto Property, for the following reasons, among others:
 - (i) During the initial sales process for the Toronto Property:
 - 1) notice of the sale was sent to approximately 3,000 parties;

- 2) the Toronto Property was listed for sale on MLS for a period of approximately 10 weeks; and
 - 3) the Toronto Property was listed on Colliers' website;
- (ii) During the re-marketing of the Toronto Property:
- 1) Colliers sent an email blast to the same 3,000 parties;
 - 2) the Toronto Property was re-listed for sale on MLS for a 4-week period;
 - 3) the Toronto Property was re-listed on Colliers's website; and
 - 4) Colliers reached out to all parties that had executed a confidentiality agreement and to the parties that submitted offers during the initial listing;
- (kk) The APS represents the best offer received for the Toronto Property. Accordingly, the Transaction provides the greatest recovery available for the Toronto Property's stakeholders in the circumstances;

E. Toronto Distribution

- (ll) The Receiver intends to distribute the proceeds from the sale of the Toronto Property upon closing the transaction for the Toronto Property in the following order of priority (such scheme of distribution being the "**Toronto Distribution**"):

- (i) payment to the City of Toronto for the property taxes owing on the Toronto Property of approximately \$202,488.80, as set out in the First Report, plus any additional property taxes, further interest or fees owing at the time of closing;
- (ii) pay any remaining unpaid fees and disbursements of the Receiver and its counsel relating to the Toronto Property.
- (iii) retention of \$100,000 as a holdback amount for the further fees and disbursements of the Receiver and its counsel to close the sale of the Toronto Property and do all things necessary to wind up the receivership administration in respect of the Toronto Property;
- (iv) payment of the remaining funds from the sale of the Toronto Property to Cameron Stephens towards the indebtedness owed to it.

F. Sealing Order

- (mm) The Receiver requests that this Court grant a Sealing Order in respect of the Confidential Appendices. The Court has already granted a similar order in respect of the Terminated APS;
- (nn) The Confidential Appendices consist of a summary of the purchase offers received by the Receiver in respect of the Toronto Property and an unredacted copy of the APS, respectively;
- (oo) The Confidential Appendices contain sensitive information, including the identity of the bidders, the value of the APS, and the value of other bids

received for the Toronto Property, the disclosure of which could adversely impact the future marketability of the Toronto Property should the Transaction not close;

- (pp) Sealing this information is necessary to maximize recoveries in this proceeding and maintain the integrity and confidentiality of key information in the Sales Process;
- (qq) The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Receiver is not aware of any party that will be prejudiced if the information is sealed or any public interest that will be served if such details are disclosed in full;
- (rr) The requested sealing order is a minimally intrusive means of protecting the confidentiality of the Confidential Appendices as it will only be in force until the closing of the sale of the Purchased Assets (as defined in the APS);

G. *The Interim SRD*

- (ss) The Receiver has received and paid monies on behalf of the Debtors for the benefit of all stakeholders, as set out in the Interim SRD;
- (tt) This Court should approve the Interim SRD;

H. Professional Fees and Disbursements

- (uu) In carrying out its duties pursuant to the Receivership Order, the Receiver and the Receiver's counsel have incurred professional fees and disbursements;
- (vv) Paragraph 18 of the Receivership Order authorizes the Receiver to periodically pay its fees and disbursements, and that of its counsel, subject to approval by the Court;
- (ww) This Court should approve the fees of the Receiver and its Counsel to fund the Receiver's continued activities for the benefit of all stakeholders;
- (xx) The provisions of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended and the inherent and equitable jurisdiction of this Court;
- (yy) Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and
- (zz) Such further and other grounds as counsel may advise and this Honourable Court may deem just.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of this Motion:

- (aaa) The Third Report and the appendices thereto; and
- (bbb) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

November 25, 2024

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Limited**

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. et al.
Respondents

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

**NOTICE OF MOTION (RETURNABLE DECEMBER 4,
2024)**

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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

FACTUM OF THE RECEIVER FOR APPROVAL AND VESTING ORDER MOTION
(Returnable December 4, 2024)

December 2, 2024

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TO: Service List

PART I. OVERVIEW

1. This motion is brought by TDB Restructuring Limited in its capacity as the Court-appointed receiver (the “**Receiver**”) of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario (the “**Kingston Property**”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**” and together with the Kingston Property, the “**Properties**”), for, among, other things, the approval of the sale of the Toronto Property.

2. In particular, the Receiver seeks Orders:

- (i) approving the sale transaction (the “**Transaction**”) in respect of the Toronto Property, as contemplated by an asset purchase agreement between the Receiver and Arjun Anand, in trust (the “**Toronto Purchaser**”), dated September 26, 2024 (the “**APS**”);
- (ii) following the Receiver’s delivery of the Receiver’s certificate substantially in the form attached as Schedule “A” to the proposed Approval and Vesting Order (the “**AVO**”), transferring and vesting all of 5004591 Ontario Inc. (the “**Debtor**”)’s right, title and interest in and to the Toronto Property as the Toronto Purchaser will direct, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
- (iii) approving the Interim Distribution (as defined below);

- (iv) approving the Third Report of the Receiver dated November 25, 2024, (the “**Third Report**”) and the Supplement to the Third Report of the Receiver dated November 28, 2024 (the “**Supplement to the Third Report**”) and the Receiver’s activities described therein;
- (v) approving the fees and disbursements of the Receiver and its counsel, as detailed in the Third Report, the fee affidavit of Arif Dhanani sworn November 22, 2024, the fee affidavit of Avrom Brown sworn November 22, 2024, and the fee affidavit of Beatrice Loschiavo sworn November 22, 2024 (together, the “**Fee Affidavits**”);
- (vi) sealing Confidential Appendix 1 and Confidential Appendix 2 to the Third Report;
- (vii) approving the Receiver’s Statement of Receipts and Disbursements for both the Toronto Property and the Kingston Property contained in the Third Report (the “**Interim SRD**”); and,
- (viii) authorizing and directing Garfinkle Biderman LLP, the solicitors to the Receiver, to release the deposit held by it, in trust, which was paid to it by 2349891 Ontario Inc. (the “**Kingston Purchaser**”) pursuant to the asset purchase agreement between the Receiver and the Kingston Purchaser (the “**Kingston APS**”) on the basis that the Kingston Purchaser defaulted on the Kingston APS and forfeited the deposit.

3. The Receiver is of the view that the relief sought in this motion, including the approval of the Transaction, is in the best interest of the Debtor's stakeholders.

PART II. FACTS

A. Background

4. On December 6, 2023, the Receiver was appointed as receiver, without security, of the Properties pursuant to an Order of this Court (the "**Appointment Order**"). The Receiver's appointment became effective on December 22, 2023.¹

5. On March 1, 2024, the Court granted an order substituting the name TDB Restructuring Limited in place of RSM Canada Limited.²

6. The Debtors' primary asset is the Toronto Property, which is the site of a residential property development.

B. Secured Creditor

7. On December 18, 2019, pursuant to a loan agreement (the "**Loan**") between Cameron Stephens Mortgage Capital Ltd. (the "**Lender**") and Conacher, 500 granted the Lender a collateral mortgage in the amount of \$15,600,000 on the Toronto Property to secure the Loan.³

8. The Lender is the only creditor with a registered charge on title to the Toronto Property.

¹ Appointment Order, Appendix A to the Third Report, Receiver's Motion Record ("**RMR**"), Tab 2A, p. 38.

² Omnibus Order, Appendix B to the Third Report, RMR, Tab 2B, p. 56.

³ Third Report, paras.33-35, RMR, Tab 2, p. 32.

9. As at November 22 2024, the amount outstanding under the Loan (and secured by the Toronto Property) is estimated to be approximately \$16 million.⁴

C. The Terminated Sale of the Toronto Property

10. On June 12, 2024, the Receiver entered into an agreement of purchase and sale for the Toronto Property (the “**Terminated APS**”) with Lakeshore Lux and Design Build Group Inc (“**Lakeshore**”).⁵

11. The Receiver sought, and obtained, an order from the Court approving the transaction on July 24, 2024.⁶

12. Lakeshore Lux then sought multiple extensions to the scheduled closing of the transaction, which closing was supposed to occur on July 30, 2024. After multiple attempts to secure a commitment from Lakeshore about the closing of the transaction, the Receiver ultimately notified Lakeshore on August 27, 2024 that it was terminating the APS due to its failure to close the transaction.⁷

D. The Re-Marketing and Sales Process

13. The Receiver immediately re-marketed the Toronto Property, and engaged in a sales process for the Toronto Property as follows.

⁴ Final Discharge Statement, Appendix H to the Third Report, RMR, Tab 2H, p. 186.

⁵ Third Report, para. 3, RMR, Tab 2, p. 24.

⁶ Third Report, para. 3, RMR, Tab 2, p. 24.

⁷ Second Report, paras. 9-15, Appendix D to the Third Report, RMR, Tab 2D, p. 95.

1. Marketing Efforts

14. The Receiver and Colliers, which had been retained for the original sale of the Toronto Property, set a bid deadline date of September 26, 2024 at 3:00 pm.⁸

15. Colliers listed the Toronto Property on MLS, and sent out an e-mail blast to its data of approximately 3,000 prospective purchasers.⁹

16. Colliers also contacted all previous bidders, and those who had signed a confidentiality agreement, to advise them that the Toronto Property was being re-marketed.¹⁰ Colliers maintained its electronic data room to provide access to confidential information pertaining to the Toronto Property to parties which had executed the Confidentiality Agreement.

2. Offers Received

17. On September 26, 2024, Colliers received two offers and one letter of intent for the Toronto Property. A subsequent offer was received on September 28, 2024. The Receiver reviewed the offers (including the late offer) with Colliers and the Lender. The Receiver determined that the offer from Toronto Purchaser was the highest and best offer, and should be accepted.¹¹

⁸ Third Report, para. 20, RMR, Tab 2, p. 29.

⁹ Third Report, para. 18, RMR, Tab 2, p. 28.

¹⁰ Third Report, para. 19, RMR, Tab 2, p. 29.

¹¹ Third Report, para. 22, RMR, Tab 2, p. 29. See also Confidential Appendix 1, submitted under seal, for a summary of the offers.

E. The APS

18. On October 7, 2024, the Receiver executed the APS with the Toronto Purchaser, subject to the approval of this Court. The salient terms of the APS include:

- (a) the APS is firm as the Toronto Purchaser has waived all conditions¹² except for the issuance of the AVO;
- (b) the Toronto Purchaser has paid the deposit required under the APS to the Receiver; and
- (c) closing of the sale contemplated in the APS is scheduled to occur within 10 business days following the date on which the AVO is granted, or such other date as agreed between the Toronto Purchaser and the Receiver.¹³

19. The Receiver is of the view that sufficient efforts were made to obtain the best price for the Toronto Property and that the marketing process was conducted fairly. The Receiver regards the APS as the most advantageous offer for the Toronto Property.¹⁴

20. The Receiver therefore recommends that this Court approve the APS and grant an Order vesting title in the purchased assets in the Toronto Purchaser or its assignee upon the closing of the Transaction.¹⁵

¹² The Toronto APS was conditional on the Toronto Purchaser's due diligence. The Toronto Purchaser subsequently indicated it was waiving its due diligence: Third Report, paras. 23-24, RMR, Tab 2, p. 29.

¹³ Third Report, para. 25, RMR, Tab 2, pp. 29-30.

¹⁴ Third Report, paras. 27-28, RMR, Tab 2, pp. 31-32.

¹⁵ Third Report, para. 29, RMR, Tab 2, p. 31.

F. Proposed Interim Distribution

21. The Receiver seeks an order authorizing it to distribute the proceeds of the sale of the Toronto Property as follows:

- (a) payment to the City of Toronto for the property taxes owing on the Toronto Property;
- (b) payment of the unpaid fees and disbursements of the Receiver and its counsel relating to the Toronto Property;
- (c) retention of \$100,000 as a holdback amount for the further fees and disbursements of the Receiver and its counsel to close the sale of the Toronto Property and do all things necessary to wind up the Receivership administration in respect of the Toronto Property; and
- (d) payment to the Lender of the balance of the funds remaining from the proceeds of sale of the Toronto Property,

(collectively, the “**Interim Distribution**”).¹⁶

G. The Confidential Appendix

22. On this motion, the Receiver also seeks an order sealing Confidential Appendix 1 and Confidential Appendix 2 to the Third Report (together, the “**Confidential Appendices**”).

¹⁶ Third Report, para. 36, RMR, Tab 2, pp. 32-33.

23. The Confidential Appendices contains a summary of offers received for the Toronto Property as well as the purchase price under the APS. If the Transaction does not close, the release of this information could potentially have an adverse influence on any subsequent sales process that the Receiver would carry out in connection with the Property.

H. Sale of the Kingston Property and Subsequent Termination

24. The Receiver also seeks relief related to the sale of the Kingston Property.

25. The Receiver entered into a purchase and sale agreement (the “**Kingston APS**”) with 2349891 Ontario Inc. (the “**Kingston Purchaser**”) on August 13, 2024.¹⁷ Pursuant to the terms of the Kingston APS, the closing of the transaction was to occur on the later of: (i) three days following the issuance of the Kingston AVO, or the next business day; or (ii) October 2, 2024, or such other date as the parties may mutually agree upon.¹⁸

26. The Receiver attended before Justice Black on October 9, 2024, in order to seek the approval of the Kingston APS. Although the putative third mortgagee on the Kingston Property raised a number of concerns at the hearing, the Court ultimately determined were “insubstantial and bordering on inappropriate”¹⁹ and approved the sale of the Kingston Property.²⁰

¹⁷ Appendix F to the Supplement to the Third Report, dated November 28, 2024 (“Supplement to the Third Report”), Supplementary Receiver’s Motion Record (“Supplementary RMR”), Tab 1F, p. 46.

¹⁸ Third Report, para. 13, RMR, Tab 2, p. 28.

¹⁹ Endorsement Approving Sale of Kingston Property, para. 11, Supplementary RMR, Tab 1A, p. 14.

²⁰ Approval and Vesting Order, Appendix B to the Supplement to the Third Report, Supplementary RMR, Tab 1B, pp. 19-24.

27. Justice Black signed the Kingston AVO on November 18, 2024, and the closing of the sale of the Kingston Property, at that point, was scheduled for November 20, 2024.

28. On November 19, 2024 the Kingston Purchaser requested a 45-day extension.²¹

On November 20, the parties agreed that:

- (a) the Kingston Purchaser would provide an additional \$500,000 non-refundable deposit by noon on November 27, 2024;
- (b) the original deposit in the amount of \$250,000 shall be non-refundable;
- (c) time continued to be of the essence; and,
- (d) the Receiver would not grant any further extensions beyond January 6, 2025.²²

29. On November 27, 2024, counsel to the Kingston Purchaser wrote to “confirm that the Purchaser is no longer in a position to provide the additional \$500,000 deposit requested by the Receiver in order to secure an extension”. The letter went on to specify that the Kingston Purchaser was providing “formal notice of the Purchaser’s inability to complete the transactions as scheduled today...”²³

²¹ E-mails between Loopstra Nixon and Garfinkle Biderman, Supplementary RMR, Tab 1C, p. 38.

²² E-mails between Loopstra Nixon and Garfinkle Biderman, Supplementary RMR, Tab 1C, p. 33.

²³ Letter from Loopstra Nixon, Supplementary RMR, Tab 1D, p. 40.

30. Despite this, the Kingston Purchaser took the position that it does not consent to the release of the existing deposit of \$250,000, and that the deposit should be returned to the Kingston Purchaser.²⁴

31. On the same day (November 27, 2024), the Receiver confirmed the termination of the Kingston APS on the basis of the Kingston Purchaser neither closing the transaction, nor fulfilling the conditions necessary for an extension (despite the Kingston Purchaser already having agreed to those conditions). The solicitors to the Receiver confirmed the Receiver's position that the deposit had been forfeited, but would not release it pending further order from the Court.²⁵

32. The Receiver thus requests that the Court authorize and direct the solicitors to the Receiver to release the deposit held by it, in trust, which was paid by the Kingston Purchaser.

PART III. ISSUES

33. The Receiver's motion raises the following three legal issues, all of which should be answered in the affirmative:

- (a) should the Court approve the APS and the Transaction contemplated therein?
- (b) should the Court approve the contemplated Interim Distribution?;

²⁴ Letter from Loopstra Nixon, Supplementary RMR, Tab 1D, p. 40.

²⁵ Termination Letter, dated November 27, 2024, Supplementary RMR, Tab 1E, p. 43.

- (c) is it appropriate for the Court to seal the Confidential Appendices to the Third Report pending the closing of the Transaction?;
- (d) should the activities, fees and interim SRD of the Receiver, and the fees of its legal counsel be approved?; and,
- (e) should the deposit provided pursuant to the Kingston APS, which is being held in trust, be released to the Receiver?

PART IV. LAW

A. *The Court Should Approve the APS*

34. The factors to be considered by this Court in its assessment of the approval of a sale by a receiver are well established. A court should consider:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there has been unfairness in the working out of the process.²⁶

35. Having regard to the foregoing, the Receiver submits and recommends that this Court should approve the APS in order to give effect to the Transaction contemplated by the APS. In particular, the Receiver notes the following:

²⁶ *Royal Bank v. Soundair Corp.*, [1991 CanLII 2727 \(ONCA\)](#) at [para 16](#) [*Soundair*].

- (a) the Toronto Property was sufficiently exposed to the market through, among other things, distribution of promotional brochures to over 3,000 potential purchasers and a public MLS listing for approximately 4 weeks (which followed an initial 10-week listing period during the first sale that was ultimately terminated);²⁷
- (b) the Receiver considered three offers and one letter of intent for the Toronto Property;²⁸
- (c) the Receiver has concluded that the offer from the Toronto Purchaser highest and best offer received;²⁹ and
- (d) the APS contains no conditions which would delay any closing.³⁰

36. As the Ontario Court of Appeal agreed with and adopted in *Soundair*:

If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval. That would be a consequence susceptible of immensely damaging results to the disposition of assets by court-appointed receivers.³¹

37. In the present case, there are no exceptional circumstances which would warrant a rejection of the Receiver's recommendation.

²⁷ Third Report, para. 27, RMR, Tab 2, pp. 30-31.

²⁸ Third Report, para. 22, RMR, Tab 2, p. 29.

²⁹ Third Report, para. 22, RMR, Tab 2, p. 29.

³⁰ Third Report, para. 25(c), RMR, Tab 2, p. 30.

³¹ *Soundair* at [para 21](#).

38. In all, the marketing process was fair and transparent and yielded the most advantageous offer for the Toronto Property. There is no basis to interfere with the Receiver's recommendation to approve the APS.³²

39. This Court should also approve the Interim Distribution. The Lender has a valid and enforceable charge on the Toronto Property in first priority and is therefore entitled to the net proceeds of the Transaction.³³ The approval of this distribution will permit the Receiver to proceed towards the conclusion of its mandate in an efficient manner, minimizing the need for the added expense of further court attendances.

B. The Court Should Seal the Confidential Appendix

40. As noted above, the Receiver seeks an Order sealing the Confidential Appendices pending the closing of the Transaction contemplated by the APS.

41. The circumstances in which this Court should seal part of a record before it were described by the Supreme Court of Canada in the case of *Sierra Club of Canada v. Canada (Minister of Finance)*.³⁴

42. In that case, the Supreme Court observed that a confidentiality order should be granted in two circumstances:

³² 1180554 Ontario Ltd. v. CBJ Developments Inc. et al. - CV-23-00707989-00CL - Ont. S.C.J. at paras. 6-7 ([Endorsement](#) of Justice Kimmel, May 29, 2024) [*"CBJ"*].

³³ Third Report, paras. 33-35, RMR, Tab 2, p. 32.

³⁴ *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41 \(CanLII\)](#) at [para. 45](#).

- (a) when an order is needed to prevent serious risk to an important interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
- (b) when the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

43. In the context of court-supervised sale proceedings, this Court has routinely applied *SierraClub* and held that it is appropriate to seal information and documentation filed in support of a motion to approve a sale where the materials “disclose the valuations of the assets under sale, the details of the bids received by the court-appointed officer and the purchase price contained in the offer for which court approval is sought”.³⁵

44. Sealing these materials is necessary to ensure that the Receiver can maximize value for the Property if the contemplated Transaction does not close and the Receiver (or someone else) markets the Toronto Property for sale again.³⁶

C. The Kingston Deposit has been Forfeited

45. The Kingston APS was an unconditional offer from the Kingston Purchaser. The Kingston Purchaser paid a \$250,000 deposit to the solicitors for the Receiver as a non-refundable deposit.³⁷

³⁵ *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, [2014 ONSC 1173 \(CanLII\)](#) at [para. 32](#) [“*GE Canada*”]. For a similar example, see *CBJ* at [paras. 13-14](#).

³⁶ *GE Canada* at [paras. 32-34](#).

³⁷ Supplement to the Third Report, para. 5, Supplementary RMR, p. 7.

46. Despite multiple extensions, the Kingston Purchaser has now indicated that it is “no longer interested in pursuing financing”, but has taken the position that its deposit should be returned to it “in full”.³⁸

47. The Kingston APS clarifies what if the sale was not completed on the Closing Date as a result of the Kingston Purchaser’s default, “the Deposit shall be forfeited to the Vendor.”³⁹

48. The Receiver has acted in good faith in the sale of the Kingston Property, and was ready, willing and able to close the transaction:

- (a) the Receiver agreed to an initial extension to November 20, 2024, at no additional cost to the Kingston Purchaser.⁴⁰
- (b) on November 20, 2024, at the request of the Kingston Purchaser the Receiver agreed to a further extension of the closing date to January 6, 2025 on terms including the payment of a further deposit by November 27, 2025. The Kingston Purchaser agreed unconditionally to the terms of the extension, including that the original deposit in the amount of \$250,000 is non-refundable.⁴¹

³⁸ Letter from Loopstra Nixon, Appendix D to the Supplement to the Third Report, Supplementary RMR, Tab 1(D), p. 40.

³⁹ Redacted Kingston APS, art. 2.5(c), Supplement to the Third Report, Supplementary RMR, Tab 1F, p. 55.

⁴⁰ Supplement to the Third Report, para. 13(c), Supplementary RMR, p. 9.

⁴¹ E-mails between Loopstra Nixon and Garfinkle Biderman, Appendix C to the Supplement to the Third Report, Supplementary RMR, Tab 1(C), p. 33.

49. The Kingston Purchaser breached the APS by (1) failing to satisfy the conditions of the further extensions by failing to provide the additional \$500,000 deposit⁴² and (2) failing to close the transaction on November 20, 2024.

50. The Kingston Purchaser asserts that it is entitled to the deposit due to the delay in the issuance of the Kingston AVO. In its view, because issuance of the Order was delayed by three weeks, the Kingston Purchaser lost the remainder of the 2024 construction season.⁴³

51. This argument fails for several reasons:

- (a) first, this is not a valid basis for breaching the Kingston APS. The parties agreed that the Kingston APS was subject to Court approval,⁴⁴ and that this condition was incapable of waiver.⁴⁵ The Kingston Purchaser further agreed that the Closing Date would be contingent on the issuance of the court order approving the sale.⁴⁶ At no point did the Kingston Purchaser make it a condition of the purchase that the transaction had to be completed in order to permit construction in the 2024 season;
- (b) second, there is no basis for the Kingston Purchase to request and agree to the terms of the extension if it was no longer interested in the Kingston

⁴² Letter from Loopstra Nixon, Appendix D to the Supplement to the Third Report, Supplementary RMR, Tab 1(D), p. 40.

⁴³ Letter from Loopstra Nixon, Appendix D to the Supplement to the Third Report, Supplementary RMR, Tab 1(D), p. 40.

⁴⁴ Redacted Kingston APS, art. 2.15(a)(i), Supplement to the Third Report, Supplementary RMR, Tab 1F, p. 59.

⁴⁵ Redacted Kingston APS, art. 4.5, Supplement to the Third Report, Supplementary RMR, Tab 1F, p. 64.

⁴⁶ Redacted Kingston APS, art. 1.1(j), Supplement to the Third Report, Supplementary RMR, Tab 1F, p. 46.

Property due to the loss of the 2024 construction season. In fact, it was the Kingston Purchaser which requested on November 20 that the closing date be extended to January 6, 2025, and then explicitly agreed to the conditions for this extension as proposed by the Receiver. Simply put, the issue of the 2024 construction season is a red herring for the Kingston Purchaser's inability to close; and

- (c) finally, the Kingston Purchaser's extension requests came *after* the Kingston AVO was issued. Therefore, the Kingston Purchaser clearly waived any delay as a result of the late issuance of the Kingston AVO.

52. It is well-established that when a purchaser repudiates an APS and fails to close the transaction, the deposit is forfeited, without proof of any damage suffered by the vendor.⁴⁷ The deposit paid by the Kingston Purchaser stood as security for the performance of the contract, and by its failure to perform, has forfeited the deposit.⁴⁸

53. Moreover, both the Kingston APS⁴⁹ as well as the parties subsequent correspondence⁵⁰ confirm that time remained of the essence. The Court of Appeal has been clear that where time is of the essence, "a time limit in an agreement is essential such that breach of the time limit will permit the innocent party to terminate the contract."⁵¹

⁴⁷ *Azzarello v. Shawqi*, [2019 ONCA 820](#) at [para. 45](#), citing *Tang v. Zhang*, [2013 BCCA 52](#) and *Redstone Enterprises Ltd. v. Simple Technology Inc.*, [2017 ONCA 282](#).

⁴⁸ *Azzarello v. Shawqi*, [2019 ONCA 820](#) at [para. 54](#), citing *Benedetto v. 2453912 Ontario Inc.*, [2019 ONCA 149](#).

⁴⁹ Redacted Kingston APS, art. 6.3, Supplement to the Third Report, Supplementary RMR, Tab 1F, p. 69.

⁵⁰ E-mails between Loopstra Nixon and Garfinkle Bideman, Appendix C to the Supplement to the Third Report, Supplementary RMR, Tab 1(C), p. 33.

⁵¹ *3 Gill Homes Inc. v. 5009796 Ontario Inc. (Kassar Homes)*, [2024 ONCA 6](#) at [para. 24](#), citing *Di Millo v. 2099232 Ontario Inc.*, [2018 ONCA 1051](#).

The Receiver was entitled to terminate the Kingston APS due to the Kingston Purchaser's default as a result of missing deadlines.

54. There is also no concern with unfairness to the Kingston Purchaser. The Receiver agreed to multiple extension requests and was fully co-operative in facilitating the closing of the transaction. The Receiver itself was able to close. Meanwhile, creditors to the Debtor will be prejudiced due to the Kingston Purchaser's default since interest on the secured charges will continue accrue while the Receiver re-markets the Kingston Property for sale. Even though damages are not necessary for the deposit to be forfeited,⁵² the forfeited deposit will address this prejudice in part.

55. The Receiver respectfully requests that the Receiver's solicitors be authorized and directed to release the deposit held by it, in trust, for the benefit of the Debtor's creditors.

D. The Activities, Fees and Interim SRD of the Receiver, and the Fees of its Legal Counsel, Should be Approved

56. The fees and disbursements incurred by the Receiver and its counsel for the period from January 1, 2024 to June 30, 2024, were previously approved by the Court pursuant to an order of the Court dated July 24, 2024.

57. The Receiver submits that the fees, activities and disbursements of the Receiver and those of its legal counsel should be approved because the Receiver and its counsel engaged diligently since July 1, 2024, among other things:

- (a) obtain the approval and sale order of the first Terminated APS;

⁵² *Azzarello v. Shawqi*, [2019 ONCA 820](#) at [para. 45](#).

- (b) negotiate further extensions with Lakeshore;
- (c) oversee the re-marketing and sale of the Toronto Property;
- (d) negotiate the APS with the Toronto Purchaser; and
- (e) prepare the Third Report and the Supplement to the Third Report.

58. The fees and disbursements of the Receiver and its counsel were incurred at each party's standard rates and charges as set out in their respective fee affidavits. The Receiver submits that these fees and disbursements are fair, reasonable and justified in the circumstances.⁵³

59. The Receiver seeks approval of the interim receipts and disbursements for both the Toronto Property and the Kingston Property. The Receiver has received and paid monies on behalf of the Debtors for the benefit of all stakeholders, as set out in the Toronto Property Interim R&D, the Kingston Property Interim R&D, and Third Report.⁵⁴ Accordingly, this Court should approve the Toronto Property Interim R&D and the Kingston Property Interim R&D.

PART V. ORDER REQUESTED

60. The Receiver respectfully requests that this Court make an order in the form of the draft AVO and ancillary relief order as uploaded on Case Centre.

⁵³ See Fee Affidavit of Arif Dhanani, sworn November 22, 2024, Appendix K to the Third Report, RMR, Tab 2K, p. 192; Fee Affidavit of Beatrice Loschiavo, sworn November 22, 2024, Appendix L to the Third Report, RMR, Tab 2L, p. 210; Fee Affidavit of Avrom Brown, sworn November 22, 2024, Appendix M to the Third Report, RMR, Tab 2M, p. 232.

⁵⁴ Toronto Property Interim R&D, Appendix I to the Third Report, RMR, Tab 2I, p. 188; Kingston Property Interim R&D, Appendix J to the Third Report, RMR, Tab 2J, p. 190.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of December, 2024.

A handwritten signature in blue ink, appearing to be 'JL' or 'RS', is positioned above a horizontal line.

Jeffrey Larry / Ryan Shah

SCHEDULE “A” – AUTHORITIES CITED

1. *GE Canada Real Estate Financing Business Property Co. v. 1262354 Ontario Inc.*, [2014 ONSC 1173 \(CanLII\)](#).
2. *Royal Bank v. Soundair Corp.*, [1991 CanLII 2727 \(ONCA\)](#).
3. *Sierra Club of Canada v. Canada (Minister of Finance)*, [2002 SCC 41 \(CanLII\)](#).
4. *1180554 Ontario Ltd. v. CBJ Developments Inc. et al.* - CV-23-00707989-00CL – Ont. S.C.J. (Commercial List) ([Endorsement](#) of Justice Kimmel, May 29, 2024).
5. *3 Gill Homes Inc. v. 5009796 Ontario Inc. (Kassar Homes)*, [2024 ONCA 6](#), citing *Di Millo v. 2099232 Ontario Inc.*, [2018 ONCA 1051](#).
6. *Azzarello v. Shawqi*, [2019 ONCA 820](#)

**CAMERON STEPHENS MORTGAGE
CAPITAL LTD.**

-and-

CONACHER KINGSTON HOLDINGS INC. et al.

Applicant

Respondents

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT
TORONTO

**FACTUM OF THE RECEIVER FOR APPROVAL AND
VESTING ORDER MOTION
(RETURNABLE DECEMBER 4, 2024)**

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Lawyers for the Receiver, TDB Restructuring Limited

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

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

SUPPLEMENTARY FACTUM OF THE RECEIVER
(Returnable December 4, 2024)

December 3, 2024

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**Lawyers for the Receiver, TDB Restructuring
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TO: Service List

A. Background

1. This is a motion brought by TDB Restructuring Ltd, in its capacity as the Court-appointed receiver (the “**Receiver**”) for the approval of the sale transaction contemplated by an agreement of purchase and sale between the Receiver and Arjun Anand in trust (the “**Purchaser**”) made as of September 26, 2024 (the “**APS**”).

2. The Receiver’s motion to approve the APS is scheduled for December 4, 2024. In connection with that motion, the Receiver filed a factum addressing its recommendation that the APS should be approved (the “**First Factum**”).¹

3. The day before hearing, the Receiver received two additional offers as well as one expression of intent to submit an offer for the purchase of the Toronto Property, each of which was higher than the offer made by the Purchaser.

4. The Receiver has placed these offers before the Court in a Confidential Second Supplement to the Third Report of the Receiver.

5. The additional offers put the following additional issue before the Court: under what circumstances should a court consider or accept a late, but higher offer from an unsuccessful bidder?

¹ Unless otherwise defined, all capitalized terms shall have the meanings ascribed to such terms in the First Factum.

B. *The Consideration of Late but Higher Bids*

6. In an effort to assist the Court on this motion, the Receiver has canvassed the relevant caselaw in circumstances where, as here, a higher offer is presented after the conclusion of the sales process but before the sale approval motion.

7. The case law establishes that where the sales process was fair, the Court will only refuse to approve the existing offer where the new offer is “substantially higher” than the existing offer.

8. In this case, the Receiver is of the view that the high threshold for setting aside the APS is not met.

9. Courts have rarely refused to approve the original offer on the basis that a new offer is “substantially higher”. Ultimately, where the receiver’s process is fair, and its decision to enter into an agreement of purchase and sale was reasonable and sound at the time it was made, courts are generally unwilling to set aside this decision simply because a later, higher bid is made.²

10. Where the difference between the accepted offer and the late, higher offer is not “substantial”, courts generally decline to interfere with the receiver’s sales process. For example:

² *Crown Trust Co. et al. v. Rosenberg et al.*, [1986 CanLII 2760](#) (Ont. Sup. Ct.) citing *Re Selkirk* (1986), 58 C.B.R. (N.S.) 245 (Ont. S.C. Bkcy.).

- (a) In *Re 1730960 Ontario Ltd*, the court held that an 8% difference was insufficient to suggest that the accepted offer was artificially low and should be rejected by the courts.³
- (b) In the CCAA context, Chief Justice Morawetz (as he now is) refused to postpone the approval of an asset purchase agreement where a late entrant made a non-binding offer that was 30% higher than the offer that was subject to approval. Even in that case, Justice Morawetz was satisfied that the higher offer, on its face, did not “lead to an inference that the strategy employed by the Monitor was inadequate, unsuccessful, or improvident, nor the price was unreasonable.”⁴
- (c) Recently, the Saskatchewan Court of Appeal rejected the appeal of a disappointed purchaser who had tendered a \$2.8 million late offer, which was 27.3% higher than the \$2.2 million successful offer approved by the Court. In the Court’s view, accepting a late bid would damage the integrity of the court-mandated sales process, impacting on the ability to secure the highest possible price in other cases.⁵

C. Application to the APS

11. Where there is a late but higher offer, the threshold question for the court remains the same: whether the purchase price in the receiver’s recommended agreement of

³ *1730960 Ontario Ltd. (Re)*, [2009 CanLII 37909](#) at [para. 26](#) (Ont. Sup. Ct.).

⁴ *Terrace Bay Pulp Inc., Re*, [2012 ONSC 4247](#) at [para. 54](#).

⁵ *Smith Street Lands Ltd. v KEB Hana Bank of Canada*, [2020 SKCA 41](#) at [paras. 38-41](#).

purchase and sale is “so unreasonably low ... that the receiver was improvident in accepting it.”⁶

12. In this case, the First Factum sets out the comprehensive marketing efforts undertaken by the Receiver. The existence of the other offers confirms the reasonableness of the purchase price, since the late offers are only marginally (6.7%-14.2%) higher. The purchase price in the APS before the court falls squarely within the range of offers received, and importantly, was compliant with the sales process.

13. Finally, the overriding concern with integrity, fairness and predictability of the court-ordered sales process militate in favour of the approval of the conforming, successful bid. As Justice Cumming pointed out in *Re 1730960 Ontario Ltd*, “[i]t is unfair and objectionable for a party to wait until another bid is made and has been accepted by the Receiver and then to make a bid which is marginally higher and ask the Court to not approve the agreement of purchase and sale resulting from the accepted bid.”⁷

14. Here, the Purchaser has acted in good faith and is a *bona fide* third party purchaser. The existence of marginally higher bids, submitted on the eve of the hearing, are not sufficient to displace the Receiver’s recommendation set out in its Third Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 3rd day of December, 2024



Jeffrey Larry / Ryan Shah

⁶ *Royal Bank v. Soundair*, 1991 CarswellOnt 205 at para. 30.

⁷ *1730960 Ontario Ltd. (Re)*, [2009 CanLII 37909](#) at [para. 26](#) (Ont. Sup. Ct.).

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

-and-

CONACHER KINGSTON HOLDINGS INC. et al.

Applicant

Respondents

**ONTARIO
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PROCEEDING COMMENCED AT
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**SUPPLEMENTARY FACTUM OF THE RECEIVER FOR
(RETURNABLE DECEMBER 4, 2024)**

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SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-23-00701672-00CL DATE: DECEMBER 4, 2024

NO. ON LIST: 2

TITLE OF PROCEEDING: CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS INC. ET AL

BEFORE: JUSTICE W.D. BLACK

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ENDORSEMENT OF JUSTICE W.D. BLACK:

- [1] As counsel for the Receiver aptly put it, there has been a “flurry of activity” in this matter in the last 12-24 hours or so before the time set for the hearing, such that it became apparent that more time would be required for various interested parties to exchange and consider one another’s materials, and more time would be required for argument. A half-hour had been booked for the hearing, based on the state of the record at the time the appointment was made, but, given the aforementioned flurry, that proved to be inadequate.
- [2] In simple summary terms, in circumstances in which the Receiver was seeking approval of a proposed sale transaction for the “Islington” or “Toronto” property (as defined in the materials), a handful of additional offers, and certain evidence purporting to confirm a considerably higher value for the property at issue, arrived in the hours before the hearing.
- [3] I felt it was not realistic or fair to all concerned to rush the hearing to conclusion in the circumstances, and so, with a view to minimizing the delay but accommodating the additional information and submissions, I will now hear the matter on Tuesday, December 10, 2024, at 8:30 a.m. In the meantime, the Receiver may file any additional materials that it sees fit to file in response to the late-breaking flurry of additional information received.
- [4] While it may well be that now all offers that will be made are on the table, if any parties wish to file additional offers, I have directed that this be done by no later than Noon on Monday, December 9, so that the Receiver has a realistic opportunity to consider any such additional information.



W.D. BLACK J.

DATE: NOVEMBER 4, 2024



SUPERIOR COURT OF JUSTICE

COUNSEL SLIP/ ENDORSEMENT FORM

COURT FILE NO.: CV-23-00701672-00CL DATE: DECEMBER 10, 2024

NO. ON LIST: 1

TITLE OF PROCEEDING: **CAMERON STEPHENS MORTGAGE CAPITAL LTD. v. CONACHER KINGSTON HOLDINGS INC. et al**

BEFORE: **JUSTICE W.D. BLACK**

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ENDORSEMENT OF JUSTICE W.D. BLACK:

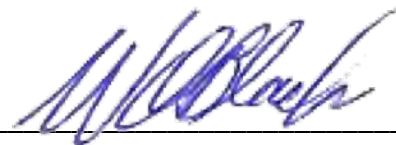
- [1] These parties were before me last week, on December 4, 2024. At that time, as my brief endorsement of that day reflects, there had been considerable activity in the hours leading up to the time appointed for the hearing, including new last-minute offers to purchase the “Toronto Property” that was the subject of the appointment.
- [2] In the circumstances, I directed that the parties should have an opportunity to exchange their materials and submissions in a slightly less compressed fashion, and that we would reconvene today (December 10, 2024).
- [3] Since the parties were before me last week, there has been one significant development. That is, 1001079582 Ontario Inc (“100”), a would-be purchaser of the Toronto Property delivered a further offer on Saturday December 6, 2024, (the “Third Offer”) at a higher price than its two previous offers.
- [4] On December 4, and until the arrival of this latest offer, the Receiver’s position had been, even-handedly but firmly, to the effect that the prior offers from 100, although higher than the offer/price (the “subject offer” or the “subject price”) in the transaction for which the Receiver was seeking approval (the “subject transaction”), was not “substantially higher” than that price so as to raise concerns about the providence of the proposed sale.
- [5] In its supplementary factum for purposes of the December 4 hearing, the Receiver had reviewed certain caselaw in which late offers ranging from 8% to 30% higher than the offers subject to approval in those cases had not led to a conclusion that the subject price was unreasonable, or that the process undertaken to obtain the subject price was unreasonable or flawed.
- [6] In the circumstances of last week, in reliance on those cases, the Receiver’s position was that it had run a comprehensive marketing effort, that the (existing) purchaser (the “subject purchaser”), had “acted in good faith” and was a “*bona fide* third party purchaser” and that the “existence of marginally higher bids, submitted on the eve of the hearing, are not sufficient to displace the Receiver’s recommendation set out in its Third Report.”
- [7] That recommendation, stressing the “overriding concern with integrity, fairness and predictability of the court-ordered sales process,” was that the court should approve the conforming, successful (subject) bid. The Receiver reminded the court of the words of Cumming J. in *1730960 Ontario Ltd. (Re)*, in which His Honour said “[i]t is unfair and objectionable for a party to wait until another bid is made and has been accepted by the Receiver and then to make a bid that is marginally higher and ask the Court to not approve the agreement of purchase and sale resulting from the accepted bid.”
- [8] The Third Offer, however, is 37% higher than the subject price.
- [9] While the Receiver, quite appropriately, stands by its submissions about the integrity of the process, and the worrisome precedent associated with giving effect to an offer received very late in the process (and in the face of the subject offer that the Receiver has accepted and recommended), the Receiver also clearly recognizes that at a certain level, a late-breaking offer can and perhaps must be considered simply by dint of its value.
- [10] It is apparent that the Receiver allows that the Third Offer may be in that category. Before me today Receiver’s counsel submitted that, albeit the Receiver’s first position remains that the proposed subject

transaction should be approved, it now says that, as a second possibility, if the court is persuaded that 37% is a sufficiently higher price to qualify as “substantially higher” such that that the subject price risks improvidence, then the Receiver suggests a further “auction” process whereby the bidders are asked to submit their best offers by a specified date in the near term.

- [11] In determining what to do in these circumstances, I first observe that I regard the circumstances as unique, likely singular, and unlikely to be replicated in future (or certainly not often).
- [12] In that regard, I heard submissions from counsel for the purchaser whose offer is the subject of the approval motion, pointing to the specter of the unpredictable free-for-all that will ensue if I fail to approve the subject transaction and countenance 11th hour offers like the Third Offer.
- [13] I do not regard that as a high risk, let alone an inevitable consequence. Again I find that the circumstances before me are unique and unlikely to be regularly repeated.
- [14] I should note that, on the other side of the fence, I also reject certain submissions on behalf of 100’s bid, offered to suggest that in fact the equities here favour my approval of – or at least a re-opening of the process to recognize and make room for consideration of – the Third Offer.
- [15] Those submissions include the assertion that 100 stands in the shoes of a beneficial owner of the Toronto Property, and that its offer is akin to a redemption.
- [16] The ownership argument is based on the fact that AJGL Group Inc. (“AJGL”) is the beneficial owner of the shares of 5004591 Ontario Inc. and beneficial owner of 2849, 2851, 2853, 2855, and 2857 Islington Avenue in Toronto, being the Toronto Property.
- [17] It is clear that AJGL assembled the five properties making up the Toronto Property and developed them over a number of years, ultimately obtaining planning approval for a 110-unit mid-rise condo building which Colliers (engaged by the Receiver) marketed for sale in the receivership.
- [18] It is as a result of that ownership and that “sweat equity” that AJGL, via 100 (hereafter AJGL and 100 will be referred to from time to time collectively as “AJGL”), seeks “to acquire ownership back from the Receiver by submitting the highest bid.” AJGL submits that, as such, its position is “analogous to that of a mortgagor seeking to redeem a mortgage.”
- [19] AJGL argues that this ownership interest puts it in a unique position, different than the competing bidder in all of the cases on which the Receiver relies in its argument. It says that whereas the cases in the Receiver’s factum involve “disinterested third-parties as bidders” AGJL is instead a “beneficial owner of the [Toronto] Property seeking to have its equitable right to redeem the [Toronto] Property recognized and protected by the Court.”
- [20] I do not accept that AJGL is akin to a beneficial owner seeking to redeem.
- [21] A redemption of the mortgage financing here would require payment of roughly four times the amount of the Third Offer. So, while the Third Offer is potentially propitious, and while the past ownership stake may mean that acquiring the Toronto Property has unique value for AJGL, the Third Offer is not fairly characterized as being in the nature of a redemption.

- [22] I am prepared to give modest credence to AJGL's related argument that, inasmuch as the subject purchaser would be aware of the former owner's interest, and aware that the former owner may seek to reclaim ownership, the subject purchaser's argument that a late-breaking offer from the former owner is not within the reasonable expectation of the subject purchaser may be somewhat attenuated.
- [23] In addition, recognizing that it could be criticized for "lying in the weeds," AJGL offers an explanation for not submitting a bid before the bid deadline. It says that it believed that the Kingston Property (also a part of the receivership, and for which a sale that was approved earlier this fall did not close) would be sold first, and that there would be sufficient proceeds from that sale that the Toronto Property would not ultimately be sold. AJGL says that this was its business judgment, which proved to be incorrect, but that its decision was taken in good faith, and not with a view to "waiting in the wings."
- [24] While I do not dismiss this explanation out of hand, for the most part, like AJGL's past ownership interest and its claim to an entitlement to an equitable claim, I view the purported excuse for the late offer as largely irrelevant.
- [25] I also reject AJGL's assertions that Colliers, in particular, on which the Receiver relied for advice and guidance with respect to the sale process, failed to provide proper advice, and failed in particular to ensure that the Toronto Property was exposed to the residential market in addition to that for developers, such that the sale and marketing effort was flawed.
- [26] I understand the impetus for AJGL making these arguments, but, as with the over-reaching claims about AJGL's purported rights to equitable redemption, I find these arguments insubstantial and unpersuasive, and again for the most part frankly irrelevant.
- [27] What is relevant, and the consideration that concerns and compels me, is the sheer size of the Third Offer.
- [28] Not surprisingly, in light of the 37% larger amount of the Third Offer, it has attracted the support of various parties with a potential stake in the proceeds. Ms. Greenspoon-Soer for the applicant Cameron Stephens Mortgage Capital Ltd., Mr. Taylor for 2858087 Ontario Inc. and Issam A. Saad, creditors of relevant entities, and Mr. Mosonyi on behalf of the estate trustee of the late Nicholas Kyriacopoulos each indicate, albeit for slightly different reasons, that their respective clients favour recognition of the Third Offer, and a process to include AJGL/100 with a view to maximizing the return for the Toronto Property, rather than approval of the subject transaction.
- [29] As noted, despite its appropriately stated concerns about the integrity of the process, the 37% delta between the Third Offer and the subject price caused the Receiver to suggest, as an alternative to approval of the subject offer, a further process to ensure that the value of the Third Offer is captured and maximized.
- [30] In the unique circumstances as described, I find that this is the preferable approach.
- [31] I do so without suggesting that the subject purchaser acted in anything other than good faith.
- [32] I do so, also, with an appreciation of the need to preserve the integrity and predictability of the marketing and sale process within receiverships, and the reasonable expectation in the vast majority of cases that the process will yield a value-maximizing result that should not be subverted by late-breaking offers.

- [33] As noted, I do not find that there are any flaws with the sale and marketing process undertaken here; to the contrary I find that the conduct of the Receiver, and those involved in the process, including Collier, was unassailable.
- [34] Nonetheless I find that the magnitude by which the Third Offer exceeds the subject price does in fact qualify as "substantially higher," and that it is not appropriate or in the interests of a majority of stakeholders to leave that much money "on the table."
- [35] As such, and subject to input from the Receiver about any fine-tuning required, I am ordering the process (the "Proposed Auction Process"), set out in paragraph 79(b) of AJGL's Aide Memoire, save and except that the deadline for further bids should be 5:00 p.m. on December 16 (rather than December 18 as suggested in that paragraph). To be clear, as will be evident, the subject purchaser is able to participate in this further process, and so is not precluded from making a further bid to purchase the Toronto Property.
- [36] In the course of its submissions, acknowledging the regrettable lateness of its bids (including the Third Offer) AJGL offered that, if the subject purchaser does not remain the successful bidder following the Proposed Auction Process, AJGL will reimburse the subject purchaser for its reasonable legal costs associated with the process to date. I find that to be a fair proposal, and direct AJGL to do so if we end up in that scenario.
- [37] AJGL requested the right, which I allowed, to file further written submissions after the time allotted for the hearing had elapsed. The further submissions, which I have reviewed, ask that the vesting order that will be required for the sale of the Toronto Property include a particular provision.
- [38] At the time that I granted AJGL the right to file the supplementary written submission, I also confirmed that the Receiver would have an opportunity to respond, also in writing. At the time of preparing this endorsement I have not yet received the Receiver's position.
- [39] Inasmuch as the issue with respect to the insertion or not of that clause at issue relates to an approval of a transaction not yet in place, and inasmuch as there is some urgency to deal with the process for selling the Toronto Property, I will defer my consideration and determination of the issue regarding the proposed insertion of the clause until such time as I hear from the Receiver as to its position.



W.D. BLACK J.



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

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE

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WEDNESDAY, THE 10TH

JUSTICE BLACK

)

DAY OF DECEMBER, 2024

)

CAMERON STEPHENS MORTGAGE CAPITAL LTD.

Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. and 5004591 ONTARIO INC.

Respondents

ORDER

(SALES PROCESS)

THIS MOTION, made by TDB Restructuring Limited, in its capacity as receiver and manager (in such capacity, the “**Receiver**”) of the lands and premises municipally known as 311 Conacher Drive, Kingston, Ontario (the “**Kingston Property**”) and 2849, 2851, 2853, 2855 and 2857 Islington Avenue, Toronto, Ontario (the “**Toronto Property**” and together with the Kingston Property, the “**Properties**”) for an order for an approval and vesting order in respect of the Toronto Property was heard this day at the courthouse at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion of the Receiver, the Third Report of the Receiver dated November 25, 2024 (the “**Third Report**”), the Supplement to the Third Report of the Receiver dated November 28, 2024 (the “**Supplement to the Third**”

Report”), the Second Supplement to the Third Report of the Receiver dated December 3, 2024 (the “**Second Supplement to the Third Report**”), the Third Supplement to the Third Report of the Receiver dated December 7, 2024 (the “**Third Supplement to the Third Report**”), the Factum of the Receiver, the Supplementary Factum of the Receiver, the First Affidavit of Simion Kronenfeld, the Second Affidavit of Simion Kronenfeld, the Third Affidavit of Simion Kronenfeld, the Affidavit of Carly Vande Weghe, the First Affidavit of Jamie Erlick, the Second Affidavit of Jamie Erlick, the Third Affidavit of Jamie Erlick, the Affidavit of Vincent Zhang, the First Aide Memoire of AJGL Group Inc. and 1001079582 Ontario Inc., the Second Aide Memoire of AJGL Group Inc. and 1001079582 Ontario Inc., the Receiver’s Responding Submissions to the Second Aide Memoire of AJGL Group Inc. and 1001079582 Ontario Inc., the Factum of Issam A. Saad and 2858087 Ontario Inc., the Aide Memoire of Arjun Anand (in trust for a company to be formed) and on hearing the submissions of counsel for the Receiver and the other parties listed on the counsel slip, no one appearing for any other party although properly served as appears from the Lawyer’s Certificate of Service of Ryan Shah, dated November 25, 2024 and the Affidavit of Service of Beatrice Loschiavo, dated November 29, 2024:

A. Definitions

1. THIS COURT ORDERS that for the purposes of this Order, the following definitions apply:

- (a) “**Anand**” means Arjun Anand (in trust for a company to be formed);
- (b) “**Bid Deadline**” means December 16, 2024 at 5:00 PM E.S.T.; and
- (c) “**Potential Bidders**” mean all persons who, as of December 10, 2024, have submitted to the Receiver offers to purchase the Toronto Property which term includes, for certainty, 1001079582 Ontario Inc. and Anand.

B. Approval and Vesting Order

2. THIS COURT HEREBY does not approve the sale transaction in respect of the Toronto Property as contemplated by an Agreement of Purchase and Sale as between the Receiver and Anand, dated September 26, 2024 (the “**Transaction**”).

3. THIS COURT HEREBY does not approve the proposed sale transaction in respect of the Toronto Property as contemplated by an Agreement of Purchase and Sale submitted to the Receiver by 1001079582 Ontario Inc. on December 6, 2024.

4. THIS COURT HEREBY dismisses the Receiver’s motion seeking an Approval and Vesting Order approving the Transaction.

C. Final Sales Process

5. THIS COURT ORDERS AND DIRECTS that, beginning forthwith and continuing until the Bid Deadline, the Receiver shall solicit and consider further offers to purchase the Toronto Property from Potential Bidders (such process being the “**Final Sales Process**”).

6. THIS COURT ORDERS that, for certainty, the Final Sales Process shall conclude at the Bid Deadline and that the Receiver shall not consider offers for the purchase of the Toronto Property received after the Bid Deadline.

7. THIS COURT ORDERS that the Receiver shall forthwith advise the Potential Bidders that all such persons shall have a final opportunity to submit an offer for the purchase of the Toronto Property in the Final Sales Process.

8. THIS COURT ORDERS that, following the Bid Deadline:

- (a) the Receiver shall review the offers it received in the Final Sales Process prior to the Bid Deadline and, in its discretion, determine which offer the Receiver intends to accept and recommend to the Court for approval (such successful bid being the “**Successful Bid**”); and
- (b) the Receiver shall promptly thereafter file and serve a motion seeking an approval and vesting order in respect of the transaction contemplated by the Successful Bid.

D. Reimbursement of Anand

- 9. If Anand is not the offeror of the Successful Bid, AJGL Group Inc. shall reimburse Anand for its reasonable legal costs associated with the Transaction up to the date hereof.
- 10. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.



Justice W.D. Black

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

CAMERON STEPHENS MORTGAGE CAPITAL LTD.
Applicant

-and-

CONACHER KINGSTON HOLDINGS INC. et al.
Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

ORDER
(SALES PROCESS)

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Applicant/Respondent in Appeal

-and- CONACHER KINGSTON HOLDINGS INC. AND 5004591
ONTARIO INC.

Respondents/Respondents in Appeal

Court of Appeal File No. COA-24-CV-1328

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

COURT OF APPEAL FOR ONTARIO

PROCEEDING COMMENCED AT
TORONTO

**COMPENDIUM OF THE RESPONDENTS,
AJGL GROUP INC.
AND 1001079582 ONTARIO INC.**

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