



Court File No. CV-23-00706813-00CL

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

THE HONOURABLE

)

TUESDAY, THE 8th

JUSTICE KIMMEL

)

DAY OF OCTOBER, 2024

)

B E T W E E N :

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN 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**

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property listed on Schedule “B” of the Sale Agreement (as defined below) (the “**Real Property**”) and all the other assets, undertakings and properties of each of the Respondents (collectively, the “**Debtors**”), and all proceeds thereof (together with the Real Property, the “**Property**”), for an order, *inter alia*, (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Genesis Mortgage

Investment Corporation, Elm Acquisitions Corp., and Dorr Capital Corporation, (collectively, the “**Purchaser**”), as purchaser, dated March 4, 2024, as amended (the “**Sale Agreement**”), as assigned to GFD 1333W Limited Partnership on October 7, 2024, and vesting in 1333W Lands Ltd. (the “**Assignee**”) the Respondents' right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), (ii) authorizing and directing the Receiver to terminate and disclaim certain of the of the existing agreements of purchase and sale with respect to the purchase of condominium units, (iii) approving a deposit return protocol (the “**Deposit Return Protocol**”) for deposits paid by condominium purchasers who have their existing agreements of purchase and sale with respect to the purchase of condominium units disclaimed or terminated, and (iv) sealing the summary of offers attached as Confidential Appendix ”1” to the Second Report of the Receiver dated September 27, 2024 (the “**Second Report**”), was heard this day by judicial videoconference via Zoom.

ON READING the Second Report of the Receiver, and the appendices thereto, the Supplement to the Second Report of the Receiver dated October 4, 2024 (the “**Supplementary Second Report**”), and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicant, Westmount Guarantee Services Inc., CMLS Financial Ltd., and such other parties that appear on the counsel slip, no one appearing for any other person, although properly served as appears from the affidavit of Chad Kopach sworn September 30, 2024, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion dated September 27, 2024 (the “**NOM**”), the related motion material filed in support of that NOM, including the Receiver’s Motion Record, Volume 1 dated September 27, 2024, and the Receiver’s

Motion Record, Volume 2 (Confidential Appendix) dated September 27, 2024 (collectively, the “**Motion Material**”), be and is hereby abridged, that service of the NOM and the Motion Material is hereby validated, and that further service thereof is hereby dispensed with.

APPROVAL AND VESTING

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Assignee.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Assignee substantially in the form attached as **Schedule “A”** hereto (the “**Receiver's Certificate**”), all of the Debtor’s right, title and interest in and to Purchased Assets described in the Sale Agreement, including, without limitation, the Real Property listed on **Schedule “B”** hereto, shall vest absolutely in the Assignee, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, constructive, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Justice Cavanagh made on October 12, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property*

Security Act (Ontario) or any other personal property registry system; (iii) all mortgages, pledges, charges, liens, debentures, trust deeds, assignments by way of security, security interests, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in, the Purchased Assets or any part thereof or interest therein, and any agreements, leases, options, easements, rights of way, restrictions, executions, or other encumbrances (including notices or other registrations in respect of any of the foregoing) affecting legal or beneficial title to the Purchased Assets or any part thereof or interest therein, including but not limited to any of the foregoing which are registered on title to the Purchased Assets following the date hereof but prior to the registration in the Land Registry Office for the Land Titles Division of Waterloo (No. 58) of an Application for Vesting Order to which this Order is attached; (iv) all rights and claims of any condominium purchasers pursuant to any existing agreements of purchase and sale with respect to the purchase of condominium units which are terminated or disclaimed; and (v) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “D”**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Waterloo (No. 58) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Assignee as the owner of the subject Real Property identified in

Schedule “B” hereto in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “C”** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Respondents and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Respondents,

the vesting of the Purchased Assets in the Assignee pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of any of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other

reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

TERMINATION AND DISCLAIMER OF AGREEMENTS OF PURCHASE AND SALE

7. **THIS COURT ORDERS** that the Receiver is hereby authorized, on or following closing of the Transaction, to terminate and disclaim all of the existing agreements of purchase and sale with respect to the purchase of condominium units within Tower B in the Project (as each term is defined in the Second Report) and, upon the delivery of the Receiver's Certificate in accordance with this Order, any rights or claims thereunder or relating thereto are not continuing obligations effective against the Real Property or binding on the Assignee in any way whatsoever.

8. **THIS COURT ORDERS** that the Receiver is hereby authorized, following closing of the Transaction, with notice to be provided by the Assignee to the Receiver within 120 days of the closing of the Transaction, to terminate and disclaim the existing agreements of purchase and sale with respect to the purchase of condominium units within Tower A (as defined in the Second Report) in the Project that are not being assumed by the Assignee, and upon the Receiver terminating and disclaiming such agreements of purchase and sale, any rights or claims thereunder or relating thereto shall not be continuing obligations effective against the Real Property or binding on the Assignee in any way whatsoever.

DEPOSIT RETURN PROTOCOL

9. **THIS COURT ORDERS** that the Deposit Return Protocol attached as Appendix "A" to Supplementary Second Report dated October 4, 2024, be and same is hereby approved.

SEALING AND GENERAL

10. **THIS COURT ORDERS** that the summary of offers received in the Sale Process and attached as Confidential Appendix “1” to the Second Report, shall be and are hereby sealed, kept confidential and shall not form part of the public record until the earlier of (a) 30 days following the closing of the Transaction, or (b) further Order of this Court.

11. **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.

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



Digitally signed by
Jessica Kimmel
Date: 2024.10.09
15:14:48 -04'00'

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-23-00706813-00CL

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SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

RECEIVER’S CERTIFICATE

RECITALS

I. Pursuant to an Order of The Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on October 12, 2023, KSV Restructuring Inc. (“**KSV**”) was appointed as receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property listed on Schedule “B” of the Sale Agreement (as defined below) (the “**Real Property**”) and all the other assets, undertakings and properties of each of the Respondents, and all proceeds thereof (together with the Real Property, the “**Property**”).

II. Pursuant to an Order of the Court dated October 8, 2024, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and Genesis Mortgage Investment

Corporation, Elm Acquisitions Corp., and Dorr Capital Corporation (collectively, the “**Purchaser**”), as purchaser, dated March 4, 2024, as amended (the “**Sale Agreement**”), and provided for the vesting in 1333W Lands Ltd. (the “**Assignee**”) of the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

III. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Assignee has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

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KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver and manager, and not in its personal capacity or in any other capacity

Per: _____
Name:
Title:

Schedule “B” – Legal Description of the Property

PIN 22590-0550 (LT) in LRO No. 58

LOTS 29, 30, 31, 32, 33, 34, 45, 46, 47, 48, 49, 90 AND 91 AND PART LOTS 12, 13, 14, 15, 16, 17, 43, 44, 86, 87, 89 AND 90, PLAN 322, AND LOT 127 STREETS AND LANES, (BEING A LANE, PLAN 322, CLOSED BY BY-LAW AS IN 175368) AND PART LOT 126 STREETS AND LANES, (BEING PART OF HERMAN AVENUE, PLAN 322, CLOSED BY BY-LAW AS IN 175368) AND PART LOT 141 STREETS AND LANES, (BEING PART OF HERMAN AVENUE, PLAN 322, CLOSED BY BY-LAW AS IN 210008) AND PART LOT 173 STREETS AND LANES, (BEING PART OF WEBER STREET, PLAN 322 (RENAMED SUNNYSIDE AVENUE) CLOSED BY BYLAW AS IN 270276), ALL BEING PARTS 1, 2 AND 3, PLAN 58R-21405, SUBJECT TO AN EASEMENT AS IN 687124, SUBJECT TO AN EASEMENT IN GROSS OVER PART 3, PLAN 58R-21405 AS IN WR1306081, SUBJECT TO AN EASEMENT IN GROSS OVER PART 2, PLAN 58R-21405 AS IN WR1324371, SUBJECT TO AN EASEMENT AS IN WR1326075, CITY OF KITCHENER

Schedule “C”- List of Encumbrances to be expunged and discharged

- 1) Instrument No. WR508428 registered December 7, 2009 being a Notice Of Change Of Address For Service—Instrument.
- 2) Instrument No. WR1299640 registered November 24, 2020 being a Charge to and in favour of WESTMOUNT GUARANTEE SERVICES INC., in the original principal amount of \$20,000,000;
- 3) Instrument No. WR1306083 registered Dec. 17, 2020 being a Postponement in favour of The Corporation of the City of Kitchener;
- 4) Instrument No. WR1324372 registered March 12, 2021 being a Postponement in favour of The Regional Municipality of Waterloo;
- 5) Instrument No. WR1367209 registered August 17, 2021 being a Charge to and in favour of CMLS Financial Ltd., Computershare Trust Company of Canada, and Genesis Mortgage Investment Corp., in the original principal amount of \$82,000,000;
- 6) Instrument No. WR1367210 registered August 17, 2021, being a Notice of Assignment of Rents General in favour of CMLS Financial Ltd., Computershare Trust Company of Canada, and Genesis Mortgage Investment Corp.;
- 7) Instrument No. WR1367215 registered August 17, 2021 being a Postponement in favour of CMLS Financial Ltd., Computershare Trust Company of Canada, and Genesis Mortgage Investment Corp.;
- 8) Instrument No. WR1507433 being a Notice registered May 8, 2023 amending WR1299640;
- 9) Instrument No. WR1507448 registered May 8, 2023 being a Charge to and in favour of Corfinancial Corp. in the original principal amount of \$3,500,000;
- 10) Instrument No. WR1518428 registered July 6, 2023 is a Construction Lien from Gold Star Drywall Services Inc. in the claimed amount of \$787,259.65.
- 11) Instrument No. WR1518912 registered July 7, 2023 is a Construction Lien from Dean-Lane Contractors Inc. in the claimed amount of \$2,157,415.
- 12) Instrument No. WR1519072 registered July 10, 2023 is a Construction Lien from Conestoga Roofing & Sheet Metal Ltd. in the claimed amount of \$311,562.
- 13) Instrument No. WR1521083 registered July 19, 2023 is a Construction Lien from Aluminum Window Designs Ltd. in the claimed amount of \$1,662,600.

- 14) Instrument No. WR1521506 registered July 20, 2023 is a Construction Lien from Greentech Sealants Inc. in the claimed amount of \$220,190.
- 15) Instrument No. WR1521825 registered July 21, 2023 is a Construction Lien from Classic Tile Contractors Limited in the claimed amount of \$591,923.
- 16) Instrument No. WR1522293 registered July 25, 2023 is a Construction Lien from Stubbe's Precast Commercial Ltd. and Stubbe's Precast Inc. in the claimed amount of \$1,374,127.
- 17) Instrument No. WR1522297 registered July 25, 2023 is a Construction Lien from O'connor Electric Ltd. in the claimed amount of \$344,955.
- 18) Instrument No. WR1525011 registered August 3, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$135,600.
- 19) Instrument No. WR1525014 registered August 3, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$66,912.
- 20) Instrument No. WR1525022 registered August 3, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$364,425.
- 21) Instrument No. WR1525872 registered August 9, 2023 is a Construction Lien from Pearson Metal Inc. in the claimed amount of \$647,217.
- 22) Instrument No. WR1525921 registered August 9, 2023 is a Construction Lien from HGL Electrical in the claimed amount of \$3,123,088.
- 23) Instrument No. WR1527801 registered August 17, 2023 is a Construction Lien from Matthews Equipment Limited in the claimed amount of \$85,018.
- 24) Instrument No. WR1530052 registered August 29, 2023 is a Construction Lien from ABA Architects Inc. in the claimed amount of \$432,315.
- 25) Instrument No. WR1530175 registered August 29, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$45,878.
- 26) Instrument No. WR1530179 registered August 29, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$143,133.
- 27) Instrument No. WR1532157 registered September 6, 2023 is a Construction Lien from Gillam Urban Constructors Inc. in the claimed amount of \$1,748,531.
- 28) Instrument No. WR1532406 registered September 7, 2023 is a Certificate of Action from Stubbe's Precast Commercial Ltd. and Stubbe's Precast Inc. re Instrument No. WR1522293.

- 29) Instrument No. WR1533262 registered September 12, 2023 is a Construction Lien from O'connor Electric Ltd. in the claimed amount of \$12,555.
- 30) Instrument No. WR1534716 registered September 20, 2023 is a Certificate of Action from Pearson Metal Inc. re Instrument No. WR1525872.
- 31) Instrument No. WR1535931 registered September 27, 2023 is a Certificate of Action from Dean-Lane Contractors Inc. re Instrument No. WR1518912.
- 32) Instrument No. WR1536124 registered September 27, 2023 is a Certificate of Action from O'connor Electric Ltd. re Instrument No. WR1522297 and WR1533262.
- 33) Instrument No. WR1536918 registered September 29, 2023 is a Certificate of Action from Classic Tile Contractors Limited re Instrument No. WR1521825.
- 34) Instrument No. WR1537429 registered October 3, 2023 is a Construction Lien from Gillam Urban Constructors Inc. and Gillam Communities 1333 Weber Street Limited Partnership in the claimed amount of \$2,467,563.
- 35) Instrument No. WR1537430 registered October 3, 2023 is a Construction Lien from Gillam Urban Constructors Inc. and Gillam Communities 1333 Weber Street Limited Partnership in the claimed amount of \$873,036
- 36) Instrument No. WR1537590 registered October 4, 2023 is a Certificate of Action from Oxford Builders Builders Supplies Inc. re Instrument No. WR1525011, WR1525014, WR1525022, WR1530179, WR1530175.
- 37) Instrument No. WR1537739 registered October 5, 2023 is a Certificate of Action from Conestoga Roofing & Sheet Metal Ltd. re Instrument No. WR1519072.
- 38) Instrument No. WR1537806 registered October 5, 2023 is a Certificate of Action from Aluminum Window Design Installations Inc. re Instrument No. WR1521083.
- 39) Instrument No. WR1538280 registered October 10, 2023 is a Certificate of Action from ABA ARCHITECTS INC.re Instrument No. WR1530052.
- 40) Instrument No. WR1538717 registered October 11, 2023 is a Notice of an Exclusive Listing Agreement made as of March 22, 2019 between 1776411 Ontario Ltd. and Rego Realty Inc.
- 41) Instrument No. WR1538754 registered October 12, 2023 is a Certificate of Action from Gold Star Drywall Services Inc. re Instrument No. WR1518428.
- 42) Instrument No. WR1538821 registered October 12, 2023 is a Certificate of Action from Gillam Urban Constructors Inc. re Instrument No. WR1532157.

- 43) Instrument No. WR1538822 registered October 12, 2023 is a Certificate of Action from Gillam Urban Constructors Inc. And Gillam Communities 1333 Weber Street Limited Partnership re Instrument No. WR1537429.
- 44) Instrument No. WR1538823 registered October 12, 2023 is a Certificate of Action from Gillam Urban Constructors Inc. And Gillam Communities 1333 Weber Street Limited Partnership re Instrument No. WR1537430.
- 45) Instrument No. WR1543864 registered November 7, 2023 is an Application to Register Court Order from Ontario Superior Court Of Justice - Commercial List re appointing receiver KSV.
- 46) Instrument No. WR1549167 registered December 5, 2023 is a Notice of Security Interest from Enercare Home and Commercial Services Limited Partnership, and Enercare Home and Commercial Services Inc. in the consideration of \$1,225,341.72.
- 47) Instrument No. WR1551094 registered December 15, 2023 is a Construction Lien from Troy Life & Fire Safety Ltd. in the claimed amount of \$184,715.
- 48) Instrument No. WR1551772 registered December 20, 2023 is a Notice of Security Interest from Metergy Solutions Inc. in the consideration of \$3,621,837.
- 49) Instrument No. WR1562497 registered March 13, 2024 is a Certificate of Action from Troy Life & Fire Safety Ltd. re Instrument No. WR1551094.

Schedule “D” - Permitted Encumbrances

General

1. Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein.
2. All Applicable Laws, including municipal, provincial or federal statutes, by laws, regulations or ordinances.
3. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or a Province of Canada.
4. Any encumbrances filed by or at the request of the Purchaser or which are otherwise expressly approved by the Purchaser in writing.

Specific

5. Transfer Easement registered on August 20, 1980 in favour of the Hydro-Electric Commission of Kitchener-Wilmont as Instrument No. 687124.
6. Notice (airport zoning regulations) registered on May 4, 2009 in favour of His Majesty the King in Right of Canada as Instrument No. WR459096.
7. Transfer Easement registered on December 17, 2020 in favour of The Corporation of the City of Kitchener as Instrument No. WR1306081.
8. Notice (encroachment agreement) registered on February 17, 2021 in favour of The Corporation of the city of Kitchener as Instrument No. WR1318720.
9. Transfer Easement registered on March 12, 2021 in favour of The Regional Municipality of Waterloo as Instrument No. WR1324371.
10. Transfer Easement registered on March 19, 2021 in favour of Rogers Communications Inc. as Instrument No. WR1326075.
11. Notice (development agreement) registered on August 20, 2021 in favour of The Corporation of the City of Kitchener as Instrument No. WR1368206.
12. Notice registered on August 20, 2021 in favour of The Corporation of the city of Kitchener as Instrument No. WR1368207.
13. Application for Absolute Title registered on April 21, 2022 as Instrument No. WR1429995.
14. Notice (encroachment agreement) registered on May 5, 2022 in favour of The Corporation of the city of Kitchener as Instrument No. WR1434025.
15. Notice registered on September 20, 2022 in favour of The Corporation of the City of Kitchener as Instrument No. WR1467608.

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(COMMERCIAL LIST)**

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

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in its capacity as Court-appointed Receiver