

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

BETWEEN:

CERRUTI INVESTMENTS INC.

Applicant

- and -

2616766 ONTARIO LIMITED

Respondent

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

**FACTUM OF THE RECEIVER
(Sale Process Approval and Ancillary Relief Order and
Construction Lien Claims Procedure Order)**

September 5, 2025

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PART I – INTRODUCTION

1. On April 17, 2025 (the “**Appointment Date**”), upon an application by Cerruti Investments Inc. (“**CII**”), the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted the Order (Appointing Receiver) (the “**Receivership Order**”), appointing KSV Restructuring Inc. as the receiver and manager (in such capacity, the “**Receiver**”) without security, of all of the assets, undertakings and properties of 2616766 Ontario Limited (the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”).¹

2. The Receiver now brings this motion seeking approval of:

- (a) a sale process approval and ancillary relief order (the “**Sale Process Approval Order**”), among other things:
 - (i) approving a sale process (the “**Sale Process**”) for the Property, including the real property municipally known as 6500 Cantelon Drive, Windsor, Ontario (the “**Real Property**”);
 - (ii) approving the listing agreement, engaging CBRE Limited (“**CBRE**”) as the broker in the Sale Process, substantially in the form attached as Appendix “B” of the First Report, and the retention of CBRE by the Receiver under the terms thereof;
 - (iii) authorizing the Receiver and CBRE to implement the Sale Process pursuant to the terms thereof, and authorizing and directing the Receiver and CBRE

¹ All capitalized terms used herein and not otherwise defined have the meaning given to them in the Receivership Order or the First Report of the Receiver dated September 3, 2025 (the “**First Report**”).

to do all things reasonably necessary or desirable to give full effect to the Sale Process and to perform their respective obligations thereunder;

- (iv) amending the Receivership Order to increase the Receiver's Borrowing Limit from \$1,000,000 to \$2,000,000 and granting a corresponding increase to the Receiver's Borrowings Charge;
 - (v) approving the First Report, including the Receiver's activities described therein; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval; and
 - (vi) approving the fees and disbursements of the Receiver and those of its counsel for the periods set out in the Fee Affidavits (as defined below); and
- (b) a construction lien claims procedure order, among other things, approving the Construction Lien Claims Process (as defined below) and authorizing the Receiver to carry out same in accordance with the terms thereof.

3. The purpose of these receivership proceedings is to maximize recoveries from the Property (including the Real Property) for the benefit of the Debtor's stakeholders.² The proposed Sale Process Approval Order provides a fair, transparent, and efficient framework for marketing and selling the Property and advances the core objective of these receivership proceedings.

² First Report at 1.0(3) [[E289](#)].

4. The proposed CLCPO facilitates the resolution of the numerous Construction Lien Claims that have been registered against the Real Property, including providing a means of determining both the quantum of those claims as well as identifying and providing a pathway to address any priority disputes that may exist as between Construction Lien Creditors and mortgagees. Calling for Construction Lien Claims now through a fair and efficient process pursuant to the proposed CLCPO will allow for these matters to be addressed now such that they do not unnecessarily delay potential distributions to creditors from any transaction arising out of the Sale Process, and will also allow the Receiver to consider the impact of the Construction Lien Claims on any credit bid that may be submitted by a mortgagee of the Real Property.

5. For the reasons specified herein and in the First Report, the Receiver respectfully requests that this Court grant the proposed Sale Process Approval Order and the CLCPO.

PART II – SUMMARY OF FACTS

A. Background

6. The Debtor is a single purpose entity whose principal asset is the Real Property, a 53.4-acre industrial lot in Windsor, Ontario with 499,263 square feet of net rentable area.³

7. Since the Appointment Date, the Receiver has undertaken significant steps to prepare the Real Property for sale for the benefit of the Debtor's stakeholders, including, among other things:

³ First Report at 2.0(1) [[E291](#)].

- (a) working extensively with the tenants/occupants of the Real Property and their counsel to document and formalize leasing and occupancy arrangements;⁴
- (b) working to address various construction and permitting deficiencies, including in the rentable units located in the Real Property;⁵
- (c) commissioning a Phase I Environmental Safety Assessment, with a Phase II assessment expected to be completed within the next one to two months;⁶ and
- (d) corresponding with CBRE with respect to the status of the Real Property and the Debtor's prior efforts to market and sell the Real Property with the assistance of CBRE.⁷

B. The Proposed Sale Process

8. The Receiver has developed the Sale Process, the details of which are further described in the First Report, in order to realize and maximize value from the Real Property in a timely manner for the benefit of the Debtor's stakeholders.

9. In connection with the Sale Process, the Receiver selected CBRE to act as the proposed listing brokerage to market and sell the Real Property in light of: (i) its extensive experience marketing industrial properties for sale in Windsor and the broader Canadian market; and (ii)

⁴ First Report at 3.1(2) [[E293](#)].

⁵ First Report at 3.2(1) and 3.2(2) [[E294](#)].

⁶ First Report at 3.3(1) [[E295](#)].

⁷ First Report at 7.0(1) [[E307](#)].

CBRE's familiarity with the Real Property through its prior engagement by the Debtor to market and sell the Real Property prior to these receivership proceedings.⁸

10. Pursuant to the proposed Sale Process:

- (a) the Receiver, with the assistance of CBRE and the Receiver's counsel, will administer, supervise, facilitate and oversee the Sale Process with a view of maximizing value for the Real Property in a timely manner;
- (b) CBRE will, among other things: (i) prepare marketing materials for the Real Property; (ii) send an offering summary and marketing materials to CBRE's client base, including specifically targeted prospects; (iii) publish the opportunity in journals, publications and online, as CBRE and the Receiver consider appropriate to maximize interest in this opportunity; (iv) post the Real Property on the Multiple Listing Service ("MLS") on an unpriced basis, if requested by the Receiver; and (v) meet with prospective bidders to explain the potential of the Real Property;⁹
- (c) the Real Property will be marketed on an "as is, where is" basis;¹⁰
- (d) once prospective purchasers submit a non-binding letter of intent, the Receiver, in consultation with CBRE, may elect to pursue negotiations with one or more

⁸ First Report at 4.2 [E296].

⁹ First Report at 4.4(1) [E296].

¹⁰ First Report at 4.4(2)(a) [E299].

bidders, which may involve asking bidders to improve their offers, including so as to maximize consideration and minimize closing risk;¹¹ and

- (e) the Receiver will, subject to Court approval and, to the extent applicable, the Ventra ROLR (as defined below), select the successful bid for the Real Property, having regards to, among other things: (i) the total consideration offered; (ii) the conditions to closing, if any, and the time required to satisfy or waive the same; and (iii) such other factors affecting the speed and certainty of closing and the value of the offers as the Receiver considers relevant.¹²

11. The lease between Ventra Assembly Company (“**Ventra**”), the tenant of the largest unit at the Real Property, and the Debtor includes a right of last refusal to purchase the Real Property in favour of Ventra (the “**Ventra ROLR**”). Unless Ventra waives the Ventra ROLR, the Receiver will provide the successful bid to Ventra for consideration pursuant to the Ventra ROLR. If Ventra elects to exercise the Ventra ROLR and enters into an agreement of purchase and sale satisfactory to the Receiver, Ventra’s bid will be deemed the successful bid, subject to Court approval. However, should the Receiver determine that the Ventra ROLR is impairing the Sale Process or the maximization of value of the Real Property, the Receiver reserves the right to seek relief from the Court with respect to the Ventra ROLR (including, without limitation, to modify the provisions of the Sale Process as they relate to the Ventra ROLR).¹³

¹¹ First Report at 4.4(1) [\[E296\]](#).

¹² First Report at 4.4(1) [\[E296\]](#).

¹³ First Report at 4.3 [\[E296\]](#).

12. Any proposed sale of the Real Property will be subject to Court approval at a subsequent motion.¹⁴

13. While CBRE will commence preparations for the Sale Process immediately upon Court approval, at the request of CII, the Receiver agreed to defer the commencement of the Sale Process until the end of September 2025 to allow CII to consult with other major stakeholders regarding a potential consensual restructuring that would avoid the need for a Sale Process.¹⁵

C. The Receiver's Borrowings

14. Since the Appointment Date, the Receiver has not borrowed any monies. Rental income from the Real Property has been sufficient to cover the required costs of these receivership proceedings to date, including operating and professional costs and the costs of addressing certain deficiencies at the Real Property to date.¹⁶

15. In order to facilitate the sale of the Real Property and to avoid materially impairing its marketability and value, the Receiver is requesting that the Borrowing Limit and the Receiver's Borrowing Charge be increased from \$1,000,000 to \$2,000,000.

16. The anticipated use of the Receiver's borrowings is detailed in the First Report, which, among other things, includes: (i) costs associated with completing the construction works necessary to enhance the viability and marketability of the Real Property; (ii) property tax arrears owing to the Corporation of the City of Windsor; and (iii) making certain interest payments on a

¹⁴ First Report at 4.4(2)(h) [\[E300\]](#).

¹⁵ First Report at 4.4(3) [\[E301\]](#).

¹⁶ First Report at 5.0(3) [\[E303\]](#).

mortgage held by 2763161 Ontario Inc. o/a Laminar Capital (“**Laminar**”), the Debtor’s most senior mortgagee.¹⁷

D. The First Report and the Receiver’s Activities

17. The Receiver is seeking approval of the First Report and its activities described therein. As further detailed in the First Report, the efforts and activities of the Receiver to date, include, among other things:

- (a) undertaking extensive efforts to prepare the Real Property for sale for the benefit of the Debtor’s stakeholders, including regularizing certain key leasing and occupancy arrangements at the Real Property and addressing various disputes with tenants arising from deficiencies in the landlord’s work with respect to such premises;
- (b) arranging for the general maintenance and upkeep of the Real Property;
- (c) corresponding with all tenants of the Real Property regarding the collection of rents, required maintenance within their suites and other general occupancy-related matters;
- (d) providing regular updates to the Debtor’s mortgagees regarding the status of these receivership proceedings; and

¹⁷ First Report at 5.0(9) [\[E304\]](#).

- (e) corresponding with the Debtor's creditors, including utility providers and other vendors.¹⁸

E. Fees and Disbursements of the Receiver and its Counsel

18. In support of this motion, the Receiver delivered the Affidavit of Noah Goldstein, sworn September 3, 2025 (the "**KSV Fee Affidavit**") and the Affidavit of Josh Sloan, sworn September 2, 2025 (the "**Goodmans Fee Affidavit**", and together with the KSV Fee Affidavit, the "**Fee Affidavits**"). The Fee Affidavits provide a comprehensive listing of the accounts sought to be passed, including each account and summaries identifying the individual professionals who have worked on this matter, their hourly billing rates and total number of hours worked, among other information.¹⁹ The accounts included in each of the Goodmans Fee Affidavits were redacted in limited instances to protect privileged and confidential information.²⁰

19. The fees of the Receiver and its counsel total \$205,138.82 and \$215,914.00 (exclusive of costs and taxes), respectively, for the period from on or about the Appointment Date to July 31, 2025, and August 25, 2025 (the "**Relevant Periods**"), respectively, and are further detailed and summarized in the First Report and the Fee Affidavits appended thereto.²¹

20. The fees and disbursements charged by the Receiver and its counsel are consistent with market professional rates in the Toronto market, and are reasonable and appropriate in the

¹⁸ First Report at 7.0(1) [E307].

¹⁹ KSV Fee Affidavit [E341]; Goodmans Fee Affidavit [E357].

²⁰ Goodmans Fee Affidavit at para 4 [E358].

²¹ First Report at 8.0(1) [E307]; KSV Fee Affidavit at para 4 [E342]; Goodmans Fee Affidavit at paras 4-5 [E358].

circumstances having regard to the scope of work undertaken and the results achieved in the receivership to dates.²²

F. Construction Lien Claims Process

21. A total of nine parties have registered construction liens on title to the Real Property (each a “**Construction Lien**” and collectively, the “**Construction Liens**”), which total approximately \$10.99 million (or \$9.2 million once a duplicative Construction Lien is accounted for).²³

22. The CLCPO provides a process whereby the Receiver will be able to identify and, as necessary, quantify and otherwise resolve the Construction Liens (the “**Construction Lien Claims Process**”) pursuant to there terms thereof.

23. More specifically, the Construction Lien Claims Process provides that any person asserting a Construction Lien Claim (a “**Construction Lien Creditor**”) must deliver a completed proof of claim (“**Proof of Claim**”) to the Receiver on or before October 9, 2025, at 5:00 p.m. (Toronto time). The Receiver will then review the filed Proof of Claim, and, to the extent that the Receiver determines to revise or disallow any Proof of Claim, will notify the applicable Construction Lien Creditor in writing of its basis for doing so (a “**Notice of Revision or Disallowance**”). A Construction Lien Creditor which wishes to dispute a Notice of Revision or Disallowance must in turn deliver a notice of dispute (a “**Notice of Dispute**”) to the Receiver no later than 5:00 p.m. on the calendar day that is 14 calendar days after the delivery of the Notice of Revision or

²² KSV Fee Affidavit at para 6 [E342]; Goodmans Fee Affidavit at para 7 [E359].

²³ First Report at 6.1(1) [E304]. Following service of motion materials, the Receiver’s counsel was advised by counsel to a Construction Lien claimant that another construction lien for \$413,948 had been registered on title to the Real Property by an existing Construction Lien claimant following the commencement of these receivership proceedings, bringing the total to ten Construction Liens registered on title totaling approximately \$11.4 million (or approximately \$9.6 million once the duplicative Construction Lien is accounted for).

Disallowance (or such later date as the Receiver may agree in writing). Disputes identified in a Notice of Dispute will then be resolved in accordance with the procedures set forth in the CLCPO.²⁴ The Receiver may not admit a Construction Lien Claim in priority to a mortgagee without the consent of the relevant mortgagee(s) or further order of the Court.

PART III – THE ISSUES AND THE LAW

24. The issues on this motion are whether this Court should:

- (a) grant the proposed Sale Process Approval Order; and
- (b) grant the proposed CLCPO.

A. The Sale Process Approval Order Should be Granted

(i) The Sale Process Should be Approved

25. Section 243(1) of the *Bankruptcy and Insolvency Act* (“**BIA**”) provides the Court with broad discretion to grant powers to a receiver, including powers to exercise control over the property of a company in a receivership proceeding, and in making orders generally that the court considers advisable.²⁵

26. In addition, the Receivership Order explicitly authorizes the Receiver to engage real estate brokers, market the Property, and negotiate terms and conditions of a sale of the Property as the Receiver in its discretion may deem appropriate.²⁶

²⁴ First Report at 6.2-6.4 [[E305](#)]

²⁵ [Bankruptcy and Insolvency Act, RSC 1985, c B-3](#), as amended, s [243\(1\)](#) [BIA].

²⁶ [Receivership Order](#) at paras 4(e) and 4(k).

27. Although the decision to approve a sale process is distinct from the approval of a proposed sale transaction, courts have held that the reasonableness and adequacy of any sale process proposed by a court-appointed receiver are to be assessed in light of the factors that a court will take into account when considering the approval of a proposed sale.²⁷ The Ontario Court of Appeal summarized those factors in *Soundair* as follows:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers are to be obtained; and
- (d) whether there has been unfairness in the working out of the process.²⁸

28. In addition to the *Soundair* factors, the Court must also assess: (a) the fairness, transparency and integrity of the proposed process; (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and (c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.²⁹

²⁷ *Choice Properties Limited Partnership v Penady (Barrie) Ltd*, [2020 ONSC 3517](#) at para [15](#) [*Choice Properties*]; *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#) at para [6](#) [*CCM Master*]; *Royal Bank of Canada v Soundair Corp* (1991), [4 OR \(3d\) 1 \(CA\)](#) at p 9 [*Soundair*].

²⁸ [Soundair](#) at p 9.

²⁹ *Ontario Securities Commission v Bridging Finance Inc*, [2021 ONSC 5338](#) at paras [7–8](#); [Choice Properties](#) at para [16](#); [CCM Master](#) at para [6](#).

29. In considering sale process matters, courts (including the Ontario Court of Appeal) have held that substantial deference should be given to the business judgement and recommendations of a receiver as an officer of the Court with significant expertise in insolvency proceedings.³⁰

30. The Receiver recommends that the Court approve the Sale Process for the following reasons:

(a) **The Sale Process is commercially reasonable.** The Sale Process is designed to be a comprehensive, fair and transparent process that will broadly canvass the market for value-maximizing transactions, including by circulating an offering summary and marketing materials to CBRE's client base and specifically targeted prospects, engaging in direct canvassing of the most likely prospects and posting the opportunity on MLS (if requested by the Receiver). This comprehensive marketing process will extensively expose the Real Property to interested bidders. The Sale Process will be overseen by the Receiver, with the assistance of CBRE (a highly experienced broker in the space with existing specific expertise) and the completion of any transaction arising from the Sale Process will remain subject to Court approval.³¹

(b) **The Sale Process optimizes the chances of identifying the best available transaction.** The structure and proposed timelines of the Sale Process are designed to enable the Receiver and CBRE to market the Property broadly, while maintaining

³⁰ *Marchant Realty Partners Inc v 2407553 Ontario Inc*, [2021 ONCA 375](#) at paras [10](#), [15](#) and [19](#). See also *Ontario Securities Commission v Bridging Finance Inc*, [2022 ONSC 1857](#) at paras [43-45](#).

³¹ First Report at 4.4(1) [[E296](#)].

an efficient process that provides interested parties with the necessary degree of certainty. The Sale Process authorizes the Receiver to waive strict compliance with the terms of the Sale Process or modify the terms thereof, in its reasonable business judgement.³² Such discretion will ensure that the Receiver and CBRE have the flexibility to adapt the Sale Process in response to interest and developments that may arise during the Sale Process, all with a view to achieving the best outcome for the benefit of the Debtor's stakeholders.

- (c) **The interests of all parties have been considered.** The Receiver intends to conduct a transparent and inclusive process, and the ultimate sale price for the Property (including the Real Property) will be determined by the market. Accordingly, the Sale Process should protect the interests of all stakeholders, under the circumstances. The Sale Process is also supported by Laminar and Cerruti, the Debtor's senior mortgagees.³³ As described in greater detail in the First Report, the Receiver intends to engage with Ventra regarding the Ventra ROLR and, unless Ventra is prepared to waive the Ventra ROLR, comply with the Ventra ROLR in the context of the Sale Process; provided, however, that the Receiver reserves the right to return to Court to seek relief in respect of the Ventra ROLR should the Receiver determine it is impacting the Receiver's ability to maximize value or the

³² First Report at 4.4(2)(d) [\[E300\]](#).

³³ First Report at 4.6(1)(c) [\[E302\]](#).

integrity of the Sale Process.³⁴ The Receiver believes this is a prudent approach to addressing the Ventra ROLR in the circumstances.

31. For the reasons outlined above and in the First Report, the Receiver respectfully submits that the proposed Sale Process will maximize the likelihood of obtaining the best transaction available in respect of the Property for the benefit of the Debtor's stakeholders, and will lead to a transaction that satisfies the *Soundair* criteria.

(ii) *The Listing Agreement Should be Approved*

32. The Court's jurisdiction to approve the Listing Agreement is confirmed in the Receivership Order, which directs that the Receiver is empowered to engage advisors, among other persons, from time to time and on whatever basis to assist with the exercise of the Receiver's powers and mandate. In addition, the broad discretion contained in paragraph 243(1)(c) of the BIA provides the statutory basis for the Court to approve the Receiver's engagement of CBRE.³⁵

33. This Court regularly exercises its discretion to authorize Court-appointed receivers to enter into key agreements, including the retention of advisors to assist with a sale process.³⁶

34. In the present case, the Receiver requires a listing brokerage to effectively implement the Sale Process and identify the best transaction available in the market. CBRE will play a critical

³⁴ First Report at 4.3 [E296].

³⁵ [Receivership Order](#) at para 4(e); BIA [s 243](#).

³⁶ See e.g., *Keb Hana Bank v Mizrahi Commercial (The One) LP, et al* (6 June 2024), Ont Sup Ct J [Commercial List] CV-23-00707839-00CL ([Order \(Approval of SISP\)](#)) at para 3; *Government of Yukon v Victoria Gold Corp* (25 June 2025), Ont Sup Ct J [Commercial List] CV-24-00725681-00CL ([Order \(Approval of Sale Process\)](#)) at para 3; *30 Roe Investments Corp* (14 December 2022), Ont Sup Ct J [Commercial List] CV-22-00674810-00CL ([Amended Sale Process Approval Order](#)) at para 4.

role in the proposed Sale Process, including in the implementation of the Sale Process and related marketing strategy.³⁷

35. The Receiver submits that the Listing Agreement is reasonable and appropriate in the circumstances, given that, among other things:

- (a) CBRE is highly qualified and suitable to act as the Listing Agent, including based on its extensive experience marketing industrial properties for sale in Windsor and the broader Canadian market, as well as its specific experience with respect to the Real Property;³⁸
- (b) the Listing Agreement is in a form substantially consistent with the form entered into by the Receiver on numerous other receivership mandates involving the sale of real property;³⁹
- (c) the fees payable to CBRE are consistent with market practice and reduced fees have been specifically negotiated in the context of a Credit Bid Transaction or should the Receiver elect to terminate the Listing Agreement or should it be deemed terminated in the case of a Redemption Transaction;⁴⁰ and

³⁷ First Report at 4.2 and 4.4(1) [[E296](#)].

³⁸ First Report at 4.2(1) [[E296](#)].

³⁹ First Report at 4.5(1) [[E301](#)].

⁴⁰ First Report at 4.5(2) and 4.5(3) [[E301](#)].

- (d) Laminar and Cerruti, the Debtor's senior mortgagees, support the engagement of CBRE.⁴¹

36. For these reasons, the Receiver submits that it is appropriate to approve the Listing Agreement, substantially in the form attached as Appendix "B" of the First Report, and the retention of CBRE by the Receiver under the terms thereof.

- (iii) *Increasing the Borrowing Limit and the Receiver's Borrowings Charge is Appropriate*

37. Subsection 243(1) of the BIA authorizes a court to appoint a receiver to, among other things, "take any [...] action that the court considers advisable".⁴²

38. The "very expansive wording" of paragraph 243(1)(c) of the BIA has been interpreted as giving judges "the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise" in relation to a court-ordered receivership.⁴³ Accordingly, this broad jurisdiction permits the Court to do what "justice dictates" and what "practicality demands".⁴⁴

⁴¹ First Report at 4.6(1)(c) [[E302](#)].

⁴² BIA, [s 243\(1\)](#).

⁴³ *Peace River Hydro Partners v Petrowest Corp*, [2022 SCC 41](#) at para [148](#), citing *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, [2021 ABCA 226](#) at para [20](#).

⁴⁴ *Third Eye Capital Corporation v Resources Dianor Inc/Dianor Resources Inc*, [2019 ONCA 508](#) at para [57](#); *Canada (Minister of Indian Affairs and Northern Development) v Curragh Inc*, [1994 CanLII 7468, 114 D.L.R. \(4th\) 176](#) (Ont Ct J (GD)) at para [16](#).

39. This Court will often extend a receiver's borrowing limit in response to evolving circumstances in a receivership, including to complete urgent activities while also maintaining a buffer for any unforeseen costs.⁴⁵

40. To enable the Receiver to be able to complete its mandate, which, primarily, is to maximize the value of the Real Property through a Court-supervised sale process, the Receiver requires that its borrowing powers be increased by \$1,000,000 at this time. This increase will allow the Receiver to fund the necessary construction works to prepare the Real Property for sale, pay outstanding property taxes (which constitute a priority payable that will need to be addressed in the context of a transaction in any event) and fund interest on the senior mortgage registered on title, which has been requested by Laminar, who is also the party who has agreed to advance funds to the Receiver.⁴⁶

41. The Receiver submits that increasing the Borrowing Limit and the Receiver's Borrowings Charge is appropriate for the following reasons:

- (a) the increased borrowings will facilitate the construction works required to prepare the Real Property for sale and enhance its overall value in the context of the proposed Sale Process;⁴⁷

⁴⁵ See e.g., *Star America DPGI Acquisition Company, Inc. v Demand Power Group Inc.* (28 July 2025) Ont Sup Ct J [Commercial List] CV-23-00709164-00CL ([Order](#)) at para 3; *Macquarie Equipment Finance Limited v Validus Power Corp et al* (1 November 2023), Ont Sup Ct J [Commercial List] CV-23-00703754-00CL ([Order \(Increase of Receiver's Borrowing Limit\)](#)) at para 2; *Kingsett Mortgage Corporation et al v Vandyk et al* (21 December 2023), Ont Sup Ct J [Commercial List] CV-23-00709180-00CL ([Order \(Approving Increased Borrowing Power by Receiver\)](#)) at para 2.

⁴⁶ First Report at 5.0(9) [[E304](#)].

⁴⁷ First Report at 5.0(10) [[E304](#)].

- (b) as detailed in the First Report, the increased borrowings will decrease the interest expense currently being incurred to the detriment of the Debtor's stakeholders as funds will be borrowed at a lower interest rate (12%) relative to the interest expense currently being incurred on outstanding property taxes (18%) and the first mortgage(14%);⁴⁸ and
- (c) Laminar, the Debtor's most senior mortgagee, has consented to the increase in the Borrowing Limit and has agreed to make these funds available to the Receiver.⁴⁹

42. In light of the foregoing, the Receiver submits that increasing the Borrowing Limit, and the corresponding Receiver's Borrowings Charge, is appropriate in the circumstances and in the best interests of the Debtor's stakeholders.

(iv) *The Receiver's First Report and Activities Should be Approved*

43. This Court has the inherent jurisdiction to approve the activities of a court-appointed receiver.⁵⁰ There are good policy and practical reasons for this, including that Court approval:

- (a) allows the court officer to move forward with the next steps in the proceedings;
- (b) brings the court officer's activities before the Court;
- (c) allows an opportunity for the concerns of stakeholders to be addressed, and any problems to be rectified;

⁴⁸ First Report at 5.0(5) and 5.0(6) [[E303](#)].

⁴⁹ First Report at 5.0(11) [[E304](#)].

⁵⁰ *Bank of America Canada v Willann Investments Ltd.*, [1996 CanLII 2782](#) (Ont CA).

- (d) enables the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the court officer not otherwise provided by the applicable legislation; and
- (f) protects creditors from the delay in distribution that would be caused by: (i) re-litigation of steps taken to date; and (ii) potential indemnity claims by the court officer.⁵¹

44. This Court has held that the above-noted observations apply to the activities of a court-appointed receiver because the activities of any court officer “can and should be considered by the Court as against the mandate, powers and authority of that officer.”⁵²

45. In this case, all of the Receiver's activities were necessary and undertaken in good faith pursuant to the Receiver's duties and powers as set out in the Receivership Order, and in each case were in the best interests of the Debtor's stakeholders generally. In addition, the First Report was served on the Service List and posted on the Receiver's website for review by the Debtor's creditors and other stakeholders. No adverse comments have been received in respect of same to date.

46. Accordingly, the Receiver respectfully submits that the First Report and activities described therein ought to be approved.

⁵¹ *Target Canada Co (Re)*, [2015 ONSC 7574](#) at para [12](#); *Laurentian University of Sudbury*, [2022 ONSC 2927](#) at paras [13–14](#) [Laurentian].

⁵² *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#) at para [66](#).

(v) *Approval of the Accounts of the Receiver and its Counsel is Appropriate*

47. This Court’s jurisdiction to pass the accounts of the Receiver and its counsel is confirmed in the Receivership Order, which directs that: “the Receiver and its legal counsel shall pass their 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.”⁵³

48. The overarching test on a motion to pass accounts is to consider the “overriding principle of reasonableness”, with the predominant consideration in such assessment being the overall value contributed by the Receiver and its counsel.⁵⁴ As stated by this Court in *Laurentian*, “[t]he Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation.”⁵⁵ Rather, as the Court of Appeal for Ontario stated in *Diemer*, “[t]he focus of the fair and reasonable assessment should be on what was accomplished, not on how much time it took.”⁵⁶

49. The Receivership Order provides that the Receiver and counsel to the Receiver “shall be paid their reasonable fees and disbursements, whether incurred prior to, on or subsequent to the date of the Receivership Order, in each case at their standard rates and charges, unless otherwise ordered by the Court on the passing of accounts”.⁵⁷ The evidence is that the Receiver and its counsel charged standard hourly rates consistent with relevant market rates.⁵⁸ Although this does

⁵³ [Receivership Order](#) at para 20.

⁵⁴ *Laurentian* at para 9 [*Laurentian*]; *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#) at paras 13–15.

⁵⁵ *Laurentian* at para 9.

⁵⁶ *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at para 45 [*Diemer*].

⁵⁷ [Receivership Order](#) at para 19.

⁵⁸ KSV Fee Affidavit at para 6 [[E342](#)]; Goodmans Fee Affidavit at para 7 [[E359](#)].

not oust the need for the Court to consider whether the fees claimed are fair and reasonable, courts have held that where standard rates have been charged under an order so directing, this is a relevant consideration supporting approval.⁵⁹

50. The following factors assist courts in evaluating the quantum of a court-appointed officer's fees. These factors are not intended to be an exhaustive list and other factors may be material in any particular case: (i) the nature, extent and value of the assets being handled; (ii) the complications and difficulties encountered; (iii) the degree of assistance provided by the company, its officers or its employees; (iv) the time spent; (v) the court officer's knowledge, experience and skill; (vi) the diligence and thoroughness displayed; (vii) the responsibilities assumed; (viii) the results achieved; and (ix) the cost of comparable services when performed in a prudent and economical manner.⁶⁰

51. Applying these factors to the present case, the Receiver respectively submits that its accounts, as well as those of its counsel, should be approved:

- (a) both the Receiver and its counsel have carried out extensive activities during the Relevant Periods, as detailed in the First Report, including devoting significant time to addressing the construction and permitting deficiencies and establishing appropriately documented leasing and occupancy arrangements at the Real Property, all with a view to preparing it for the Sale Process;

⁵⁹ [Diemer](#) at para [48](#); *Confectionately Yours Inc (Re)* (2002), 219 DLR (4th) 72 at paras [52–54](#) (Ont CA).

⁶⁰ [Diemer](#) at para [33](#); [Laurentian](#) at para [10](#).

- (b) the Receiver and its counsel are experienced restructuring professionals who have been integral in these receivership proceedings to date and have at all times demonstrated diligence and thoroughness throughout;
- (c) both the Receiver and its counsel, to the best of their knowledge, charge rates that are comparable to the rates charged by similar accounting and law firms in the Toronto market for the provision of similar services;⁶¹ and
- (d) the Receiver and its counsel have sought to ensure that the work required to be performed in the case has been undertaken in the most efficient manner possible, including by utilizing consistent core personnel throughout the mandate and by having work performed by junior and/or lower cost professionals to the extent appropriate.⁶²

52. Accordingly, for the reasons set out above, consideration of the applicable factors supports the approval of the accounts of the Receiver and its counsel as being fair and reasonable.

B. The CLCPO Should be Granted

53. A claims process in a receivership proceeding is intended to be an “efficient and flexible process” for the timely determination of claims, with a view to distributing available assets as soon as reasonably possible.⁶³ This Court routinely approves claims procedures in receivership

⁶¹ KSV Fee Affidavit at para 6 [E342]; Goodmans Fee Affidavit at para 7 [E359].

⁶² See KSV Fee Affidavit at Exhibit “B” [E354]; Goodmans Fee Affidavit at Exhibit “C” [E386].

⁶³ *Computershare Trust Company of Canada v. Cookstown Holdings Ltd.*, 2014 ONSC 685 at para 13.

proceedings, including those specifically designed to call for and resolve construction lien claims.⁶⁴

54. The Construction Lien Claims Process is fair and reasonable in the circumstances and should be approved by the Court. The CLCPO will allow the Receiver to identify, review and address the Construction Lien Claims with a view to facilitating any future distributions from any potential transaction resulting from the Sale Process, and also allow the Receiver to consider how the Construction Lien Claims may impact any credit bid that is submitted in the Sale Process by a mortgagee.⁶⁵ The foregoing is a necessary step to efficiently advance these receivership proceedings and is appropriately undertaken now so that any issues identified through the Construction Lien Claims Process – including potential priority disputes between the Construction Lien Creditors and mortgagees – do not unduly delay distributions and a conclusion of these receivership proceedings should a transaction be identified and implemented.

55. In addition, the procedures within the CLCPO are consistent with those commonly approved by the courts and will allow Construction Lien Creditors the necessary time and opportunity to assert and establish any Construction Lien Claims. In particular, the Claims Bar Date, which is 30 days from the date scheduled for this motion, will be sufficient for Construction Lien Creditors to file a Proof of Claim with the Receiver.⁶⁶ Further, the CLCPO provides the

⁶⁴ See e.g., *Peoples Trust Company et al. v Vandyk-Backyard Queensview Limited et al.* (6 March 2024) Ont Sup Ct J [Commercial List] CV-24-00713783-00CL ([Order \(LIEN CLAIMS PROCESS\)](#)) [*Vandyk-Backyard Queensview CPO*]; *Cameron Stephens Mortgage Capital LTD. v 2011836 Ontario Corp. et al.* (6 November 2024) Ont Sup Ct J [Commercial List] CV-23-00710795-00CL ([Order \(LIEN CLAIMS PROCESS\)](#)) [*2011836 Ontario CPO*].

⁶⁵ First Report at 6.5(1) [[E306](#)].

⁶⁶ See First Report at 6.5(1)(b) and 6.5(1)(c) [[E306](#)]. This Court has previously held that claims bar dates that are approximately 30 days from the issuance of an order is appropriate. See e.g., *MCAP Financial Corporation v Vandyk-Backyard King Mills Limited and Vandyk-Backyard Humberside Limited* (16 October 2024) Ont Sup Ct J [Commercial List] ([Priority Claims Procedure Order](#)) at para 3(a); [Vandyk-Backyard Queensview CPO](#) at para 4; [2011836 Ontario CPO](#) at para 5.

Receiver with appropriate flexibility to attempt to consensually resolve Construction Lien Claims (subject to the consent of relevant mortgagees or further order of the Court as relates to priority matters) or, as necessary, refer disputes to the Court for resolution, including proposing a flexible means of addressing any threshold issues that may be identified.

PART IV – RELIEF REQUESTED

56. For the reasons set out above, the Receiver requests that this Court grant the proposed Sale Process Approval Order and the CLCPO.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 5th day of September, 2025.



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Lawyers for the Receiver

SCHEDULE “A”

LIST OF AUTHORITIES

- 1) *Choice Properties Limited Partnership v Penady (Barrie) Ltd*, [2020 ONSC 3517](#)
- 2) *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#)
- 3) *Royal Bank of Canada v Soundair Corp* (1991), [4 OR \(3d\) 1](#) (Ont CA)
- 4) *Ontario Securities Commission v Bridging Finance Inc*, [2021 ONSC 5338](#)
- 5) *Marchant Realty Partners Inc v 2407553 Ontario Inc*, [2021 ONCA 375](#)
- 6) *Ontario Securities Commission v Bridging Finance Inc*, [2022 ONSC 1857](#)
- 7) *Keb Hana Bank v Mizrahi Commercial (The One) LP, et al* (6 June 2024), Ont Sup Ct J [Commercial List] CV-23-00707839-00CL ([Order \(Approval of SISP\)](#))
- 8) *Government of Yukon v Victoria Gold Corp* (25 June 2025), Ont Sup Ct J [Commercial List] CV-24-00725681-00CL ([Order \(Approval of Sale Process\)](#))
- 9) *30 Roe Investments Corp* (14 December 2022), Ont Sup Ct J [Commercial List] CV-22-00674810-00CL ([Amended Sale Process Approval Order](#))
- 10) *Peace River Hydro Partners v Petrowest Corp*, [2022 SCC 41](#)
- 11) *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, [2021 ABCA 226](#)
- 12) *Third Eye Capital Corporation v Resources Dianor Inc/Dianor Resources Inc*, [2019 ONCA 508](#)
- 13) *Canada (Minister of Indian Affairs and Northern Development) v Curragh Inc*, [1994 CanLII 7468, 114 D.L.R. \(4th\) 176](#)
- 14) *Star America DPGI Acquisition Company, Inc. v Demand Power Group Inc.* (28 July 2025) Ont Sup Ct J [Commercial List] CV-23-00709164-00CL ([Order](#))
- 15) *Macquarie Equipment Finance Limited v Validus Power Corp et al* (1 November 2023), Ont Sup Ct J [Commercial List] CV-23-00703754-00CL ([Order \(Increase of Receiver's Borrowing Limit\)](#))
- 16) *Kingsett Mortgage Corporation et al v Vandyk et al* (21 December 2023), Ont Sup Ct J [Commercial List] CV-23-00709180-00CL ([Order \(Approving Increased Borrowing Power by Receiver\)](#))
- 17) *Bank of America Canada v Willann Investments Ltd.*, [1996 CanLII 2782](#) (Ont CA)

- 18) *Target Canada Co (Re)*, [2015 ONSC 7574](#)
- 19) *Laurentian University of Sudbury*, [2022 ONSC 2927](#)
- 20) *Triple-I Capital Partners Limited v 12411300 Canada Inc*, [2023 ONSC 3400](#)
- 21) *Re Nortel Networks Corporation et al*, [2017 ONSC 673](#)
- 22) *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)
- 23) *Confectionately Yours Inc (Re)* (2002), [219 DLR \(4th\) 72](#) (Ont CA)
- 24) *Computershare Trust Company of Canada v Cookstown Holdings Ltd.*, [2014 ONSC 685](#)
- 25) *Peoples Trust Company et al. v Vandyk-Backyard Queensview Limited et al.* (6 March 2024) Ont Sup Ct J [Commercial List] CV-24-00713783-00CL ([Order \(LIEN CLAIMS PROCESS\)](#))
- 26) *Cameron Stephens Mortgage Capital LTD. v 2011836 Ontario Corp. et al.* (6 November 2024) Ont Sup Ct J [Commercial List] CV-23-00710795-00CL ([Order \(LIEN CLAIMS PROCESS\)](#))
- 27) *MCAP Financial Corporation v Vandyk-Backyard King Mills Limited and Vandyk-Backyard Humberside Limited* (16 October 2024) Ont Sup Ct J [Commercial List] ([Priority Claims Procedure Order](#))

I certify that I am satisfied as to the authenticity of every authority.

Date: September 5, 2025



Signature

SCHEDULE “B”

STATUTORY REFERENCES

BANKRUPTCY AND INSOLVENCY ACT, R.S.C., 1985, c. B-3, as amended

Court may appoint receiver

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

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person’s or bankrupt’s business; or
- (c) take any other action that the court considers advisable.

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

CERRUTI INVESTMENTS INC.
Applicant

-and- **2616766 ONTARIO LIMITED**
Respondent

Court File No: CV-25-00738703-00CL

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

Proceeding Commenced at Toronto, Ontario

**FACTUM OF THE RECEIVER
(Sale Process Approval and Ancillary
Relief Order and Construction Lien
Claims Procedure Order)**

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