Court File No. CV-25-00098804-0000

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

CMLS FINANCIAL LTD.

Applicant

-and-

ASHCROFT URBAN DEVELOPMENTS INC.

Respondent

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

FACTUM OF THE RECEIVER
(Approval and Vesting Order)

July 10, 2026

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TO: **SERVICE LIST**

PART I – OVERVIEW

1. On February 24, 2025, following a December 5, 2024 application for protection under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**") by Ashcroft Urban Developments Inc. ("**AUDI**", or the "**Debtor**") and other related companies (the "**Ashcroft Group**"), and a January 3, 2025 Order (the "**Interim Receivership Order**") appointing AlixPartners Restructuring, Inc. ("**AlixPartners**"), formerly known as KSV Restructuring Inc., as interim receiver (the "**Interim Receiver**") over AUDI and other Ashcroft Group companies, the Ontario Superior Court of Justice issued an Order (the "**AUDI Receivership Order**") appointing AlixPartners as the receiver and manager (the "**Receiver**"), without security, of all of the property, assets and undertakings (the "**Property**") of AUDI on application by CMLS Financial Ltd. ("**CMLS**") as servicer for General Bank of Canada and Equitable Bank (together, the "**Lenders**").

2. AUDI's principal assets are certain condominium units at the real property located at 101 Queen Street and 110 Sparks Street, Ottawa, Ontario (the "**Real Property**"), which consists of a luxury hotel and condominiums branded as "ReStays".

3. On this motion, the Receiver seeks an Approval and Vesting Order (the "**AVO**"), among other things:

(a) approving a transaction (the "**Transaction**") contemplated by an asset purchase agreement dated April 6, 2026, as amended (the "**CLV APS**"), in respect of the Real Property that the Receiver entered into with 1000747194 Ontario Inc. (the "**Purchaser**"), subject to Court approval, and vesting title in the Real Property in the Purchaser; and

(b) sealing the confidential appendices attached to the Receiver's Second Report dated July 7, 2026 ("**Second Report**"), being a summary of offers received in the Sale Process (defined below), and an unredacted copy of the CLV APS (collectively, the "**Confidential Information**"), until the earlier of 60 days following closing of the Transaction, or until further Order of this Court (whichever is earlier);

4. The Receiver also seeks a Distribution and Ancillary Relief Order (the "**Distribution Order**"), among other things:

(a) authorizing it to disclaim an agreement of purchase and sale dated December 15, 2015, in respect of residential unit 1801 at the Real Property ("**Unit 1801**"), "), including two parking stalls, two locker units, and two bike rack units, between Re Residences By Ashcroft Inc. (now known as AUDI) as vendor, and David Choo ("**Choo**"), the president of the Ashcroft Group of companies, including AUDI, as purchaser (the "**2015 Choo APS**");

(b) approving a distribution to CMLS of the cash on hand in the receivership estate and from the net proceeds of sale of the Transaction, up to the balance owing to CMLS pursuant to a loan agreement with AUDI dated August 9, 2021 (the "**CMLS Loan**"), subject to a holdback for the Unencumbered Units Allocation (defined below), the Priority Payables Holdback (defined below), and the Subject Unit Holdback (defined below);

(c) discharging the Interim Receivership Order from title to one of the locker units at the Real Property (the "**Inadvertently Included Unit**") that was transferred to a purchaser prior to the Interim Receivership Order, but was inadvertently included in the schedule of the Real Property at Schedule "A" to the Interim Receivership Order;

(d) authorizing the Receiver to assign the Debtor into bankruptcy and appoint AlixPartners as Licensed Insolvency Trustee; and

(e) approving the Second Report, approving and accepting the Receiver's Interim Statement of Receipts and Disbursements in respect of the Debtor for the period from January 3, 2025, to July 2, 2026, as set out at Appendix "I" to the Second Report, and approving the Receiver's fees and disbursements for the period to June 30, 2026, and the fees and disbursements of the Receiver's counsel, Blaney McMurtry LLP ("**Blaney**"), for the period to June 30, 2026.

5. The Transaction is the best transaction to have emerged following a lengthy Court-approved sale process (the "**Sale Process**") conducted by two leading real estate brokerages pursuant to the Order of Justice Mew dated March 21, 2025 (the "**Sale Process Order**"). The Sale Process was a fair, open, and transparent process, and the Transaction has the support of CMLS.

6. The Purchaser requires disclaimer of the 2015 Choo APS, and the legal test for the disclaimer being sought is met. The 2015 Choo APS does not grant Choo a proprietary interest in the unit covered by that agreement.

7. The Confidential Information contains information regarding offer details resulting from the Sale Process that, if made public, could negatively impact the opportunity to maximize realization in the future if the Real Property were to be marketed again.

PART II – FACTS

Procedural Background to the Receivership and Encumbrances over the Real Property

8. On December 5, 2024, the Court issued an Initial Order in the CCAA Proceedings in respect of AUDI and other Ashcroft Group companies.[1]

9. The continuation of the CCAA Proceedings was opposed at the comeback motion heard on December 12, 2024. Pursuant to the Honourable Justice Mew's decision dated December 20, 2024, the Court dismissed the motion to extend the CCAA Proceedings, and allowed a motion made by CMLS to appoint AlixPartners as interim receiver of AUDI. AlixPartners was also appointed as Interim Receiver over other Ashcroft Group companies by way of motions brought by certain other lenders.[2]

10. By Order of Justice Mew issued January 3, 2025, AlixPartners was appointed interim receiver of the assets, undertakings, and properties of AUDI, and other Ashcroft Group companies (the "**Interim Receivership Order**").[3]

11. Following the granting of the Interim Receivership Order, CMLS commenced the within application seeking, among other things, to convert the Interim Receivership Order to a full Receivership Order. On February 24, 2025, the Honourable Justice Mew granted the AUDI Receivership Order.[4]

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[1] Motion Record of the Receiver dated July 7, 2026 ("**Receiver's Record**"), Second Report of the Receiver, dated July 7, 2026 ("**Second Report**"), para. 1.0.1.
[2] Receiver's Record, Second Report, para. 1.0.2 and Appendix "A", Reasons for decision of Justice Mew dated December 20, 2024.
[3] Receiver's Record, Second Report, para. 1.0.3 and Appendix "B", Interim Receivership Order.
[4] Receiver's Record, Second Report, para. 1.0.5 and Appendix "C", AUDI Receivership Order.

12. AUDI is currently indebted to CMLS in the approximate amount of $59,100,000 (the "**CMLS Indebtedness**"), with interest and costs continuing to accrue. CMLS is the sole secured creditor of AUDI, holding a first ranking mortgage (the "**CMLS Mortgage**") registered on title to certain of the Real Property, and general security agreement site-specific to the same units covered by the CMLS Mortgage (the "**CMLS GSA**").[5]

13. AUDI is also subject to a potential deemed trust claim from Canada Revenue Agency ("**CRA**") for $351,715.30 relating to assessed and unremitted HST for three HST filing periods in 2024 (the "**CRA Claim**").[6]

14. The Real Property includes 13 units that are not subject to CMLS' security, being one residential unit and 12 underground units consisting of three parking stalls and nine locker units (collectively, the "**Unencumbered Units**").[7] The Purchaser has allocated $2,471,500 from the purchase price under the CLV APS to the Unencumbered Units (the "**Unencumbered Units Allocation**"), and this amount will be available for distribution to creditors with proven claims in the bankruptcy, assuming the Court authorizes the Receiver to assign AUDI into bankruptcy.[8]

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[5] Receiver's Record, Second Report, paras. 7.0.1 and 7.0.2.
[6] Receiver's Record, Second Report, para. 9.0.1, Appendix "J", CRA Claim.
[7] Receiver's Record, Second Report, para. 1.0.7.
[8] Receiver's Record, Second Report, para. 8.0.3; Supplementary Motion Record of the Receiver, dated July 10, 2026 ("**Supplementary Record**"), Supplement to the Second Report of the Receiver dated July 10, 2026 ("**Supplementary Report**"), para. 3.0.2.

The Sale Process

i. Launch of the Sale Process

15. The Court approved the Sale Process for the Real Property pursuant to the Sale Process Order, including retaining TD Cornerstone Commercial Realty Inc. ("**TD**") and Cushman & Wakefield Ottawa ("**Cushman**" and together with TD, the "**Brokers**") as listing agents.[9]

16. On or about April 8, 2025, the Brokers prepared an investment summary and a confidentiality agreement (the "**CA**"), and distributed the investment summary to over 3,700 prospective purchasers, including local and national operators of hotels and other investors. The Real Property was also marketed through, among other things, CoStar/Loopnet, the Multiple Listing Service, print and digital ads, and visible signage at the Real Property.[10]

17. Prospective purchasers were provided with the CA, which they were required to sign to access a virtual data room (the "**VDR**"). The VDR included financial and other information regarding the Real Property and the building thereon. 37 parties executed a confidentiality agreement, and were provided access to the virtual data room. The Brokers conducted 13 tours of the Real Property during the initial six-week marketing period under the Court-approved Sale Process.[11]

[9] Receiver's Record, Second Report, para. 3.1.2.
[10] Receiver's Record, Second Report, paras. 3.1.3 to 3.1.5.
[11] Receiver's Record, Second Report, paras. 3.1.6 and 3.1.1.1.

18. The Receiver received nine offers by the initial bid deadline (May 20, 2025) with a narrow range of proposed purchase prices. The Brokers set May 27, 2025, as a second-round bid date, and invited interested parties to improve their offers. The summary of all offers (the "**Offer Summary**") is at Confidential Appendix "1" to the Second Report.[12]

ii. The Aborted Initial APS

19. In consultation with CMLS and the Brokers, the Receiver identified one of the parties (the "**Initial Prospective Purchaser**") as the leading bidder, and the Receiver and the Initial Prospective Purchaser entered into an Agreement of Purchase and Sale dated June 9, 2025 (the "**Initial APS**"), which included an initial due diligence period of 45 days.[13]

20. The due diligence period was extended several times, the last of which was to September 10, 2025 (the "**Final Waiver Date**"). The Initial Prospective Purchaser failed to waive conditions by the Final Waiver Date, and accordingly the Initial APS was terminated.[14]

iii. The MPAC Reassessment

21. The Receiver received a notice from the Ontario Municipal Property Assessment Corporation ("**MPAC**") dated September 9, 2025, which provided for certain adjustments (the "**MPAC Reassessment**") by MPAC to the tax classes and tax valuation of the units at the Real Property operating as the ReStays hotel, as well as certain other units (together, the "**Reassessed Units**").[15]

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[12] Receiver's Record, Second Report, paras. 3.1.1.2 to 3.1.1.4, Confidential Appendix "1", Offer Summary.
[13] Receiver's Record, Second Report, paras. 3.1.1.5 to 3.1.1.6.
[14] Receiver's Record, Second Report, para. 3.1.1.7.
[15] Receiver's Record, Second Report, para. 3.2.1, Appendix "E", MPAC Reassessment.

22. The MPAC Reassessment was triggered by, among other things, the non-filing of a declaration (the "**Declaration**") by AUDI in 2024. If it had been filed, the Declaration would have declared to MPAC that during the 2025 tax year and subsequent years the Reassessed Units would be operated as hotel units. As a result of the MPAC Reassessment, property taxes attributable to the Reassessed Units increased by $850,042 for 2025.[16]

23. The Receiver engaged Ryan, LLC ("**Ryan**"), a property tax consulting firm, to, among other things, submit a request for reconsideration with respect to the Reassessed Units (the "**RFR**"), and file a declaration for the 2027 tax year (the "**2027 Declaration**"). Ryan also prepared estimated property taxes payable in 2026, 2027, and in future years based on the RFR and the 2027 Declaration.[17]

iv. The Remarketing Process

24. Following the termination of the Initial APS, the Receiver instructed the Brokers to re-engage with previous bidders and other likely prospects that had not submitted bids, supported by updated financial and operational data for ReStays (the "**Remarketing Process**").[18]

25. Among other things, the Remarketing Process generated an Agreement of Purchase and Sale from the Initial Prospective Purchaser dated February 12, 2026. The Receiver responded to the Initial Prospective Purchaser by way of counter-offer on February 20, 2026, which was not accepted.[19]

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[16] Receiver's Record, Second Report, paras. 3.2.2. and 3.2.3.
[17] Receiver's Record, Second Report, paras. 3.2.4 to 3.2.6, Appendix "F", Revised Ryan Letter.
[18] Receiver's Record, Second Report, para. 3.3.1.
[19] Receiver's Record, Second Report, paras. 3.3.2. to 3.3.5.

26. The Remarketing Process also generated a letter of intent (the "**LOI**") from CLV Group Inc. ("**CLV**") dated February 2, 2026, which the Receiver identified as the leading bid among the remaining interested bidders based on, among other things, CLV's experience in the sector and the extent of due diligence performed prior to submitting its LOI.[20]

v. The CLV APS

27. On or about April 6, 2026, in consultation with CMLS, the Receiver and the Purchaser (a corporation formed by CLV to acquire the Real Property) entered into the CLV APS. The CLV APS initially contemplated a waiver date of May 18, 2026. The waiver date was subsequently extended several times, and the Purchaser waived conditions under the CLV APS on June 19, 2026.[21]

28. The Purchaser has paid the two deposits due under the CLV APS, and the Transaction is unconditional save for Court approval.[22]

29. The closing date under the CLV APS is the later of (a) the first business day 10 days after the issuance of the AVO, and (b) the first business day after the date 10 days following final determination of any appeals/motions to set aside or vary the AVO.[23]

[20] Receiver's Record, Second Report, para. 3.3.3.
[21] Receiver's Record, Second Report, paras. 3.3.6 and 3.3.8, Appendix "G", Redacted CLV APS.
[22] Receiver's Record, Second Report, para. 4.1.1(h).
[23] Receiver's Record, Second Report, para. 4.0.1(k).

30. The assets being acquired by the Purchaser (collectively, the "**Assets**") include, among other things:[24]

(a) AUDI's right title and interest in the Real Property, building, equipment and inventory;

(b) permits and licenses pertaining to the Real Property and the operation of the hotel; and

(c) the "ReStays" name and branding and intellectual property rights therein (the "**ReStays IP**"), but only if the Receiver is able to obtain the same from the owner thereof, as the ReStays IP is not owned by AUDI nor subject to the AUDI Receivership Order.

31. The Assets are being sold on an "as is, where is" and "without recourse" basis.[25]

32. Pursuant to the CLV APS, the Purchaser had the option, but not the obligation, to offer employment to all ReStays employees effective from closing of the Transaction. The Purchaser has indicated that it intends to offer employment to all current employees of ReStays.[26]

33. The Transaction provides for ReStays to continue to be operated as a going concern, by an experienced operator controlled by an Ottawa firm which owns and operates another hotel and several purpose-built rentals in Ottawa and across Canada.[27]

34. The purchase price set out in the CLV APS (the "**Purchase Price**") is payable partly in cash, with the balance being satisfied by a mortgage by the Lenders in the amount of $34.45 million

[24] Receiver's Record, Second Report, para. 4.0.1(f).
[25] Receiver's Record, Second Report, para 4.0.1(i).
[26] Receiver's Record, Second Report, para. 4.0.1(j).
[27] Receiver's Record, Second Report, paras 4.1.1.

(the "**Lenders Mortgage**"). The portion of Purchase Price to be allocated to the Real Property covered by the CMLS Mortgage and CMLS GSA is insufficient to repay the CMLS Indebtedness in full.[28]

35. The Purchaser has allocated $2,471,500 of the Purchase Price to the Unencumbered Units (i.e. the Unencumbered Units Allocation). The distribution of the Unencumbered Units Allocation will be determined based on a pro rata distribution to AUDI's unsecured creditors with proven claims in the AUDI bankruptcy, assuming the Court authorizes the Receiver to assign AUDI into bankruptcy (discussed below). These unsecured creditors will include CMLS based on its shortfall under the CMLS Loan.[29]

36. The part of the purchase price to be paid in cash will be adjusted on closing for adjustments that are standard for a real estate transaction, and will be used to satisfy municipal taxes owing in respect of the Real Property, amounts secured by the Receiver's Charge and the Receiver's Borrowings Charge (as those terms are defined in the AUDI Receivership Order), the commission owing to the Brokers, a professional fee reserve, and a reserve for invoices related to operating expenses incurred prior to closing of the Transaction which are received after closing (the "**Priority Payables Holdback**").[30]

37. The Receiver also expects to maintain a holdback of $50,000 (the "**Subject Unit Holdback**") to offset requests for reimbursement of legal costs and closing costs in connection with an anticipated amendment to the CLV APS to deal with the conveyances of two bike rack units and one locker unit at the Real Property (the "**Subject Units**"), which were inadvertently not

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[28] Receiver's Record, Second Report, para. 4.0.1(e) and 8.0.3.

[29] Receiver's Record, Second Report, paras. 8.0.2 to 8.0.3; Supplementary Record, Supplementary Report, para. 3.0.2.

[30] Receiver's Record, Second Report, paras. 8.0.1, 8.0.2 and 8.0.7.

conveyed to residential condominium unit purchasers as part of transactions which closed prior to the AUDI Receivership Order.[31]

Disclaimer of The Choo APS

38. Prior to AUDI's receivership, AUDI (formerly known as Re Residences By Ashcroft Inc.) and its president, Choo, entered into the 2015 Choo APS in respect of Unit 1801. Unit 1801 is one of the 19 residential units covered by the CLV APS.[32]

39. The 2015 Choo APS was entered into before construction commenced at the Real Property. The purchase price is $4.5 million, inclusive of applicable taxes, and a deposit of $675,000, which was paid in or about January 2016, and all but $4,000 was released during construction.[33]

40. The Purchaser has advised that it does not wish to assume the 2015 Choo APS as part of the Transaction.[34]

The Proposed Distribution

41. Subject to a holdback for the Unencumbered Units Allocation, the Priority Payables Holdback, and the Subject Unit Holdback, and after payment of any fees and disbursements of the Receiver and its counsel, the Receiver proposes to distribute the net proceeds of sale from the Transaction to AUDI's sole secured creditor, CMLS, in partial satisfaction of the CMLS Indebtedness (the "**CMLS Distribution**").[35]

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[31] Receiver's Record, Second Report, para. 6.0.5.
[32] Supplementary Record, Supplementary Report, paras. 2.0.1 and 2.0.2.
[33] Supplementary Record, Supplementary Report, paras. 2.0.2 and 2.0.3.
[34] Supplementary Record, Supplementary Report, para. 2.0.4.
[35] Receiver's Record, Second Report, paras. 8.0.2 and 8.0.3.

42. The Receiver has obtained an independent opinion from its counsel, Blaney, with respect to the validity and enforceability of CMLS' security over AUDI and the Real Property. This opinion confirms that, subject to standard assumptions and qualifications, CMLS' security constitute valid and enforceable charges against the Debtor other than in respect of the Unencumbered Units, over which CMLS does not hold security, and the Subject Units.[36]

Confidential Appendices

43. The Second Report includes the Confidential Information, being of the Summary of Offers and the unredacted CLV APS. If made public at this stage, and the Transaction is terminated for any reason and the Receiver has to re-market the Real Property, the disclosure of this information would be detrimental to any future sales process.[37]

Proposed Bankruptcy of the Debtor

44. The Receiver refers to the CRA Claim as being a "potential" priority charge, as the CCAA Proceedings preceded the AUDI Receivership Order. CRA's claims for sales taxes are unsecured in a CCAA proceeding. The Receiver is of the view that the claim would remain unsecured in a subsequent receivership.[38]

45. For the avoidance of any doubt, the Receiver proposes to assign the Debtor into bankruptcy to reverse the priority of the CRA Claim, if it exists, and for AlixPartners or another Licensed Insolvency Trustee, to administer the bankruptcy as Trustee.[39]

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[36] Receiver's Record, Second Report, para. 7.0.2
[37] Receiver's Record, Second Report, paras. 5.0.1 to 5.0.3.
[38] Receiver's Record, Second Report, para. 9.0.1, Appendix "J", CRA Claim.
[39] Receiver's Record, Second Report, para. 9.0.2 and 9.0.3.

Partial Deletion of the Interim Receivership Order

46. The Receiver has identified one unit at the Real Property that had been transferred to a purchaser prior to the receivership proceeding, but that was inadvertently included in Schedule "A" to the Interim Receivership Order, and the Interim Receivership Order was registered over the Inadvertently Included Unit.[40]

47. This Inadvertently Included Unit should never have been included as part of the Interim Receivership Order, and the CLV APS excludes the Inadvertently Included Unit. In the circumstances, the Interim Receivership Order should be deleted from title to the Inadvertently Included Unit.[41]

PART III – ISSUES

48. The issues to be decided on the Receiver's motion are whether the Court should:

(a) approve the Transaction;

(b) seal the summary of offers received in the Sale Process, and an unredacted copy of the CLV APS, attached as confidential appendices "1" and "2", respectively, to the Second Report, until the earlier of 60 days following closing of the Transaction, or until further Order of this Court (whichever is earlier);

(c) authorize the Receiver to disclaim the 2015 Choo APS;

(d) authorize the Receiver to make the CMLS Distribution;

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[40] Receiver's Record, Second Report, para. 6.0.7.
[41] *Ibid.*

(e) delete the Interim Receivership Order from title to the Inadvertently Included Unit; and,

(f) authorize the Receiver to assign the Debtor into bankruptcy; and

PART IV – LAW AND ARGUMENT

A. The Approval and Vesting Order Should be Granted

(a) The CLV APS Should be Approved

49. The purpose of a receivership under section 243 of the *Bankruptcy and Insolvency Act* (the "**BIA**") is to "enhance and facilitate the preservation and realization of the assets for the benefit of creditors," a purpose which is generally achieved through the liquidation of the debtors' assets.[42] In *Royal Bank v. Soundair*, the Court of Appeal stated that the following factors must be considered when considering the approval of a proposed sale:[43]

(a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;

(b) the efficacy and integrity of the process by which offers are obtained;

(c) whether there has been unfairness in the working out of the process; and,

(d) the interests of all parties.

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[42] *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc*., 2019 ONCA 508, at para. 73

[43] *Royal Bank of Canada v. Soundair Corp*. ("***Soundair***"), 1991 CanLII 2727 (ON CA), at para. 16.

50. Each of these factors is satisfied in respect of the Sale Process:

(a) **Fairness, Transparency and Integrity:** The Sale Process was conducted in a fair and transparent manner that maintained the appropriate levels of integrity.[44] All potential purchasers were treated fairly and equally, with interested parties being provided financial and other information to engage in due diligence, and with such interested parties being granted access to the VDR upon the signing of a CA;[45]

(b) **Commercial Efficacy**: The Sale Process conducted by the Brokers occurred over an approximately one year period, during which time prospective purchasers were able to perform any required due diligence, as facilitated by the Brokers;[46]

(c) **Process Designed to Obtain Best Possible Price**: The market was widely canvassed, with more than 3,700 prospective purchasers being notified of the Sale Process, including local and national operators of hotels and other investors. The Real Property was also marketed through, among other things, CoStar/Loopnet, the Multiple Listing Service, print and digital ads, and visible signage at the Real Property. [47] The CLV APS provides for the highest available realization for AUDI's stakeholders, and CMLS supports Transaction notwithstanding that it will incur a shortfall on the CMLS Loan.[48]

51. The commercial decisions of a receiver regarding a sale process are afforded broad deference by the courts. The business judgment of a receiver is accepted by the court absent

[44] Receiver's Record, Second Report, para. 4.1.1(a).
[45] Receiver's Record, Second Report, para. 3.1.6 and 3.1.1.1.
[46] Receiver's Record, Second Report, para. 3.1.3 and 3.3.2.
[47] Receiver's Record, Second Report, paras. 3.1.3 to 3.1.5.
[48] Receiver's Record, Second Report, para 4.1.1

exceptional circumstances,[49] and courts have stated that where a receiver has acted reasonably, prudently and not arbitrarily, the court should not sit in appeal from the receiver's decision or conduct a detailed review of every element of the procedure by which a receiver's decision was made.[50]

52. The Receiver submits that the Transaction should be approved for the reasons outlined above. The Sale Process was carried out fairly, transparently and with all due integrity and efficacy, and was a commercially reasonable process which obtained the highest realization available in the circumstances.

(b) The Sealing Order Should be Granted

53. Pursuant to s. 137(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, the Receiver requests that the Offer Summary and an unredacted copy of the CLV APS, attached as confidential appendices "1" and "2", respectively, to the Second Report, be temporarily treated as confidential and sealed, and not form part of the public record, pending the earlier of (a) 60 days following the closing of the Transaction and (b) further order of the Court.

54. The test for a sealing order was established by the Supreme Court in *Sierra Club*, and subsequently recast in *Sherman Estate*. The test requires the court to consider whether:[51]

(a) Court openness poses a serious risk to an important public interest;

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[49] *Soundair*, at para 21, 58.
[50] *Bank of Montreal v. Dedicated National Pharmacies Inc. et al*, 2011 ONSC 4634 (Ont. S.C.J. - Commercial List), at para. 43.
[51] *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38.

(b) the Order sought is necessary to prevent this serious risk to the identifiable interest because reasonable alternative measures will not prevent this risk; and,

(c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

55. Each of these considerations supports the proposed sealing Order:

(a) **Public Interest**: The maximization of recovery in insolvency has been found to constitute an important public interest for the purpose of obtaining a sealing order. The granting of a sealing order in respect of commercially sensitive information is therefore "standard practice" in insolvency proceedings,[52] and courts have approved sealing orders where they are required to protect commercially sensitive information, including the ultimate purchase price.[53] As the publication of the purchase price and information from which the purchase price can be determined prior to the closing of the Transaction could adversely impact the future marketability of the Real Property should the Transaction not close, the sealing of this information is necessary to ensure that recoveries in these receivership proceedings are maximized;

(b) **Lack of a Reasonable Alternative**: Courts in insolvency proceedings have found that there is no reasonable alternative to a sealing Order in circumstances where declining to grant the proposed Order would materially impair the maximization of asset value for the benefit of stakeholders.[54] In the present case, there are no

[52] *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 2, at para. 39.
[53] *Danier Leather Inc., Re*, 2016 ONSC 1044, at para. 84; *Elleway Acquisitions Limited v. 4358376 Canada Inc*. ("***Elleway Acquisitions***"), 2013 ONSC 7009 at para 48.
[54] *Original Traders Energy Ltd. (Re)*, ("***Original Traders***"), 2023 ONSC 753 at paras. 60-62.

reasonable alternatives to a sealing Order which would prevent the risks to the stakeholders outlined above; and

(c) **Proportionality**: The benefits of the proposed sealing Order greatly exceed any disadvantages. No party will be prejudiced by the temporary sealing of the commercially sensitive information, and no public interest will be served if it is made public prior to closing, prejudicing stakeholder recoveries in the process.[55]

B. The Receiver should be Authorized and Directed to Disclaim the 2015 Choo APS

56. The Receiver's authority to disclaim derives from the receiver's duty to maximize the recovery of assets under its jurisdiction, in service of which the Receiver may affirm or disclaim contracts.[56] It is well-established that the Court may direct a receiver to disclaim pre-sale agreements in the context of real property receiverships.[57] Paragraph 4(c) of the AUDI Receivership Order permits the Receiver to cease to perform or disclaim any contracts of the Debtor.[58]

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[55] See *Elleway Acquisitions*, at para. 48, in which the court held that the beneficial effects of maximizing recoveries in insolvency greatly outweigh any deleterious effects which could result for sealing an APA pending a transaction closing.

[56] *Peoples Trust Company v. Censorio Group (Hastings & Carleton) Holdings Ltd*., 2020 BCSC 1013 ("***Peoples Trust***") at para. 25, cited with approval in *Riocan Real Estate Investment Trust v. 2455034 Ontario Limited Partnership* 2026 ONSC 733 at para 84, and *KingSett Mortgage Corporation et al. v. Vandyk-Uptowns Limited et al*. 2024 ONSC 6205 ("***Kingsett v. Vandyk-Uptowns***") at para 25.

[57] *Constantine Enterprises Inc. v. Mizrahi (128 Hazelton) Inc. et al.,* 2025 ONSC 2073 at para 38, appeal dismissed 2025 ONCA 710 ("***Constantine v. Mizrahi***"), *KingSett Mortgage Corp. v. Stateview Homes et al.*, (November 16, 2023), Ont. S.C.J. (Commercial List), Court File No. CV-23-00698576-00CL (Endorsement of Justice Osborne) ("***KingSett v. Stateview Homes***") at para. 16, *KingSett Mortgage Corp. et al. v. Stateview Homes (Minu Towns) Inc.*, (September 14, 2023), Ont. S.C.J. (Commercial List), Court File No. CV-23-00698576-00CL (Endorsement of Justice Cavanaugh) at p. 1, *Firm Capital Mortgage Fund Inc. v. Stateview Homes (Hampton Heights) et al.*., (August 18, 2023), Ont. S.C.J. (Commercial List), Court File No. CV-23-00700356-00CL (Endorsement of Justice Conway) at para. 6, *Forjay Management Ltd. v. 0981478 B.C. Ltd.,* 2018 BCSC 527 *("**Forjay Management**")* at paras. 131-132.

[58] Receiver's Record, Second Report, Appendix "C", AUDI Receivership Order.

57. The criteria to be considered by a Court in determining whether to authorize such disclaimers were set out in *Forjay Management*, and affirmed by the Court of Appeal for Ontario in *Constantine v. Mizrahi*: (i) the respective legal priorities of the competing interests, (ii) whether the disclaimer would enhance the value of the assets, and if so, would a failure to disclaim amount to a preference in favour of a particular party, and (iii) whether, if a preference would arise, the party which is seeking to avoid the disclaimer has established that the equities support such a preference.[59]

58. The proposed disclaimer of the 2015 Choo APS satisfies the criteria:

(a) **Respective Legal Priorities**: The 2015 Choo APS includes a specific clause prohibiting Choo from registering it on title to the Real Property.

(b) **Value Maximization**: The CLV APS is the result of a canvassing of the market for interested purchasers that was thoroughly and professionally conducted by the Brokers, with sufficient opportunity for all potentially interested persons to obtain such information they required to submit an offer. In order to maximize value, a sale of all of AUDI's Real Property will be effected by way the Transaction, and the Purchaser requires the disclaimer of the 2015 Choo APS.[60] Courts have held that a failure to authorize the disclaimer of purchase agreements in such circumstances would amount to a preference in favour of purchasers.[61]

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[59] *Constantine v. Mizrahi,* at para 38 and *Forjay Management*, at para. 44.
[60] Receiver's Supplementary Record, Supplementary Report, para 2.0.4.
[61] *Forjay Management* at para 93, *Peoples Trust* at para 57, and *Kingsett v. Vandyk-Uptowns* at para 29.

(c) **Equitable Considerations**: Equitable considerations do not support departing from the existing priorities and granting a preference to Choo, who is an officer and director of the Debtor.

59. In light of the considerations above, the Receiver submits that it should be authorized and directed to disclaim the 2015 Choo APS, thereby maximizing recovery for stakeholders.

C. The Distribution Order Should be Granted

60. If the Transaction is approved by the Court, the Receiver seeks authorization and direction to distribute the net proceeds to CMLS in accordance with the CMLS Distribution.

61. Courts commonly grant such orders as part of sale approvals in a receivership.[62] In *AbitibiBowater*, the court approved the distribution of sale proceeds from a CCAA sale process on, amongst other grounds: (i) the distributions were made in accordance with a valid and enforceable security interest; and (ii) the distributions would leave the debtor with sufficient liquidity.[63]

62. The proposed CMLS Distribution complies with the *AbitibiBowater* criteria. CMLS is the Debtor's sole secured creditor, and the CMLS Mortgage constitutes a valid and enforceable charge over the Real Property (save and except for the Unencumbered Units and the Subject Units).[64]

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[62] See, i.e., *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc*., 2014 ONSC 1173, at para. 53; *Dorr Capital Corporation v. Highview Building Corp Inc*., (September 29, 2023) Ont. S.C.J. [Commercial List] Court File No. CV-23-00698632-00CL (Endorsement of Justice Conway) at para. 4; *Farm Credit Canada v. Whyte's Foods Inc./Les Ailments et. al.*, (November 6, 2023) Ont. S.C.J. [Commercial List] Court File No. CV-23-00707205-00CL (Endorsement of Justice Steele) ("*Whyte's Food* at paras. 19-21.

[63] *AbitibiBowater inc. ("**AbitibiBowater**")*, 2009 QCCS 6461, at para. 75. While *AbitibiBowater* was a CCAA proceeding, it has been cited by courts in the context of distributions under a receivership: see *Whyte's Food*, at paras. 19-21.

[64] Receiver's Record, Second Report, para. 7.0.2.

63. Further, the Transaction is structured to ensure that the Receiver retains sufficient liquidity. The proposed holdbacks from the CMLS Distribution account for various expenses, including property taxes, amounts secured by the Receiver's Charge and the Receiver's Borrowing Charge, the commission owing to the Brokers, a professional fee reserve, and a reserve for invoices related to operating expenses incurred prior to closing of the Transaction, among other things.[65]

D. Deleting Interim Receivership Order from Title to the Inadvertently Included Unit

64. The Inadvertently Included Unit was transferred to a purchaser prior to the Ashcroft Group's CCAA Proceedings. Despite this, the Inadvertently Included Unit was included in Schedule "A" of the Receivership Order, resulting in the registration of that Order on title to the Inadvertently Included Unit.[66]

65. The Inadvertently Included Unit should never have been included as part of the Interim Receivership Order, and the CLV APS excludes the Inadvertently Included Unit. In the circumstances, the Interim Receivership Order should be deleted from title to the Inadvertently Included Unit.[67]

E. The Receiver Should be Authorized to Assign the Debtor into Bankruptcy

66. The Receiver seeks the authorization and direction of the Court to assign the Debtor into bankruptcy. This relief is not extraordinary, with the Ontario Superior Court of Justice confirming

[65] Receiver's Record, Second Report, paras. 4.0.1(i) and 4.0.1(j).
[66] Receiver's Record, Second Report, para. 6.0.7.
[67] *Ibid.*

that it has the authority to empower a Receiver to file an assignment into bankruptcy on behalf of a debtor company.[68]

67. The Court of Appeal has held that a bankruptcy order may be sought with the express purpose of affecting priorities.[69] Courts have approved of a receiver seeking the authority to assign a debtor into bankruptcy in order to reverse the priorities associated with unremitted HST on a motion for an approval and vesting order.[70]

68. The Receiver proposes to assign the Debtor into bankruptcy to reverse the priority of the CRA Claim (if such priority exists), and for AlixPartners or another Licensed Insolvency Trustee to administer the bankruptcy as Trustee.

69. The bankruptcy will be the forum for unsecured creditors to participate in a distribution associated with the proceeds related to the Unencumbered Units Allocation.

PART V – ORDER REQUESTED

70. For the reasons set out above, the Receiver requests that this Court:

(a) approve the Transaction;

(b) seal the confidential appendices to the Second Report;

(c) authorize and direct the Receiver to disclaim the 2015 Choo APS;

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[68] *RBC v. Gustin*, 2019 ONSC 5370, at para 15; *Bank of Montreal v. Owen Sound Golf and Country Club*, 2012 ONSC 557, at para 7.
[69] *Grant Forest Products Inc. v. Toronto-Dominion Bank,* 2015 ONCA 570, at para 118.
[70] *American General Life Insurance Company et al. v. Victoria Avenue North Holdings Inc*., 2023 ONSC 3322 (Ont. S.C.J. - Commercial List) , at paras 10-20.

(d) authorize the CMLS Distribution;

(e) discharge the Interim Receivership Order from title to the Inadvertently Included Unit;

(f) authorize the Receiver to assign the Debtor into bankruptcy; and

(g) approving the Second Report, approving and accepting the Receiver's Interim Statement of Receipts and Disbursements, and approving the Receiver's fees and disbursements, and the fees and disbursements of its counsel, Blaney.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of July, 2026.

ERIC GOLDEN/CHAD KOPACH
Lawyers for the Receiver, AlixPartners Restructuring, Inc.

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc*., 2019 ONCA 508

2. *Royal Bank of Canada v. Soundair Corp*., 1991 CanLII 2727 (ON CA)

3. *Bank of Montreal v. Dedicated National Pharmacies Inc. et al*, 2011 ONSC 4634 (Ont. S.C.J. - Commercial List)

4. *Sherman Estate v. Donovan*, 2021 SCC 25

5. *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 2

6. *Danier Leather Inc., Re*, 2016 ONSC 1044

7. *Elleway Acquisitions Limited v. 4358376 Canada Inc*., 2013 ONSC 7009

8. *Original Traders Energy Ltd. (Re)*, 2023 ONSC 753

9. *Peoples Trust Company v. Censorio Group (Hastings & Carleton) Holdings Ltd*., 2020 BCSC 1013

10. *Riocan Real Estate Investment Trust v. 2455034 Ontario Limited Partnership* 2026 ONSC 733

11. *KingSett Mortgage Corporation et al. v. Vandyk-Uptowns Limited et al*. 2024 ONSC 6205

12. *Constantine Enterprises Inc. v. Mizrahi (128 Hazelton) Inc. et al.,* 2025 ONSC 2073

13. *KingSett Mortgage Corp. v. Stateview Homes et al.*, (November 16, 2023), Ont. S.C.J. (Commercial List), Court File No. CV-23-00698576-00CL (Endorsement of Justice Osborne)

14. *KingSett Mortgage Corp. et al. v. Stateview Homes (Minu Towns) Inc.*, (September 14, 2023), Ont. S.C.J. (Commercial List), Court File No. CV-23-00698576-00CL (Endorsement of Justice Cavanaugh)

15. *Firm Capital Mortgage Fund Inc. v. Stateview Homes (Hampton Heights) et al.*., (August 18, 2023), Ont. S.C.J. (Commercial List), Court File No. CV-23-00700356-00CL (Endorsement of Justice Conway)

16. *Forjay Management Ltd. v. 0981478 B.C. Ltd.,* 2018 BCSC 527

17. *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc*., 2014 ONSC 1173

18. *Dorr Capital Corporation v. Highview Building Corp Inc*., (September 29, 2023) Ont. S.C.J. [Commercial List] Court File No. CV-23-00698632-00CL (Endorsement of Justice Conway)

19. *Farm Credit Canada v. Whyte's Foods Inc./Les Ailments et. al.*, (November 6, 2023) Ont. S.C.J. [Commercial List] Court File No. CV-23-00707205-00CL (Endorsement of Justice Steele)

20. *AbitibiBowater inc. ("**AbitibiBowater**")*, 2009 QCCS 6461

21. *RBC v. Gustin*, 2019 ONSC 5370

22. *Bank of Montreal v. Owen Sound Golf and Country Club*, 2012 ONSC 557

23. *Grant Forest Products Inc. v. Toronto-Dominion Bank,* 2015 ONCA 570

24. *American General Life Insurance Company et al. v. Victoria Avenue North Holdings Inc*., 2023 ONSC 3322 (Ont. S.C.J. - Commercial List)

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

Dated: July 10, 2026

Chad Kopach
Blaney McMurtry LLP
Lawyers for AlixPartners Restructuring, Inc.,
in its capacity as Court-appointed Receiver

Schedule "B": Text of Statutes, Regulations & By-Laws

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.

COURTS OF JUSTICE ACT
R.S.O. 1990, c. C.43, as amended

Sealing documents

137 (2) A court may order that any document filed in a civil proceeding before it be treated as confidential, sealed and not form part of the public record.

Court File No. CV-25-00098804-0000

CMLS FINANCIAL LTD. and **ASHCROFT URBAN DEVELOPMENTS INC.**

Applicant Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Ottawa

FACTUM OF THE RECEIVER
(Approval and Vesting Order)

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