

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

**FOREMOST MORTGAGE HOLDING CORPORATION**

**Applicant**

**-and-**

**BARAKAA DEVELOPER INC., LERRATO INC. and 2145499 ONTARIO INC.**

**Respondents**

**FACTUM OF THE RECEIVER  
(371, 373, 375 PORTE ROAD SALES)**

Date: June 10, 2025

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capacity as Receiver

Court File No. CV-24-00724076-00CL

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**PART I – OVERVIEW**

1. This factum is filed by KSV Restructuring Inc. (“**KSV**”), in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of certain real properties of Barakaa Developer Inc. and Lerrato Inc., and the property, assets and undertakings of 2145499 Ontario Inc., in support of the Receiver’s motion for: (i) three approval and vesting orders approving the sale transactions (the “**Transactions**”) contemplated by three agreements of purchase and sale (the “**Sale Agreements**”) between the Receiver, as vendor, and Sara Qadeer and Talha Azim Butt, as purchasers (the “**371 Porte Purchasers**”), Zeba Qadeer and Raja Abdul Qadeer, as purchasers (the “**373 Porte Purchasers**”), Umair Qadeer, as purchaser (the “**375 Porte Purchaser**” and collectively the “**Purchasers**”), and vesting in the applicable Purchasers, the lands and buildings known municipally as 371, 373 and 375 Porte Road, Ajax Ontario (the “**Properties**”) and the chattels listed in the Sale Agreements (collectively, the “**Purchased Assets**”); and (ii) an order authorizing the Receiver to make one or more distributions from the proceeds of the

sale of the Purchased Assets to Foremost Mortgage Holding Corporation (“**Foremost**”) and approving the Receiver’s activities set out in the Receiver’s Third Report to Court dated May 30, 2025 (the “**Third Report**”).

## **PART II - FACTS**

2. KSV was appointed as Receiver pursuant to an order of the Ontario Superior Court of Justice (the “**Court**”) made on October 21, 2024 (the “**Receivership Order**”) of two real properties (the “**Barakaa Properties**”) owned by Barakaa Developer Inc. (“**Barakaa**”), six real properties (the “**Lerrato Properties**”) owned by Lerrato Inc. (“**Lerrato**”), and the property, assets and undertaking owned by 2145499 Ontario Inc. (“**214**”, and together with the Barakaa Properties and the Lerrato Properties, (the “**Receivership Assets**”). The Properties are three of the five Lerrato Properties.
3. The application to appoint KSV as Receiver was made by Foremost, which has mortgages on each of the Receivership Assets, registered prior to all other mortgages registered on title to the Receivership Assets. The principal purpose of the receivership application was to empower the Receiver sell the Receivership Assets free and clear of encumbrances, by way of approval and vesting orders due to the registration of the disputed Joshi Mortgage by the Joshi Parties (as defined and more particularly set out in the Third Report).
4. Foremost has been funding these proceedings pursuant to the Receiver’s Borrowing Charge (as defined in the Receivership Order). Total advances by Foremost under the Receiver’s Borrowing Charge as of the date of this motion (less application of certain proceeds of the sale of one Barakaa property) total \$747,373. As of the date of the Receivership Order, the Lerrato indebtedness owing to Foremost secured by the first mortgage over the Porte Properties (the “**Porte FM Mortgage**”) was approximately \$3,155,000, before interest and costs, which have continued to accrue since the date of the Receivership Order (the “**Lerrato FM Debt**”).
5. The Receiver’s counsel, DLA, has provided the Receiver with its opinion that, subject customary assumptions and qualifications, the Lerrato FM Mortgage is valid and

enforceable and no party on the Service List has, to the Receiver's knowledge, disputed or questioned the priority of the Lerrato FM Mortgage or amount of the Lerrato FM Debt.

6. In addition to the Lerrato FM Mortgage, a second mortgage in favour of BIP Management Corporation ("**BIP**") in the principal amount of \$700,000 is registered against each of the Lerrato Properties (the "**BIP Mortgage**").

### **PART III - ISSUES**

7. The three issues before the Court are: (i) whether the Court should approve the Sale Agreements and the Transactions; (ii) whether the Court should authorize the Receiver make distributions to Foremost up to the amount of the Lerrato FM Debt, subject to holding back amounts the Receiver considers sufficient to fund the ongoing professional fees and other costs of these proceedings and (iii) whether the court should approve the Receiver's activities set out in the Third Report .

### **PART IV – LAW AND ARGUMENT**

#### **Approval of the Transactions and the Sale Agreements**

8. The law is well established in terms of the factors to be considered by the Court when assessing whether to approve a transaction entered into by a receiver for the sale of a debtor's assets. As set out in the Ontario Court of Appeal's decision in *Soundair*.<sup>1</sup>, the Court shall consider:

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

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<sup>1</sup>*Royal Bank v. Soundair Corp.* (1991) 4 O.R. (3d) 1 (C.A.), 1991 CanLII 2727 (ON C.A.)

9. The *Soundair* factors are considered in the Second Report of the Receiver dated May 30, 2025 (the “**Third Report**”).

#### **The Receiver’s Efforts to Secure the Best Price**

10. In the instant case, as in all sale processes conducted by court-appointed receivers, the Receiver’s primary consideration was securing an offer that provided for the highest possible price for the subject property having regard to the circumstances.
11. The three Properties are townhouse properties in Ajax, Ontario, substantially completed by Lerrato in 2024. Since before the Receiver’s appointment, each of the Properties has been occupied by the applicable Purchaser(s), pursuant to occupancy license agreements between the Purchasers and Lerrato, pending closing of the proposed purchase transactions.
12. Upon the Receiver’s appointment, it obtained copies of the three Agreements of Purchase and Sale for the Properties, executed in May 2024 (the “**Updated APSs**”), which amended previous agreements between Lerrato and each of the Purchasers, executed in May 2021, each of which Prior APS reflected deposits totaling \$175,000 (the “**Initial APSs**”). The Updated APSs reflected substantially increased deposits having been paid by the Purchasers to Lerrato, namely \$355,000 for 371 Porte, \$505,000 for 373 Porte and \$205,000 for 375 Porte, which amounts were confirmed by Hitesh Jhaveri, the principal of the entities that own the Receivership Assets. Mr. Jhaveri also confirmed that none of the initial or subsequent deposit amounts were or are held in trust.
13. Foremost has advised the Receiver that it was unaware of the increased deposits, and that none of the increased deposit amounts were applied by Lerrato to the Lerrato FM Mortgage. The effect of the increased deposits reflected in the Updated APSs would be to reduce the funds available to apply to the Lerrato FM Mortgage and BIP mortgage on closing by \$540,000 as compared to the deposits reflected in the Initial APSs, thereby increasing the anticipated mortgage shortfall to Foremost and BIP by that amount.
14. Given the adverse economics of the Updated APSs and their deposits to the mortgagees, the Receiver and DLA entered into negotiations with the Purchasers and their counsel, against the background of the established caselaw law whereby Courts have empowered

receivers to disclaim uneconomical real property purchase agreements where those agreements do not maximize recoveries to the relevant mortgagee stakeholders.

15. As a result of those negotiations, the Receiver and the Purchasers agreed to amend the Updated APSs to reflect and credit each Purchaser with deposits of \$175,000, consistent with the Initial APSs, and to reflect standard receivership terms (i.e., “as is where is”) and conditions, including the approval and versing orders sought on this motion (the “**Amended APSs**”). Foremost consents to proposed Transactions being completed in accordance with the Amended APSs.
16. The Receiver has obtained updated appraisals of the three Properties based on appraisals previously obtained by Foremost. The purchase prices set out in the Amended APSs (which remained unchanged from the Updated APSs) are consistent with the original and updated appraisals. In the Receiver’s view, the \$175,000 deposit credit to each Purchaser is commercially reasonable particularly when taking into account the costs of preparing the Properties to be remarketed and the time and costs of remarketing the Properties in the current residential retail market, after the costs and delay obtaining vacant possession of the Properties from the Purchasers by Court orders.

***Considering the Interests of the Parties***

17. One of the primary reasons for the commencement of these receivership proceedings by Foremost was the inability of the Debtors to convey clean title to purchasers of the Receivership Assets in light of the Joshi Mortgages. Following the Receiver’s appointment, and now that the Joshi Mortgages have been discharged, the issue(s) of material subsequent purchase price deposits having been paid by purchasers to Jhaveri entities without the consent or knowledge of the relevant mortgagees or application to their mortgages has become the central issue in these proceedings in respect of the sale of the Lerrato Properties and the remaining Barakaa Property.
18. The Receiver has been in communication with Foremost throughout the receivership proceedings, including with respect to the Receiver’s Borrowing Charge amount and

advances by Foremost thereunder. Based on the outstanding Lerrato FM Debt, Foremost is the only creditor with a direct economic interest in the sale of the three Properties.

19. The Receiver has periodically corresponded with the representative of the BIP concerning these receivership proceedings, including in respect of the sale process for the Properties. BIP is not projected to receive any distributions from the sale the Properties given the amount owing on the Lerrato FM Debt and amount of the Receiver's Charge.

### **The Efficacy and Integrity of the Process**

20. The purchase prices and deposit set out in the Amended APSs are consistent with the prices and deposit reflected in the Initial APSs which were entered into by Lerrato and the Purchasers in 2021 prior to the construction of the Properties on what the Receiver understands to be an arm's length commercial basis. The Receiver considered and balanced the costs and benefits of seeking orders to disclaim the Updated APSs and obtain vacant possession of the Properties from the Purchasers, in order to refurbish and remarket the Properties through a real estate agent in the current market, as compared to a negotiated result with the Purchasers, resulting in sales consistent with the Initial APSs and the Receiver's appraisals.

### **Unfairness in the Working out of the Process**

21. In addition to the interest of Foremost and BIP, the Receiver considered the interests of the Purchasers, who the Receiver understands from Mr. Jhaveri had sold their previous residences in reliance on the occupancy agreements for the Properties, and the unfortunate (but self-imposed) position the payments of non-market additional deposits have put them in. In the Receiver's view, the negotiated result reflected in the Amended APSs, consented to by Foremost, reflects an appropriate balance between maximizing sale proceeds and not unduly prejudicing the Purchasers who have been residing in the Properties for in excess of a year.
22. The negotiation process with the Purchasers and their counsel was conducted in an even handed manner by the Receiver, as Court officer, and DLA as its counsel, and no party was prejudiced or treated unfairly by the Receiver during the conduct of the negotiation process.

### **Distributions to Foremost in respect of the Lerrato FM Debt**

23. The Receiver recommends that it be authorized to make distributions to Foremost up to the amount of the Lerrato FM Debt from the sale proceeds following closing of the Transactions, subject to retaining a holdback in respect of the professional fees and costs of these proceedings secured by the Receiver's Charge and the Receiver's Borrowing Charge. Based on the outstanding amount of the Lerrato FM Debt and the anticipated net proceeds of the Transaction, there will still be a material portion of the Lerrato FM Debt owing to Foremost after such distributions are made.

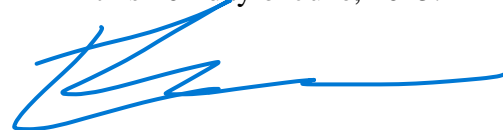
### **Approval of the Receiver's Activities**

24. The Receiver requests that the Court approve its activities as set out in the Third Report. It is the common practice of this Court and its Court appointed officers to have the officer's activities approved from time to time during the proceeding. No parties have, as of the date of this Factum, indicated any adverse comment on the Receiver's activities described in the Third Report, and the form of requested approval order contains the now standard language reflecting that only the Receiver, in its personal capacity and only with respect to its personal liability may rely on such requested approval.

## **PART V - CONCLUSION**

25. For the reasons set forth herein, the Receiver respectfully requests that this Court grant the Receiver's motion for approval of the Sale Agreements and Transactions and the vesting in the Purchasers all of the Debtor's right, title and interest in and to the Purchased Assets, approving a distribution to Foremost from the Transactions proceeds up to the amount of the Lerrato FM Debt, and approving the Receiver's activities set out in the Third Report.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10<sup>th</sup> day of June, 2025.



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**DLA Piper (Canada) LLP**  
Lawyers for the Receiver