

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

and

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

Respondents

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**FACTUM OF THE RECEIVER  
RE: AUTHORIZATION TO TERMINATE AND DISCLAIM AGREEMENTS OF  
PURCHASE AND SALE**

**MOTION RETURNABLE OCTOBER 7, 2025**

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Lawyers for the Receiver

TO: **SERVICE LIST**

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## **PART I - OVERVIEW**

1. KSV Restructuring Inc. ("**KSV**"), in its capacity as the Court-appointed receiver (the "**Receiver**") of certain real property of Barakaa Developer Inc. ("**Barakaa**") and Lerrato Inc. ("**Lerrato**") and the property, assets and undertakings of 2145499 Ontario Inc. ("**214 Ontario**") and together with Barakaa and Lerrato, the "**Debtors**", is seeking an order, among other things:

- (a) Approving and authorizing the Receiver to terminate and disclaim:
  - (i) an agreement of purchase and sale ("**APS**") dated August 12, 2022 (the "**First 369 Porte APS**") and a APS dated May 23, 2024 (the "**Second 369 Porte APS**") and together with the First 369 Porte APS, the "**369 Porte APS**") between Lerrato, as seller, and Muhammed Jehanzeb Agha (the "**369 Porte Purchaser**"), as Purchaser, pursuant to which the 369 Porte Purchaser agreed to purchase the land and building known municipally as 369 Porte Road, Ajax, Ontario ("**369 Porte**") and the chattels listed in the 369 Porte APS;
  - (ii) a License to Occupy dated January 1, 2024 between Lerrato and the 369 Porte Purchaser in respect of the occupation of 369 Porte by the 369 Porte Purchaser pending closing of the sale of 369 Porte (the "**369 Porte License**");

- (iii) an APS dated August 12, 2022 (the “**First 377 Porte APS**”) and an APS dated May 14, 2024 (the “**Second 377 Porte APS**” together with the First 377 Porte APS, the “**377 Porte APS**”) between Lerrato, as seller, and Rohitkumar M. Patel and Arvindaben R. Patel (the “**377 Porte Purchasers**”), as Purchasers, pursuant to which the 377 Porte Purchasers agreed to purchase the land and building known municipally as 377 Porte Road, Ajax, Ontario (“**377 Porte**”), and the chattels listed in the 377 Porte APS;
  - (iv) any and all occupancy licenses or agreements between Lerrato and the 377 Porte Purchasers in respect of the occupation of 377 Porte by the 377 Porte Purchasers pending the closing of the sale of 377 Porte;
- (b) declaring that the Receiver is entitled to vacant possession of each of 369 Porte and 377 Porte;
- (c) ordering the 369 Porte Purchaser and the 377 Porte Purchasers and any other occupants of 369 Porte or 377 Porte, to vacate 369 Porte and 377 Porte, as applicable, by no later than 4:00p.m on the date that is 30 days from the issuance of the Disclaimer Order or the next business day if that day is a weekend or holiday (the “**Vacancy Date**”);
- (d) ordering if the 369 Porte Purchaser, the 377 Porte Purchasers, or any other occupants of 369 Porte or 377 Porte refuse to vacate the applicable residence by or before 4:00pm on the Vacancy Date, then, at the request

of the Receiver, the Ontario Provincial Police and/or the Sherriff of the Regional Municipality of Durham (Oshawa), are hereby authorized and directed to accompany and assist the Receiver in taking vacant possession of the applicable residence; and

- (e) granting the Receiver leave to issue writs of possession for 369 Porte and/or 377 Porte directed to the Sheriff of the Regional Municipality of Durham (Oshawa).

2. The Receiver was appointed pursuant to the order of Justice W.D. Black dated October 21, 2024 (the “**Appointment Order**”). The Receiver has completed the sale of certain of the real properties but, notwithstanding months of indulgences and negotiations, the Receiver has, to date, been unable to reach acceptable terms to complete the sale of three properties, two of which (369 Porte and 377 Porte) are the subject of this motion. The third property is the subject of a motion returnable October 10, 2025.

3. The Receiver’s view and recommendation to the Court is that the disclaimers of the 369 Porte APS and the 377 Porte APS are in the best interest of the Lerrato stakeholders as a whole.

## PART II - SUMMARY OF FACTS

4. 214 Ontario, Lerrato and Barakka are a real estate development companies controlled by Hitesh Jhaveri (“**Mr. Jhaveri**”) and his wife Niketa Wadia (“**Ms. Wadia**”).<sup>1</sup>

5. Pursuant to the Appointment Order<sup>2</sup>, KSV was appointed as Receiver of certain real properties of the Debtors including:

(a) two fully constructed homes in Richmond Hill, Ontario owned by Barakaa, being 25 Madison Avenue (“**25 Madison**”) and 23 Madison Avenue (“**23 Madison**”);<sup>3</sup>

(b) five fully constructed residential freehold townhouses and one parcel of residual real property (a municipal easement) in Ajax, Ontario owned by Lerrato (the “**Porte Properties**”);<sup>4</sup> and

(c) a substantially completed 10-unit townhouse condominium project in Ajax, Ontario owned by 2145499 (the “**Doric Development**”)<sup>5</sup>

(collectively, the “**Receivership Assets**”).

6. The Receiver has completed sales of 371, 373 and 375 Porte Road (the “**Completed Porte Transactions**”) and 25 Madison.<sup>6</sup>

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<sup>1</sup> Fourth Report to Court of KSV Restructuring Inc. as Receiver and Manager of 2145499 Ontario Inc. and certain properties of Barakaa Developer Inc., and Lerrato Inc. [“**Fourth Report**”] at 2.0, para 1, Receiver Motion Record [“**RMR**”], Tab 3, p. 26.

<sup>2</sup> Order (Appointing Receiver) at para 2, RMR, Appendix A, p. 35.

<sup>3</sup> First Report of Receiver, [“**First Report**”] at 2.0, para 1, RMR, Appendix D, p. 89.

<sup>4</sup> First Report at 2.0, paras 2-3, RMR, Appendix D, p. 89-90.

<sup>5</sup> First Report at 2.0, para 5, RMR, Appendix D, p. 90.

<sup>6</sup> Fourth Report at 2.1, paras 4-5, RMR, Tab 3, p. 26-27.

7. The Receiver attempted for several months to negotiate commercially acceptable, value maximizing transactions with the purchaser of 23 Madison, the 369 Porte Purchaser and the 377 Porte Purchasers similar to those entered into with the purchasers/occupants in the Completed Porte Transactions.<sup>7</sup>

8. The Receiver's negotiations with the 23 Madison Purchaser, the 369 Porte Purchaser, and the 377 Porte Purchasers have been unsuccessful to date.<sup>8</sup>

9. The within motion is only with respect to the 369 Porte APS and the 377 Porte APS. The 23 Madison APS is the subject matter of a separate motion.

10. The within motion is supported by Foremost Mortgage Holding Corporation, a secured lender to Lerrato, with a first-in-time mortgage registered on title to 369 Porte and 377 Porte.

#### **A. 369 Porte**

11. Since the date of the Receiver's appointment on October 21, 2024, the 369 Porte Purchaser has been in occupancy of 369 Porte pursuant to the 369 Porte License.

12. 369 Porte is subject to the Second 369 Porte APS, signed by the 369 Porte Purchaser on May 24, 2023 and by Lerrato on May 23, 2024, for a purchase price of \$1,300,000 plus certain prescribed additional amounts. The Second 369 Porte APS reflects a \$10,000 deposit. The Second 369 Porte APS appears to supersede and replace

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<sup>7</sup> Fourth Report at 3.0, para 1, RMR, Tab 3, p. 29.

<sup>8</sup> Fourth Report at 3.0, para 1, RMR, Tab 3, p. 29.

the First 369 Porte APS dated August 12, 2022 for a purchase price of \$1,300,000, which reflects two deposits in the amounts of \$50,000 each.

13. Based on the Receiver's discussions with Mr. Jhaveri, the 369 Porte Purchaser made 17 separate deposit payments to Lerrato, totalling in aggregate \$150,000, none of which has been held in trust by Lerrato or Mr. Jhaveri. The Receiver is prepared to close with the 369 Purchaser based on the financial terms of the Second 369 Porte APS and a \$150,000 deposit credit, as amended to reflect the "as is where is" nature of a receivership approval and vesting order transaction.

14. Notwithstanding that the 369 Porte Purchaser has had ten months since the Receiver's appointment to arrange financing to complete the purchase of 369 Porte, the 369 Porte Purchaser has failed to meaningfully engage in discussions with the Receiver concerning his purchase of 369 Porte. Given the lack of engagement, including through the 369 Porte Purchaser's lawyer's law clerk, the 369 Porte Purchaser appears financially incapable of closing a transaction with the Receiver on the terms of the Second 369 Porte APS or at all.<sup>9</sup>

15. To maximize the realizable value of 369 Porte for the benefit of stakeholders, the Receiver needs to obtain vacant possession of 369 Porte from the 369 Porte Purchaser, return the residence to saleable condition, and re-expose it to the market as soon as possible.

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<sup>9</sup> Fourth Report at 3.1, para 1, RMR, Tab 3, p. 29-30.



## **B. 377 Porte**

16. Since the date of the Receiver's appointment on October 21, 2024, the 377 Porte Purchasers have been in occupancy of 377 Porte.

17. 377 Porte is subject to the Second 377 Porte APS, dated May 14, 2024 for a purchase price of \$1,300,000 plus certain prescribed additional amounts, which reflects a \$75,000 deposit amount.<sup>10</sup> The Second 377 Porte APS appears to supersede and replace the First 377 Porte APS also for a purchase price of \$1,300,000, which reflected two deposits in the amounts of \$50,000 each.<sup>11</sup>

18. Mr. Jhaveri on behalf of Lerrato has advised the Receiver that Lerrato has received three purchase price deposits totalling \$150,000 from the 377 Porte Purchasers, none of which has been held in trust by Lerrato or Mr. Jhaveri. The Receiver is prepared to close with the 377 Porte Purchasers based on the financial terms of the 377 Porte APS and a \$150,000 deposit credit, as amended to reflect the "as is where is" nature of a receivership approval and vesting order transaction.<sup>12</sup>

19. When contacted by the Receiver's counsel, the 377 Porte Purchasers, through their counsel, have taken the position that they are entitled to purchase price deposit credits totalling \$679,949, as a result of 38 separate payments between April 30, 2019 and September 17, 2024, made to Lerrato (19), Mr. Jhaveri (5), Osmi Homes (10), 214 Ontario (2), and OM Sai Marble Inc.<sup>13</sup> Mr. Jhaveri has advised the Receiver that only \$150,000 of the payments received by Lerrato are purchase price deposits for 377

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<sup>10</sup> Fourth Report at 3.2, para 1, RMR, Tab 3, p. 30.

<sup>11</sup> Fourth Report at 3.2, para 1, RMR, Tab 3, p. 30.

<sup>12</sup> Fourth Report at 3.2, para 1, RMR, Tab 3, p. 30.

<sup>13</sup> Fourth Report at 3.2, para 2, RMR, Tab 3, p. 30.

Porte.<sup>14</sup> Mr. Jhaveri has advised that other payments are on account of the 377 Porte Purchasers requested upgrades to the 377 Porte construction (ie: in addition to the purchase price), and other amounts were repaid.<sup>15</sup>

20. Given the 5-year payment history starting well before the First 377 Porte APS, the large number of payment transactions, and the varied Jhaveri-related payment recipients, and certain disclosed communications between them, it appears that the relationship between the 377 Porte Purchasers and Mr. Hitesh/Ms. Wadia Jhaveri is not a traditional arm's length vendor and purchaser relationship.<sup>16</sup> The 377 Porte Purchasers have refused to agree to a transaction with the Receiver based on \$150,000 of deposits, and through their counsel have continue to demand a purchase price deposit credit of \$679,949 against a \$1,300,000 purchase price, which is unacceptable to the Receiver and the 377 Porte mortgagee stakeholders.

21. To maximize the realizable value of 377 Porte for the benefit of stakeholders, the Receiver needs to obtain vacant possession of 337 Porte from the 377 Porte Purchasers, return the residence to saleable condition, and re-expose it to the market as soon as possible.

### **C. The Receiver's Recommendation**

22. The Receiver is of the view that the disclaimers of the 377 Porte APS and the 369 Porte APS are, in all the circumstances, in the best interests of Lerrato's stakeholders as a whole given:

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<sup>14</sup> Fourth Report at 3.2, para 3, RMR, Tab 3, p. 30.

<sup>15</sup> Fourth Report at 3.2, para 3, RMR, Tab 3, p. 30.

<sup>16</sup> Fourth Report at 3.2, para 3, RMR, Tab 3, p. 30.

- (a) the Receiver provided the 369 Porte Purchaser ten months to arrange financing to close his purchase of 369 Porte, and it does not appear that the 369 Porte Purchaser will be able to do so;
- (b) with respect to 377 Porte:
  - (i) the Receiver has tried unsuccessfully for several months to negotiate a value maximizing transaction with the 377 Porte Purchasers consistent with the terms of the Completed Porte Sales;
  - (ii) if the Receiver closed on the terms proposed by the 377 Porte Purchasers, the net proceeds from those sales would be materially less than what could be realized by the Receiver if it resold 377 Porte;
  - (iii) the 377 Porte Purchasers can seek to recover “deposits” paid to Lerrato and the other payees, for which credit is not being provided, as Lerrato itself continues to operate is not subject to these receivership proceedings;
- (c) given the lengthy advance notice of this motion and its return date, vacant possession of 377 Porte and 369 Porte within 30 days of the Disclaimer Order should provide the 377 Porte Purchasers and the 369 Porte Purchaser sufficient time to make alternative living arrangements; and

- (d) Foremost is supportive of the Receiver's recommendations and is prejudiced by further cost and delay if this matter is not resolved on a timely basis.<sup>17</sup>

### **PART III - STATEMENT OF ISSUES**

23. This motion raises the following issues of law:

- (a) Whether this Court should authorize the Receiver to terminate and disclaim:
  - (i) the 369 Porte APS and the 369 Porte License;
  - (ii) the 377 Porte APS and any agreement or arrangement relating to the occupancy of 377 Porte.
- (b) Whether this Court should order and declare that the Receiver is entitled to vacant possession of each of 369 Porte and 377 Porte;
- (c) Whether this Court should order:
  - (i) the 369 Porte Purchaser and the 377 Porte Purchasers and any other occupants of 369 Porte or 377 Porte, to vacate 369 Porte and 377 Porte, as applicable, by no later than 4:00p.m on the Vacancy Date;
  - (ii) that if the 369 Porte Purchaser, the 377 Porte Purchasers, or any other occupants of 369 Porte or 377 Porte refuse to vacate the applicable residence by or before 4:00pm on the Vacancy Date, then,

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<sup>17</sup> Fourth Report at 3.4, paras 2-3, RMR, Tab 3, p. 31-32.

at the request of the Receiver, the Ontario Provincial Police and/or the Sheriff of the Regional Municipality of Durham (Oshawa) are authorized and directed to accompany and assist the Receiver in taking vacant possession of the applicable residence; and

- (d) Whether this Court should grant the Receiver leave to issue writs of possession for 369 Porte and/or 377 Porte directed to Sheriff of the Regional Municipality of Durham (Oshawa).

24. The Receiver submits that the these issues should all be answered 'yes'.

#### **PART IV - LAW**

##### **A. This Court should authorize the Receiver to disclaim the 369 APS and the 377 APS**

25. The Court's jurisdiction to direct a receiver to disclaim agreements of purchase and sale in the context of real property developments is well established and has been authorized by this court many times.<sup>18</sup> Disclaimers are an important tool by which a receiver can maximize the value of the assets of the estate for the benefit of a debtor's stakeholders as a whole.<sup>19</sup>

26. The Court considers the following factors when determining whether it should authorize a receiver to disclaim a pre-sale purchase agreement:

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<sup>18</sup> *Cameron Stephens Mortgage Capital Ltd. v 2011836 Ontario Corp. et al*, 2024 ONSC 3507 [**"Cameron Stephens"**] at para 17, Receiver's Book of Authorities [**"RBOA"**], Tab 1, citing *Forjay Management Ltd. v 0981478 BC Ltd.*, [2018 BCSC 527](#), 11 B.C.L.R. (6th) 395 [**"Forjay Management"**] at paras. [131-132](#); *Firm Capital Mortgage Fund Inc. v 2012241 Ontario Ltd.*, [2012 ONSC 4816](#), 99 C.B.R. (5th) 120 [**"Firm Capital"**] at paras. [31-38](#); and *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd.*, [2020 BCSC 1013](#), 80 C.B.R. (6th) 118 [**"Peoples Trust"**] at para. [57](#); see also [Bankruptcy and Insolvency Act](#), RSC 1985, c B-3, [s. 243\(1\)\(c\)](#).

<sup>19</sup> *Forjay Management* at para. [36](#); *Peoples Trust* at para. [25](#).

- (a) the respective legal priority positions as between the competing interests;
- (b) whether a disclaimer would enhance the value of the assets, and, if so, whether a failure to disclaim would amount to a preference in favour of one party; and
- (c) if a preference would arise, whether the party seeking to avoid a disclaimer has established that the equities support that result.<sup>20</sup>

27. When applied to the circumstances of the within matter, the above factors strongly support the authorization of the Receiver to disclaim the 369 Porte APS, the 369 Porte License, the 377 Porte APS and the 377 Porte License.

***1. The 369 Porte Purchaser and 377 Porte Purchasers' interest is subordinate to that of the secured lenders***

28. Each of the 369 Porte APS and 377 Porte APS contain the following express acknowledgment that the 369 Porte Purchaser and 377 Porte Purchasers (as the case may be) subordinates and postpones their APS to any mortgage or construction financing of the Debtors and any advances thereunder:

The Purchaser hereby acknowledges the full priority of any mortgage or construction financing arranged by the Vendor and/or secured by the Real Property over his interest as Purchaser for the full amount of the said mortgage or construction financing, notwithstanding any law or statute to the contrary and agrees to execute all acknowledgments or postponements required to give full effect thereto.<sup>21</sup>

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<sup>20</sup> *Cameron Stephens* at para 18, RBOA, Tab 1, citing *Forjay Management* at paras. [41-44](#).

<sup>21</sup> 369 Porte APSs and Occupancy License [**“369 Porte APS”**] at Schedule A, para 16, RMR, Appendix H, p.140; 377 Porte APSs [**“377 Porte APS”**] at Schedule A, para 16, RMR, Appendix I, p. 181.

29. The 369 Porte Purchaser and 377 Porte Purchasers agreed to forbear from registering the 369 Porte APS and 377 Porte APS (as the case may be) on title to the property.<sup>22</sup>

30. The language in the 369 Porte APS and 377 Porte APS clearly shows that:

- (a) The 369 Porte APS and 377 Porte APS were not intended to convey a proprietary interest in 369 Porte to the 369 Porte Purchaser or a proprietary interest in 377 Porte to the 377 Porte Purchasers; and
- (b) The Debtors' secured loans have priority over the 369 Porte Purchaser's rights under the 369 Porte APS and over the 377 Porte Purchasers' rights under the 377 Porte APS.

31. Similar language has been relied upon by Courts to determine that purchasers of property under agreements of purchase and sale are subordinate in interest to secured lenders for the purpose of terminating their agreements in the context of a receivership.<sup>23</sup>

***2. Disclaiming the 369 Porte APS and 377 Porte APS will enhance the value of the Debtors' estate***

32. In respect of 369 Porte, the Receiver has provided the 369 Porte Purchaser many months to arrange financing to close its purchaser of 369 Porte but, it appears, that the 369 Porte Purchaser will not be able to do so.<sup>24</sup>

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<sup>22</sup> 369 Porte APS at Schedule A, para 38, RMR, Appendix H, p. 145; 377 Porte APS at Schedule A, para 38, RMR, Appendix I, p. 186.

<sup>23</sup> *Firm Capital* at para 10; *Cameron Stephens* at para 28, RBOA, Tab 1.

<sup>24</sup> Fourth Report at 3.4, para 1.(a), RMR, Tab 3, p. 31.

33. In respect of 377 Porte, the Receiver has tried unsuccessfully to negotiate a transaction with the 377 Porte Purchasers consistent with the terms of the Completed Porte Sales.<sup>25</sup> If the Receiver closed on terms proposed by the 377 Porte Purchasers the net proceeds will be materially less than what could be realized by the Receiver if the Receiver resold 377 Porte.<sup>26</sup>

**3. *Avoiding disclaimer will be detrimental to all stakeholders***

34. 369 Porte and 377 Porte are fully constructed residential freehold townhomes.<sup>27</sup> They are each subject to an APS and have not closed. Each purchaser has paid one or more deposits and are currently occupying their residence. Each purchaser has been occupying the units since the date of the Receiver's appointment, but neither has paid occupancy fees or property taxes.<sup>28</sup>

35. In considering the detriment to all stakeholders, Doherty J.A. recognized:

Receivers will often have to make difficult business choices that require a careful cost/benefit analysis and the weighing of competing, if not irreconcilable, interests. Those decisions will often involve choosing from among several possible courses of action, none of which may be clearly preferable to the others. Usually, there will be many factors to be identified and weighed by the receiver. Viable arguments will be available in support of different options. The receiver must consider all of the available information, the interests of all legitimate stakeholders, and proceed in an evenhanded manner. That, of course, does not mean that all stakeholders must be equally satisfied with the course of conduct chosen by the receiver. If the receiver's decision is within the broad bounds of reasonableness, and if it proceeds fairly, having considered the interests of all stakeholders, the court will support the receiver's decision.<sup>29</sup>

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<sup>25</sup> Fourth Report at 3.4, para 1.(b)(i), RMR, Tab 3, p. 31.

<sup>26</sup> Fourth Report at 3.4, para 1.(b)(ii), RMR, Tab 3, p. 31.

<sup>27</sup> First Report at 2.0, paras 2-3, RMR, Appendix D, p. 89-90.

<sup>28</sup> First Report at 2.0, para 4, RMR, Appendix D, p. 90.

<sup>29</sup> *Ravelston Corp. (Re)*, [2005 CanLII 63802 \(ON CA\)](#) at para 40.



36. While disclaimer of the 369 Porte APS, the 369 Porte License, the 377 Porte APS, and the 377 Porte occupancy arrangements will have a negative impact on the 369 Porte Purchaser and 377 Porte Purchasers, this does not justify overriding the secured lender's legal priority.

37. The 369 Porte Purchaser has paid a market deposit and the Receiver is prepared to complete a sale transaction based on the existing financial terms. However, the 369 Porte Purchaser by all evidence appears to be incapable of closing, because the 369 Porte Purchaser has not been able to secure financing. As such, any detriment to the 369 Porte Purchaser is as a result of their own inability to close the transaction they agreed to with Lerrato.

38. With respect to the 377 Porte Purchasers, because the 377 Porte Purchasers are insisting on a \$679,949 deposit credit, the net proceeds of sale from 377 Porte under the 377 Porte APS on those terms would materially increase the shortfalls to the mortgagees of 377 Porte. The Receiver has advised the 377 Porte Purchasers that it will close the sale of 377 Porte on terms similar to those of the Completed Porte Sales, which includes, a credit for a market deposit (in this case the amount of \$150,000 indicated by Hitesh Jhaveri). The 377 Porte Purchasers take the position that all amounts they paid to Lerrato or related parties should be netted against and applied as a deposit against the purchase price.

39. The 377 Porte Purchasers can close the sale of 377 Porte on the terms proposed by the Receiver and seek to recover "deposits" paid to Lerrato and other persons and

entities for which credit is not being provided since Lerrato is not subject to receivership proceedings and has other development projects.<sup>30</sup>

40. Without the disclaimer, the Receiver will not be able to market 369 Porte and 377 Porte and the secured lenders will suffer a materially more substantial loss relative to an outcome where the Receiver disclaimed the 369 Porte APS and the 377 Porte APS.

41. In all, the inability of the Receiver to disclaim the 369 Porte APS, the 369 Porte License, the 377 Porte APS, and the 377 Porte occupancy agreement would occasion significant harm to the Debtors' priority stakeholders and impair the overall recoveries in the receivership to the detriment of the estate as a whole. In the Receiver's view, this harm outweighs that which would be caused to the 369 Porte Purchaser and 377 Porte Purchasers by the disclaimer given their option to close the transaction with the Receiver on terms similar to the Completed Porte Sales. Equity therefore does not support refusal of the Receiver's request to authorize its disclaimer of the 369 Porte APS, the 369 Porte License, the 377 Porte APS, and the 377 Porte License

#### **B. The Court Should Order Vacant Possession and Ancillary Relief**

42. Vacant possession of each of 369 Porte and 377 Porte is required in order to maximize the proceeds of the sale and in order to do that the Receiver must be able to offer a prospective purchaser vacant possession. The Receiver reiterates and relies on the equities as stated above for an order for vacant possession.

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<sup>30</sup> Fourth Report at 3.4, para 1.(b)(iii), RMR, Tab 3, p. 31.

43. The Receiver submits that vacant possession be made available to the Receiver within 30 days of the Disclaimer Order as that should provide the 369 Porte Purchaser and the 377 Porte Purchasers sufficient time to make alternative living arrangements.

44. If vacant possession is not provided by either of the 369 Porte Purchaser and the 377 Porte Purchasers within the 30 day period, the Receiver will seek the assistance of the Ontario Provincial Police or the Sheriff of the Regional Municipality of Durham (Oshawa).

**PART V - ORDER REQUESTED**

45. The Receiver requests that this Court make an order in the form of the draft order included in the Receiver's Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 29<sup>th</sup> day of September, 2025.



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Edmond Lamek

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**SCHEDULE “A”**

**LIST OF AUTHORITIES**

1. *Cameron Stephens Mortgage Capital Ltd. v 2011836 Ontario Corp. et al*, 2024 ONSC 3507. **[RBOA, Tab 1]**
2. *Firm Capital Mortgage Fund Inc. v 2012241 Ontario Ltd.*, [2012 ONSC 4816](#), 99 C.B.R. (5th) 120.
3. *Forjay Management Ltd. v 0981478 BC Ltd.*, [2018 BCSC 527](#), 11 B.C.L.R. (6th) 395.
4. *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd*, [2020 BCSC 1013](#), 80 C.B.R. (6th) 118.
5. *Ravelston Corp. (Re)*, [2005 CanLII 63802 \(ON CA\)](#).

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

*Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).*

Date September 29, 2025



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Signature

## SCHEDULE “B”

### TEXT OF STATUTES, REGULATIONS & BY - LAWS

[Bankruptcy and Insolvency Act](#), RSC 1985, c B-3.

#### **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.

FOREMOST MORTGAGE HOLDING CORPORATION  
Applicant

-and- BARAKAA DEVELOPER INC. et al.  
Respondents

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT  
TORONTO

**FACTUM OF THE RECEIVER  
MOTION RETURNABLE OCTOBER 7, 2025**

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