

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. AND  
2226 ROYAL WINDSOR LP

Respondents

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

**FACTUM OF THE RECEIVER**

**(MOTION FOR APPROVAL AND VESTING ORDER AND LEASE RELIEF ORDER)**

April 22, 2026

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Lawyers for the Receiver

## PART I - NATURE OF THE MOTION

1. On May 30, 2024, the Ontario Superior Court of Justice (the “**Court**”) issued an order (the “**Receivership Order**” and as amended on November 15, 2024 and April 28, 2025, the “**A&R Receivership Order**”) appointing KSV Restructuring Inc. as the receiver and manager (the “**Receiver**”), without security, of certain real property (the “**Real Property**”) and all present and future assets, undertakings and personal property, with the exception of all security granted by 759 Winston Churchill GP Inc. (“**Churchill GP**”) to the Toronto-Dominion Bank in connection with certain letters of credit (together with the Real Property, the “**Property**”) belonging to: Churchill GP, 759 Winston Churchill L.P. (“**Churchill LP**” and, together with Churchill GP, “**Churchill**”), 688 Southdown GP Inc. (“**Southdown GP**”), 688 Southdown LP (“**Southdown LP**,” and collectively with Southdown GP, “**Southdown**”), 2226 Royal Windsor GP Inc. (“**Royal Windsor GP**”), and 2226 Royal Windsor LP (“**Royal Windsor LP**,” and collectively with Royal Windsor GP, “**Royal Windsor**”) (collectively, the “**Debtors**”).

2. Each of the Debtors are privately held real estate development entities, which prior to these receivership proceedings were engaged in developing various Projects (as defined below) on their respective Real Property, all of which is located in Mississauga, Ontario.

3. On November 13, 2025, this Court granted the “**Sale Process Approval Order**,” which approved a sale process (the “**Sale Process**”) for the Property of Southdown and Royal Windsor (the “**Sellers**” and the “**Subject Property**”) and further approved a Stalking Horse Agreement of Purchase and Sale (the “**APS**”) entered into between the Receiver and KingSett Mortgage Corporation, the Debtors’ primary secured creditor (“**KingSett**” or the “**Purchaser**”), pursuant to which the Purchaser agreed to act as stalking horse bidder in the Sale Process. As no Qualified Bids were received by the Qualified Bid Deadline (as defined below), the Sale Process has been

deemed terminated, and the Stalking Horse Bid (as defined in the Sale Process) deemed to be the successful bid in respect of the Property of Southdown and Royal Windsor.

4. In connection with the implementation of the APS, the Receiver seeks an Approval and Vesting Order (the “**AVO**”), which will, among other things:

- (a) approve the proposed sale transaction between the Receiver and the Purchaser, pursuant to the APS (the “**Transaction**”);
- (b) transfer and vest all of the Sellers’ right, title and interest in and to the Purchased Assets (as defined in the APS) in the Purchaser following the Receiver’s delivery of a certificate substantially in the form attached as Schedule “A” to the proposed AVO;
- (c) authorize and direct the Receiver to make distributions to the holders of Priority Claims (as defined below); and
- (d) grant a sealing order in respect of Confidential Appendix 1 (as defined below).

5. With respect to the Property of Churchill, the Churchill Project (as defined below) is comprised of three industrial buildings, of which only one building is currently complete. The Receiver determined that completion of the Churchill Project within the receivership proceedings would increase its value in an eventual sales process, and for this purpose sought and obtained amendments to the Receivership Order, which granted certain relief facilitating construction. Construction of the remaining two buildings (the “**Remaining WC Buildings**” and each, a “**Remaining WC Building**”) is expected to be completed in July 2026, and it is expected that the Churchill Project will be marketed in a Court-approved sale process soon thereafter.

6. The Receiver, in consultation with the Marketing Agent (as defined below) and KingSett, anticipates that the marketability and potential sale price of the Churchill Project will be increased if the Remaining WC Buildings, at the time of the sale process, have committed tenants secured on favourable lease terms. The Receiver therefore seeks an order (the “**Lease Relief Order**”), in order to establish a process for leasing the Remaining WC Buildings (the “**Leasing Process**”). The proposed Lease Relief Order will, among other things:

- (a) authorize the Receiver, on behalf of Churchill, to enter into leases with respect to Churchill’s Real Property, subject to the Lease Conditions (as defined below);
- (b) approve the Leasing Process; and
- (c) grant a sealing order in respect of Confidential Appendix 2 (as defined below).

7. The requested relief is appropriate in the circumstances and should be approved. The Transaction is the best and only qualified transaction to have emerged following a thorough canvassing of the market pursuant to the terms of the Court-approved Sale Process, and represents the highest recovery available. The Leasing Process provides a flexible, efficient and fair process for canvassing the market for potential lessees for the Remaining WC Buildings, which will ultimately assist in maximizing recovery for Churchill’s stakeholders in a subsequent sale.

## PART II - SUMMARY OF FACTS

8. The facts are more fully set out in the Fourth Report of the Receiver.<sup>1</sup>

### A. The Debtors and the Projects

9. The Debtors are privately held entities which are collectively the registered and beneficial owners of the Real Property. Prior to these proceedings, the Debtors intended to develop three real-estate development projects on their respective Real Property, including:

- (a) The “**Southdown Project**” which was being developed on property located at 688 Southdown Road, Mississauga, Ontario, owned by Southdown (the “**Southdown Lands**”). There is no active construction on the Southdown Lands.<sup>2</sup>
- (b) The “**Royal Windsor Project**,” which was being developed on property located at 2226 Royal Windsor Drive, Mississauga, Ontario, owned by Royal Windsor (the “**Royal Windsor Lands**”). The Royal Windsor Lands are industrial zoned lands and were intended to be re-zoned for residential use (which has not occurred). There is no active construction on the Royal Windsor Lands.<sup>3</sup>
- (c) The “**Churchill Project**” (collectively with the Southdown Project and the Royal Windsor Project, the “**Projects**”), which was being developed on property located at 759 Winston Churchill Boulevard, Mississauga, Ontario, owned by Churchill (the “**Churchill Lands**”). Construction in respect of the Churchill Project is

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<sup>1</sup> Fourth Report of the Receiver dated April 17, 2026 [Fourth Report]. Capitalized terms not otherwise defined have the same meaning as in the Fourth Report. Dollar amounts are given in Canadian dollars unless otherwise specified.

<sup>2</sup> Fourth Report at para. 2.2.1(a).

<sup>3</sup> Fourth Report at para. 2.2.1(b).

currently occurring within the receivership proceedings, pursuant to relief granted in the A&R Receivership Order.<sup>4</sup>

10. The Receiver understands that the Debtors do not have any employees.<sup>5</sup>

**B. The Transaction**

**(a) Indebtedness**

11. KingSett is the principal secured creditor of the Sellers. The indebtedness owing to KingSett with respect to each of the Sellers is as follows (all amounts as of March 31, 2026):

(a) With respect to Southdown, approximately \$445,969 of the amount borrowed pursuant to the Receiver's General Borrowings Charge was used to fund costs and disbursements related to Southdown. Further, Southdown is indebted approximately \$201.4 million pursuant to a commitment letter dated August 19, 2021 (as amended) between KingSett, as lender, and Southdown, as borrower (the "**Southdown Indebtedness**"). The Southdown Indebtedness is secured by, among other things, both the Southdown First Mortgage Charge (as defined in the APS), and a collateral mortgage in respect of the Royal Windsor Lands.<sup>6</sup>

(b) With respect to Royal Windsor, approximately \$87,413 of the amount borrowed pursuant to the Receiver's General Borrowings Charge was used to fund costs and disbursements related to Royal Windsor. Further, Royal Windsor is indebted

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<sup>4</sup> Fourth Report at para. 2.2.1(c).

<sup>5</sup> Fourth Report at para. 2.1.4.

<sup>6</sup> Fourth Report at para. 3.2.3.1(a)-(c).

approximately \$41.9 million pursuant to a commitment letter dated June 28, 2022 (as amended) between KingSett, as lender, and Royal Windsor, as borrower (the “**Royal Windsor Indebtedness**”). The Royal Windsor Indebtedness is secured by, among other things, both the Royal Windsor First Mortgage Charge (as defined in the APS), and a collateral mortgage in respect of the Southdown Lands.<sup>7</sup>

12. In addition, the Receiver understands that 7037619 Canada Inc. has registered a subordinate mortgage charge in the amount of \$20,000,000 on the Southdown Lands, the validity of which has not been reviewed given the construct of the APS and associated recoveries.<sup>8</sup>

13. Based on the Sellers’ books and records, the unsecured obligations of Southdown and Royal Windsor as of the date of the Receivership Order, totalled approximately \$3.2 million and \$118,000, respectively, which were primarily owing to municipalities, consultants, and professionals.<sup>9</sup>

14. Certain parties have registered construction liens on the Sellers’ Real Property, a portion of which may have priority over the secured claims of the mortgagees.<sup>10</sup> The process by which such potential priority claims will be addressed is discussed in more detail below.

**(b) The Sale Process**

15. In accordance with the terms of the Sale Process Approval Order, the Receiver retained Avison Young (the “**Agent**”) to list the Subject Property for sale. Shortly after the Sale Process

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<sup>7</sup> Fourth Report at para. 3.2.3.1(d)-(f).

<sup>8</sup> Fourth Report at para. 3.2.3.4.

<sup>9</sup> Fourth Report at para. 3.2.3.5.

<sup>10</sup> Fourth Report at para. 3.3.2.6.

Approval Order was granted, the Agent listed the Subject Property on MLS® and distributed an interest solicitation letter (the “**Teaser**”), a bid process letter and a form of non-disclosure (“**NDA**”) to 1,694 prospective buyer contacts, and further marketed the Subject Property through, among other things, email campaigns and digital advertisements. Interested parties that signed the NDA were given access to a virtual data room (the “**VDR**”) which contained information regarding the Subject Property, including financial information, contracts, permits, designs, drawings, budgets and other diligence information.<sup>11</sup>

16. Fourteen parties executed the NDA and were given access to the VDR, and two LOIs were submitted on or prior to the January 15, 2026, LOI Deadline. The Sale Process deadline for submission of Qualified Bids was February 17, 2026 (the “**Qualified Bid Deadline**”), which the Receiver extended, pursuant to the Sale Process Approval Order, to March 2, 2026, to facilitate further discussions with parties that had provided LOIs. No binding offers were received in respect of the Southdown Property by the Qualified Bid Deadline, other than the Stalking Horse Bid.<sup>12</sup>

17. With respect to the Royal Windsor Property, one offer (other than the Stalking Horse Bid) was received by the Qualified Bid Deadline (the “**Royal Windsor Offer**”). The Receiver determined that this offer did not constitute a Qualified Bid, as it failed to provide Consideration Value (as defined in the Sale Process) that, in the Receiver’s opinion, would provide a superior economic result for the Royal Windsor estate, when compared to the Stalking Horse Bid. This determination was informed by, among other things, the fact that no bid was received for the Southdown Property alone and that KingSett would not solely acquire the Southdown Property, the consequence of which would be that the Southdown Indebtedness, which is secured by, among

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<sup>11</sup> Fourth Report at paras. 3.1.1-3.1.3.

<sup>12</sup> Fourth Report at paras. 3.1.5-3.1.6.

other things, the Royal Windsor Collateral Mortgage, would remain outstanding. Despite the fact that the Royal Windsor Offer did not constitute a Qualified Bid, the Receiver engaged in further discussions after the Qualified Bid Deadline to understand the terms and conditions of the Royal Windsor Offer and whether the party which submitted the Royal Windsor Offer would be willing to improve its bid.<sup>13</sup>

18. While various discussions and proposals were exchanged, ultimately the party who submitted the Royal Windsor Offer was unable to offer terms which would provide for a superior economic result for the Royal Windsor Estate when compared to the APS. Accordingly, as no Qualified Bids (other than the Stalking Horse Bid) were received by the Qualified Bid Deadline, the Stalking Horse Bid was deemed to be the successful bid in respect of both the Southdown Property and the Royal Windsor Property.<sup>14</sup>

**(c) The Purchased Assets and Purchase Price**

19. Under the terms of the APS, the Purchaser will purchase all of the Sellers' right, title, and interest in the Subject Property, including, among other things: (i) the Southdown Lands and Royal Windsor Lands; (ii) the Assumed Contracts; (iii) all hoarding and preconstruction matters relating to the Lands; and (iv) the Development Approvals (collectively, the "**Purchased Assets**"). All assets, undertakings and properties of the Sellers, other than the Purchased Assets (as defined in the APS), are excluded from the scope of the Transaction.<sup>15</sup>

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<sup>13</sup> Fourth Report at paras. 3.1.6(e), 3.1.7.

<sup>14</sup> Fourth Report at paras. 3.1.7-3.1.8.

<sup>15</sup> See Fourth Report at para. 3.2.1.2 for a full summary description of the APS.

20. The purchase price to be paid by the Purchaser (the “**Purchase Price**”) is equal to the sum of: (i) the amount outstanding on the Closing Date (if any) under the Receiver’s Charge and the Receiver’s Borrowings Charge (as such terms are defined in the Receivership Order); (ii) \$100,000, to be used by the Receiver to fund costs incurred in connection with necessary post-Closing matters, with any unused portion being returned to the Purchaser; (iii) the amount owing on the Closing Date under the First Mortgage Charges (as defined in the APS) granted in favour of KingSett; and (iv) the amount outstanding in respect of any Priority Payables (as defined below) on the Closing Date.<sup>16</sup>

**(d) Treatment of Priority Payables**

21. As set out above, the Purchase Price under the APS includes amounts outstanding in respect of “**Priority Payables**,” which are defined as payables having priority over the First Mortgage Charges, including amounts that have priority pursuant to s. 78(2) of the *Construction Act*, RSO 1990, c. C30.

22. The Receiver’s counsel has advised the Receiver that valid liens may have certain priority over mortgages, and that various trust claims may be advanced by potential claimants in relation to development projects (any such claim a “**Construction Priority Claim**”, which may constitute a Priority Payable). There are two construction liens currently registered on title to some or all of the Southdown Lands (the “**Construction Liens**”) in the aggregate amount of \$13,522,686, and no construction liens registered against the Royal Windsor Lands.<sup>17</sup>

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<sup>16</sup> Fourth Report at para. 3.2.1.2.

<sup>17</sup> Fourth Report at paras. 3.3.1.1-3.3.1.3.

23. In order to address these potential Priority Payables, the Receiver sought and obtained the “**Priority Claims Procedure Order**” on April 28, 2025, which approved a claims process (the “**Priority Claims Process**”), for the purpose of, among other things, identifying and quantifying the Construction Priority Claims. The claims bar date for the Priority Claims Process was June 30, 2025, as of which date the Receiver received two claims for Priority Payables (“**Priority Claims**”) from construction lien claimants (collectively, the “**Construction Lien Claimants**”). No other Priority Claims have been received.<sup>18</sup>

24. The Receiver, with the assistance of its counsel and in consultation with Kenaidan Contracting Limited, has completed its review of the Priority Claims and has reached a consensual resolution with both of the Construction Lien Claimants regarding the quantum of the Priority Claims, the settled amounts of which total \$3,568,475.50. Should the proposed Transaction be approved by the Court, the Receiver is seeking authorization and direction to distribute proceeds from the Transaction to pay the Priority Claims in accordance with the terms of the AVO. These amounts will be fully funded in cash by KingSett on Closing, in accordance with the terms of the APS.<sup>19</sup>

## **C. The Churchill Project**

### **(a) Construction of Remaining WC Buildings**

25. Based on discussions with potential purchasers of the Churchill Project, it became apparent to the Receiver that completion of the project would materially increase the Churchill Project’s value in any sales process and expand the pool of potentially interested acquirors. Accordingly, on

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<sup>18</sup> Fourth Report at paras. 3.3.2.1-3.3.2.2.

<sup>19</sup> Fourth Report at paras. 3.3.2.3-3.3.3.2.

April 28, 2025, the Receiver sought and obtained certain relief in the form of the A&R Receivership Order to facilitate such construction, including the approval of a construction financing facility from KingSett.<sup>20</sup>

26. The Churchill Lands are approximately 47.15 acres and were intended to be developed into 750,354 square feet of industrial facilities, comprised of three industrial buildings. Currently, one building is complete and fully leased and the Remaining WC Buildings are being constructed within the receivership proceedings. The Remaining WC Buildings are anticipated to be completed in July 2026, and the Churchill Project is anticipated to be marketed in a Court-approved sale process soon thereafter.<sup>21</sup>

**(b) Leasing Process**

27. The Receiver, in consultation with Avison Young (the “**Marketing Agent**”) and KingSett, anticipates that the marketability and potential sale price of the Churchill Project will be increased if the Remaining WC Buildings have committed tenants secured on favourable lease terms at the time of launching such a sale process. The Receiver therefore seeks to establish the Leasing Process, whereby the Receiver, in consultation with KingSett, and with the assistance of the Marketing Agent, will administer and oversee the marketing of the Remaining WC Buildings for lease.<sup>22</sup>

28. In order to facilitate the proposed Leasing Process, the Marketing Agent, at the Receiver’s request, prepared a table to support the Leasing Process (the “**Leasing Parameters**”), which sets

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<sup>20</sup> Fourth Report at para. 4.1.1.

<sup>21</sup> Fourth Report at paras. 2.2.1(c), 4.1.2.

<sup>22</sup> Fourth Report at paras. 4.1.2-4.1.3, 4.4.1.

out minimum acceptable terms for the rental of the Remaining WC Buildings, including minimum pricing and leasing terms (the “**Minimum Terms**”).<sup>23</sup> The proposed Lease Relief Order provides that the Receiver may, on behalf of Winston Churchill, enter into lease agreements for the Remaining WC Buildings, provided the following conditions are met (collectively, the “**Lease Conditions**”, the satisfaction of which will qualify an applicable transaction as a “**Permitted Transaction**”):<sup>24</sup>

- (a) the Receiver is satisfied with the rent and other terms of the applicable transaction;
- (b) the minimum pricing and leasing terms for the applicable Remaining WC Building are not less than the applicable Minimum Terms;
- (c) the lease agreement is based on a form of lease to be prepared by the Receiver, in consultation with KingSett and the Marketing Agent (the “**Form of Lease**”);
- (d) the Marketing Agent recommends the transaction; and
- (e) KingSett provides its written consent to the transaction.

29. The Receiver will have the sole discretion to accept, reject, or negotiate offers for the Remaining WC Buildings from potential lessees (“**Offers**”), provided the Lease Conditions are satisfied.<sup>25</sup>

### **PART III - THE ISSUES AND THE LAW**

30. This Factum addresses whether the Court should:

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<sup>23</sup> Fourth Report at paras. 4.2.1-4.2.2.

<sup>24</sup> Fourth Report at para. 4.3.1.

<sup>25</sup> Fourth Report at para. 4.3.2.

- (a) approve the Transaction;
- (b) approve the Leasing Process; and
- (c) seal the Confidential Appendices.

**A. The Transaction Should be Approved**

31. The purpose of a receivership under section 243 of the *Bankruptcy and Insolvency Act* is to “enhance and facilitate the preservation and realization of the assets for the benefit of creditors.”<sup>26</sup> 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:<sup>27</sup>

- (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.

32. Each of these factors are satisfied in respect of the Transaction:

- (a) **Fairness, Transparency, and Integrity:** The Sale Process was commercially reasonable and conducted in accordance with the terms of the Sale Process

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<sup>26</sup> *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at para. 73.

<sup>27</sup> *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#) at para. 16 [*Soundair*].

Approval Order.<sup>28</sup> All potential purchasers were treated fairly and equally, and all potential purchasers that executed the NDA were given access to the VDR.<sup>29</sup>

- (b) **Commercial Efficacy:** The Sale Process was conducted by the Agent, pursuant to the Sale Process Approval Order. Avison Young is a global brokerage that has extensive experience selling development properties in and around the Greater Toronto Area and widely canvassed the market for prospective purchasers.<sup>30</sup>
- (c) **Best Possible Price:** The market was widely canvassed for potential purchasers, with 1,694 potential purchasers being sent the Teaser and the NDA, and further marketing occurring by way of email campaigns and digital advertisements.<sup>31</sup> The Receiver is of the view that the Transaction provides for the highest recovery available for the benefit of the Sellers' stakeholders in the circumstances.<sup>32</sup>
- (d) **Stakeholder Interests:** The Receiver and KingSett both support the Transaction,<sup>33</sup> and all parties with claims in priority to the First Mortgage Charges have been identified by way of the Priority Claims Process and the quantum of such Priority Claims has been consensually resolved between the Receiver and the Construction Lien Claimants.

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<sup>28</sup> Fourth Report at para. 3.2.4.1(a).

<sup>29</sup> Fourth Report at para. 3.1.6(b).

<sup>30</sup> Fourth Report at para. 3.2.4.1(b).

<sup>31</sup> Fourth Report at paras. 3.1.3-3.1.4.

<sup>32</sup> Fourth Report at para. 3.2.4.1(d).

<sup>33</sup> Fourth Report at para. 3.2.4.1(c).

33. The Receiver submits that the Transaction is in the best interests of the Sellers' stakeholders and should be approved. The Sale Process, which was carried out in accordance with the Sale Process Approval Order, was a fair, open, transparent, and commercially reasonable process which obtained the highest recovery available in the circumstances. The commercial decisions of a receiver regarding a sale process are afforded broad deference by the courts,<sup>34</sup> which have stated that where a receiver has acted reasonably, prudently and not arbitrarily, that 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.<sup>35</sup>

#### **B. The Leasing Process Should be Approved**

34. The *Soundair* factors are also satisfied in respect of the proposed Leasing Process:

- (a) **Fairness, Transparency, and Integrity:** Subject to the approval of this Court, the Receiver, in consultation with KingSett and with the assistance of the Marketing Agent, will administer and oversee the marketing of the Remaining WC Buildings for lease.<sup>36</sup> The fairness of the process will be ensured by requiring: (i) all Offers to satisfy the Lease Conditions, including that the sale price and leasing terms conform with the Minimum Terms; (ii) the agreement of purchase and sale conforms with the Form of Lease prepared by the Receiver, in consultation with KingSett and the Marketing Agent; (iii) the applicable Marketing Agent recommends the transaction; and (iv) KingSett has consented to the transaction.

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<sup>34</sup> *Soundair*, at paras. 21, 58.

<sup>35</sup> *Bank of Montreal v. Dedicated National Pharmacies Inc. et al*, [2011 ONSC 4634](#) at para. 43.

<sup>36</sup> Fourth Report at para. 4.4.1.

This will ensure that all bids are evaluated based on consistent criteria established by the Receiver.<sup>37</sup>

- (b) **Commercial Efficacy:** The proposed sale process is commercially reasonable and appropriate, and will allow the Receiver to effectively test the market for the Remaining WC Buildings in a commercially efficient manner to the benefit of all stakeholders. The Receiver will be assisted by the Marketing Agent, who was engaged by the Receiver, in consultation with KingSett, after considering, among other things, proposed fee structures, broker qualifications and experience selling comparable projects. The Marketing Agent is a global commercial real estate broker with extensive experience marketing industrial properties for sale and lease in the Greater Toronto Area and broader Canadian and International market, and further has familiarity with the Projects and these receivership proceedings (as the Marketing Agent also acted as the agent with respect to the Sale Process for the Royal Windsor Project and the Southdown Project).<sup>38</sup>
- (c) **Process Designed to Obtain Best Possible Price:** The proposed Leasing Process is designed to ultimately obtain the best possible price from the sale of the Remaining WC Buildings, as it will: (i) ensure that potential purchasers do not need to secure tenants themselves (which typically takes several months), thereby assuring potential purchasers of an immediate revenue stream; and (ii) will allow final development aspects of the Remaining WC Buildings to be completed with

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<sup>37</sup> Fourth Report at paras. 4.3.1, 4.5.1(c)-(d).

<sup>38</sup> Fourth Report at paras. 4.2.1, 4.5.1(b).

the tenants and their requirements in mind.<sup>39</sup> Further, the Minimum Terms, which were developed by the Marketing Agent, in consultation with the Receiver and KingSett, based on market research and with the benefit of its expertise and knowledge, will ensure that certain minimum thresholds are satisfied before a lease can be executed.<sup>40</sup>

- (d) **Stakeholder Interests:** The Receiver and KingSett both support the Leasing Process,<sup>41</sup> and the Receiver is not aware of any parties which oppose the approval of the Leasing Process.

35. The Receiver submits that the Leasing Process should be approved for the reasons outlined above. The proposed Leasing Process is a fair, open, transparent and commercially reasonable process designed to maximize the recovery for stakeholders in respect of the Churchill Project.

### C. The Confidential Appendices Should be Sealed

36. Pursuant to s. 137(2) of the *Courts of Justice Act*,<sup>42</sup> the Receiver requests that the following documents be filed with the Court on a confidential basis and remain sealed pending certain events:

- (a) “**Confidential Appendix 1**,” being a summary of the LOIs and the Royal Windsor Offer, which is proposed to remain sealed until the closing of the Transaction; and
- (b) “**Confidential Appendix 2**,” (together with Confidential Appendix 1, the “**Confidential Appendices**”), being the Leasing Parameters, which is proposed to

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<sup>39</sup> Fourth Report at paras. 4.1.2, 4.1.4, 4.5.1(a).

<sup>40</sup> Fourth Report at para. 4.5.1(c).

<sup>41</sup> Fourth Report at para. 4.5.1(e).

<sup>42</sup> R.S.O. c. C.43, as amended.

remain sealed until the commencement of the lease for the last Remaining WC Building, or further Order of the Court.

37. The test for a sealing order was set out by the Supreme Court in *Sherman Estate*, and requires the court to consider whether: (i) court openness poses a serious risk to an important public interest; (ii) the order sought is necessary to prevent this serious risk to the identified interest because a reasonable alternative measure will not prevent this risk; and (iii) as a matter of proportionality, the benefits of the order outweigh its negative effects.<sup>43</sup>

38. 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,<sup>44</sup> and courts have approved sealing orders where they are required to protect commercially sensitive information, including where the disclosure would jeopardize “value-maximizing dealings” with third parties moving forward.<sup>45</sup> The Confidential Appendices contain precisely this type of sensitive financial information:

(i) With respect to Confidential Appendix 1, the disclosure of the pricing information set forth in the LOIs and the Royal Windsor Offer prior to

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<sup>43</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#) at para. 38.

<sup>44</sup> *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2](#) at para. 39.

<sup>45</sup> *Danier Leather Inc., Re*, [2016 ONSC 1044](#) at para. 84. See also *Elleway Acquisitions Limited v. 4358376 Canada Inc.*, [2013 ONSC 7009](#) at para. 48 [*Elleway Acquisitions*].

Closing would undermine the integrity of any subsequent sale process if the Transaction does not ultimately close.<sup>46</sup>

(ii) With respect to Confidential Appendix 2, the disclosure of the Leasing Parameters could undermine the integrity of the Leasing Process and negatively impact realizations from the Permitted Transactions. In particular, the disclosure of the Minimum Terms would allow a prospective lessee to calculate the minimum rent and leasing term that would be accepted with respect to a Remaining WC Building.<sup>47</sup>

(b) **Lack of a Reasonable Alternative:** Courts in insolvency proceedings have found that no reasonable alternative to a sealing order exists where declining to grant the order would materially impair the maximization of asset value for the benefit of stakeholders.<sup>48</sup> In the present case, there are no reasonable alternatives to a sealing order which would prevent the risks to the Debtors' stakeholders outlined above.

(c) **Proportionality:** The benefits of the proposed sealing order greatly exceed any negatives. No party will be prejudiced by the temporary sealing of the commercially sensitive information, and no public interest will be served if they are made public,

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<sup>46</sup> Fourth Report at para. 5.0.2.

<sup>47</sup> Fourth Report at para. 5.0.3.

<sup>48</sup> *Original Traders Energy Ltd. (Re)*, (January 30 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23-00693758-00CL ([Endorsement of Justice Osborne](#)) at para. 62.

prejudicing stakeholder recoveries in the process.<sup>49</sup> Further, the sealing is appropriately limited in both time and scope.

**PART IV - NATURE OF THE ORDER SOUGHT**

39. For the reasons set out above, the Receiver requests that this Court grant the proposed Approval and Vesting Order and Lease Relief Order, substantially in the forms set out in the Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 22<sup>nd</sup> day of April, 2026:



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**OSLER, HOSKIN & HARCOURT, LLP per Marleigh Dick**  
P.O. Box 50, 1 First Canadian Place  
Toronto, ON M5X 1B8  
Lawyers for the Receiver

**TO: THE SERVICE LIST**

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<sup>49</sup> Fourth Report at para. 10.0.5. 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 documents containing highly sensitive commercial information.

## SCHEDULE "A": LIST OF AUTHORITIES

1. *Bank of Montreal v. Dedicated National Pharmacies Inc. et al*, [2011 ONSC 4634](#)
2. *Danier Leather Inc., Re*, [2016 ONSC 1044](#)
3. *Elleway Acquisitions Limited v. 4358376 Canada Inc.*, [2013 ONSC 7009](#)
4. *Original Traders Energy Ltd. (Re)*, (January 30 2023), Ont. S.C.J. [Commercial List], Court File No. CV-23-00693758-00CL ([Endorsement of Justice Osborne](#))
5. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#)
6. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
7. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#)
8. *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2](#)

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

Date April 22, 2026



\_\_\_\_\_  
Signature  
Marleigh Dick

**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.

**Restriction on appointment of receiver**

**(1.1)** In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

**Definition of receiver**

**(2)** Subject to subsections (3) and (4), in this Part, receiver means a person who

- (a) is appointed under subsection (1); or
- (b) is appointed to take or takes possession or control — 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 — under
  - (i) an agreement under which property becomes subject to a security (in this Part referred to as a “security agreement”), or
  - (ii) a court order made under another Act of Parliament, or an Act of a legislature of a province, that provides for or authorizes the appointment of a receiver or receiver-manager.

**Definition of receiver — subsection 248(2)**

(3) For the purposes of subsection 248(2), the definition receiver in subsection (2) is to be read without reference to paragraph (a) or subparagraph (b)(ii).

**Trustee to be appointed**

(4) Only a trustee may be appointed under subsection (1) or under an agreement or order referred to in paragraph (2)(b).

**Place of filing**

(5) The application is to be filed in a court having jurisdiction in the judicial district of the locality of the debtor.

**Orders respecting fees and disbursements**

(6) If a receiver is appointed under subsection (1), the court may make any order respecting the payment of fees and disbursements of the receiver that it considers proper, including one that gives the receiver a charge, ranking ahead of any or all of the secured creditors, over all or part of the property of the insolvent person or bankrupt in respect of the receiver's claim for fees or disbursements, but the court may not make the order unless it is satisfied that the secured creditors who would be materially affected by the order were given reasonable notice and an opportunity to make representations.

**Meaning of disbursements**

(7) In subsection (6), disbursements does not include payments made in the operation of a business of the insolvent person or bankrupt.

***COURTS OF JUSTICE ACT***

R.S.O. 1990, c. C.43, as amended

**Documents public**

**137 (1)** On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

**Sealing documents**

(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 lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

**Copies**

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see. R.S.O. 1990, c. C.43, s. 137.

**KINGSETT MORTGAGE  
CORPORATION**  
Applicant

and

**759 WINSTON CHURCHILL GP INC., 759 WINSTON  
CHURCHILL L.P., 688 SOUTHDOWN GP INC., 688  
SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC.  
AND 2226 ROYAL WINDSOR LP**  
Respondents

Court File No: CV-24-00714543-00CL

**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**

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

***PROCEEDING COMMENCED AT TORONTO***

**FACTUM OF THE RECEIVER**

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