Court File No. CV-25-00750862-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

B E T W E E N:

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.

Applicant

- and-

GC KING BOND LIMITED PARTNERSHIP, by its general partner, GC KING BOND GP INC.

Respondents

APPLICATION UNDER SECTION 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 and Other Ancillary Matters – Returnable May 14th, 2026)

Date: May 12, 2026

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To: **SERVICE LIST**

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PART I – OVERVIEW

1. Deloitte Restructuring Inc. ("**Deloitte**" or the "**Receiver**") brings this motion for the approval of the sale of the majority of the assets, undertakings and properties of each of GC King Bond Limited Partnership ("**King Bond LP**") and GC King Bond GP Inc. ("**King Bond GP**", and together with King Bond LP, the "**Debtors**" or "**GC King Bond**"), including the lands municipally known as 301, 311, 319, 329, 339, 349 King Road and 115, 119 Bond Crescent, Richmond Hill, Ontario (the "**Real Property**" or the "**King Bond Site**"), and certain related relief. The motion is unopposed.

2. The Debtors were formed for the purpose of developing a 115-unit residential project marketed as Twelve Oaks Towns (the "**Twelve Oaks Project**"). As at the date of the Receivership Order, only 4 semi-detached units had been delivered, with construction on the remaining 111 units either unfinished or not yet commenced.

3. Pursuant to the sale and investment solicitation process (the "**Sale Process**") approved by this Court on September 18, 2025, the Receiver selected the offer of Project Green Capital GP Inc., as general partner for Project Green Capital Limited Partnership, vesting in Project Green's nominee, Sunny Communities (King Bond) Inc. (the "**Purchaser**"), and entered into an agreement of purchase and sale (as amended, the "**APS**") for the sale of the King Bond Site and other assets (the "**Transaction**").

4. The Receiver now moves for an order, among other things:

(a) approving the Transaction and related documents, and vesting the Purchased Assets (as defined below) in the Purchaser free and clear of all liens, charges, security interests and encumbrances (the "**Approval and Vesting Order**");

(b) confirming the consent assignment of certain unit purchase agreements ("**UPA(s)**") selected by the Purchaser to the Purchaser,

(c) disclaiming those UPAs which are not being assigned to the Purchaser;

(d) approving the Deposit Return Protocol (the "**DRP**");

(e) sealing certain confidential appendices to the Second Report pending completion of the Transaction or further order of this Court (the "**Sealing Order**");

(f) approving certain distributions from the proceeds of the Transaction; and,

(g) approving the Receiver's interim statement of receipts and disbursements, the fees and disbursements of the Receiver and its counsel, and the Second Report and the Receiver's activities described therein.

5. For the reasons set out hereafter, the Receiver recommends that the relief set out above be approved by this Court. In particular, the Transaction represents the highest and best offer received in this process, and the proposed treatment of the UPAs is fair and reasonable.

6. The Transaction is supported by Caisse Desjardins Ontario Credit Union Inc. ("**Desjardins**"), the first secured creditor, and Westmount Guarantee Services Inc. ("**Westmount**"), the second secured creditor. The treatment of the UPAs provides either for their assignment on consent and the recognition of the value of their deposits by the Purchaser, or the disclaimer and termination of the UPAs and the ability for the Unit Purchasers to pursue remedies for the recovery of their deposits or to make claims under the Tarion Warranty Program.

PART II – FACTS

7. The background facts are more fully set out in the Second Report of the Receiver dated May 7, 2026 (the "**Second Report**")[1], and the Supplementary Second Report of the Receiver dated May 12, 2026 (the "**Supplementary Report**").[2]

Creditors

8. Pursuant to a credit agreement dated June 18, 2021 (the "**Credit Agreement**"), Desjardins obtained various forms of security, including the first-ranking mortgage, a general security agreement, and a general assignment of agreements of purchase and sale (collectively, the "**Desjardins Security**").[3]

[1]The Receiver's Motion Record dated May 7, 2026 ("**Receiver MR**"), The Second Report of the Receiver (the "**Second Report**"), Tab 2.
[2] The Receiver's Supplementary Second Report dated May 12, 2026.
[3] Receiver's MR, Second Report, Tab 2, pp. 20-21, paras. 17-18; Appendix "L", Tab 2, pp. 308-336.

9. Desjardins is owed approximately $29,958,000 (inclusive of amounts advanced under the Receiver's Borrowing Charge) as of April 24, 2026 (the "**Desjardins Indebtedness**").[4]

10. Westmount, as administrative agent for Aviva Insurance Company of Canada, holds security over the freehold deposits held by Robins Appleby LLP as escrow agent in connection with credit, indemnification, and bonding support provided to the Debtors in respect of their registrations with Tarion Warranty Corporation ("**Tarion**"). Pursuant to paragraph 3 of the Receivership Order, this collateral is excluded from the Property.[5]

11. A third mortgage in the amount of $400,000 was registered against the Real Property on May 1, 2025, in favour of Yinglie Li and Song Shao.[6]

12. In addition to amounts owing to secured creditors, the Debtors have accrued unpaid obligations to trade creditors, subcontractors and other service providers. Given the anticipated shortfall in respect of the Desjardins Indebtedness, the Receiver does not expect that any funds will be available for distribution to unsecured creditors.[7]

The Sale Process

13. On September 18, 2025, the Court made an order (the "**SISP Order**") approving the Sale Process. The Receiver has followed the proposed sale process as described in that Order, but for the extension of certain deadlines as it was entitled to do thereunder.[8]

14. The Receiver retained CBRE Limited ("**CBRE**") as its listing agent.[9]

[4] Receiver's MR, Second Report, Tab 2, pp. 20-21, paras. 17-18; Appendix "L", Tab 2, pp. 308-336.
[5] Receiver's MR, Second Report, Tab 2, p. 21-22, paras. 20-21; Appendix "F", Tab 2, pp. 213-234.
[6] Receiver's MR, Second Report, Tab 2, p. 22, paras. 22-23.
[7] Receiver's MR, Second Report, Tab 2, p. 22, para. 25.
[8] Receiver's MR, Second Report, Tab 2, p 15, para. 2; Appendix "C", Tab 2, pp. 89-94.
[9] Receiver's MR, Second Report, Tab 2, pp. 27-28, paras. 47-48; Appendix "C", Tab 2, pp. 89-93.

15. The Sale Process generated significant market interest, as described further below.[10]

16. The Receiver reviewed the offers and, after consultation with CBRE and Desjardins, invited the top four bidders to resubmit revised highest and best offers. Following this second round of bidding, the highest bidder was selected as the initial proposed purchaser (the "**Initial Proposed Purchaser**").[11]

17. On January 12, 2026, after due diligence, the Initial Proposed Purchaser informed CBRE that it was not prepared to proceed to close the transaction without a significant purchase price reduction. As a result, the agreement of purchase and sale terminated.[12]

18. Thereafter, the Receiver instructed CBRE to contact the next two highest bidders and invite them to submit revised offers.[13]

The Transaction

19. On or about February 6, 2026, the Receiver, with the support of Desjardins, selected the Purchaser as the successful party and entered into the APS.[14]

20. The Transaction is structured as a court-supervised, "as is, where is" sale pursuant to an Approval and Vesting Order. Closing is to occur following the issuance of the Approval and Vesting Order, the expiry of all appeal periods, and delivery of the Receiver's Certificate; all other conditions have been waived.[15]

[10] Receiver's MR, Second Report, Tab 2, pp. 29-30, para. 52.
[11] Receiver's MR, Second Report, Tab 2, pp. 30-31, paras. 53-55.
[12] Receiver's MR, Second Report, Tab 2, p. 31, para. 56.
[13] Receiver's MR, Second Report, Tab 2, p 32, paras. 56-57.
[14] Receiver's MR, Second Report, Tab 2, pp. 31-32, paras. 58-60; Appendix "G", Tab 2, pp.235-278.
[15] Receiver's MR, Second Report, Tab 2, pp. 32-33, paras. 60-62; Appendix "G", Tab 2, pp. 235-278.

21. The Transaction includes all of the Debtors' right, title and interest in and to the Real Property and all buildings, structures and improvements thereon, the Assumed UPAs, and the Debtors' interest, if any, in the Unit Deposits held in escrow relating to the Assumed UPAs (the "**Purchased Assets**").[16]

22. The Transaction excludes certain assets, including: (a) cash and cash equivalents; (b) the Unassumed UPAs and any deposits relating thereto; (c) the Freehold Deposits (as defined below); and (d) certain books, records and other assets as specified in the APS.[17]

23. Among the issues for consideration in the SISP, which the Receiver discussed with potential purchasers under the SISP, including the Purchaser, was how to deal with the various parties who had contracted with the Debtors for the purchase of freeholds or condos (the "**Unit Purchasers**").

24. The Purchaser offered, and the Receiver agreed, that as a component of its bid the Purchaser would seek the consent assignment of various UPAs held by various Unit Purchasers which it selected. The Purchaser ultimately selected 71 UPAs for potential assignment. Ultimately, only 12 Unit Purchasers[18] have agreed to and executed amending agreements ("**Amending Agreement(s)**") (collectively, the "**Assumed UPAs**"). Nonetheless, the APS provided the opportunity for the majority of purchasers to continue to have the homes they contracted for built by the Purchaser.[19]

[16] Receiver's MR, Second Report, Tab 2, pp. 32, para. 62; Appendix "G", Tab 2, p. 244.
[17] Receiver's MR, Second Report, Tab 2, pp. 32-33, para. 62 (Excluded Assets); Appendix "G", Tab 2, pp. 241-242.
[18] The Second Report states that there were 13 confirm assignments and amendments; however, one of the purchasers has now declined the assignment and amendment.
[19] Receiver's MR, Second Report, Tab 2, pp. 34-36, paras. 67-74; Appendix "K", Tab 2, pp. 288-307; Appendix "G", Tab 2, pp. 248, section 2.2.

25. The Purchaser is not seeking any forced assignments or amendments of UPAs. All parties whose UPAs are being assigned have consented in writing to those assignments and have executed the Amending Agreement. [20]

26. Under the Amending Agreement, the Unit Purchasers receive credit for the deposits they paid for the proposed units, even where those deposits, as set out below, will be applied to amounts owing to Westmount.

27. Given the project is being sold, there is no possibility after the Sale that the remaining UPAs can be honoured and it is necessary that the project be conveyed to the Purchaser free and clear of those agreements.

28. Accordingly, the Receiver is seeking to terminate and disclaim those UPAs that are not assigned to the Purchaser (the "**Unassumed UPAs**"), which will permit those Unit Purchasers to participate in the DRP in a timely and efficient manner.[21]

29. The net effect is that all UPAs will either be assigned or disclaimed.

30. The Receiver gave notice in advance of the service of these materials regarding the anticipated treatment of the Unit Purchasers. It issued notices on March 2, 2026, advising them of the proposed Transaction and the anticipated treatment of the UPAs and their deposits.[22]

31. On March 3, 2026, the Receiver sent form letters to the Unit Purchasers advising whether their UPAs had been selected for potential assignment to the Purchaser. For those Unit Purchasers

[20] Receiver's MR, Second Report, Tab 2, pp. 33-35, paras. 63, 69-70; Appendix "K", Tab 2, pp. 287-307.[20]
[21] Receiver's MR, Second Report, Tab 2, pp. 35-36, paras. 71-74.
[22] Receiver's MR, Second Report, Tab 2, pp. 23-2433-34, paras. 65-66; Appendix "H", Tab 2, pp. 279-282; Appendix "I", Tab 2, pp. 283-284; Appendix "J", Tab 2, pp. 285-286.

whose UPAs were not selected, the letter advised that the Receiver would seek to disclaim their UPAs as part of the motion to approve the Transaction.[23]

The Unit Purchasers and the Deposits

32. Prior to the appointment of the Receiver, the deposits paid by pre-construction condominium unit purchasers (the "**Condo Purchasers**") and pre-construction freehold townhome unit purchasers (the "**Freehold Purchasers**", and together with the Condo Purchasers, the "**Unit Purchasers**") were paid into two accounts managed by the Debtors' legal counsel, Robins Appleby LLP ("**Robins Appleby**"), as escrow agent.[24]

33. The total quantum of deposits held by Robins Appleby is approximately $7,945,117, of which approximately $5,698,144 is held in the condominium trust account (the "**Condo Trust Account**") for the deposits paid by Condo Purchasers (the "**Condo Deposits**") and approximately $2,246,973 is held in the freehold deposit account (the "**Freehold Deposit Account**") for the deposits paid by Freehold Purchasers (the "**Freehold Deposits**").[25]

34. The Condo Deposits are protected by the statutory trust provisions of the *Condominium Act, 1998*[26], and Robins Appleby has advised the Receiver that there are sufficient funds in the Condo Trust Account to repay the Condo Deposits, plus accrued interest.[27]

35. The Freehold Deposits do not benefit from the statutory trust protections under the *Condominium Act, 1998*. As noted, Westmount, as administrative agent for Aviva Insurance

[23] Receiver's MR, Second Report, Tab 2, pp. 33-34, paras. 65-66; Appendix "H", Tab 2, pp. 279-282; Appendix "I", Tab 2, pp. 283-284; Appendix "J", Tab 2, pp. 285-286.
[24] Receiver's MR, Second Report, Tab 2, pp. 22, paras. 26-27.
[25] Receiver's MR, Second Report, Tab 2, pp. 22-23, paras. 27-29.
[26] Condominium Act, 1998, S.O. 1998, c. 19, ss. 81-82.
[27] Receiver's MR, Second Report, Tab 2, pp. 23-24, paras. 30-32.

Company of Canada, holds security over the Freehold Deposits and these funds are excluded from the definition of "Property".

36. The Receiver does not expect there will be any funds remaining in the Freehold Deposit Account after Westmount's indemnification obligations to Tarion, unpaid premiums, and other fees are addressed.

37. Any potential recovery for Freehold Purchasers is expected to arise only through Tarion deposit warranty program, subject to applicable eligibility requirements and coverage limits.[28] There are no other unencumbered funds available to pay these deposit claims, nor are there expected to be any surplus funds from the Transaction for any creditor beyond Desjardins.

38. Certain Unit Purchasers whose freehold deposits have not been recovered have very recently asked the Receiver whether it conducted a forensic review of the deposits and their treatment by the Debtors. The Receiver has not done so because of the costs involved and the likelihood that the Transaction proceeds will be insufficient to repay Desjardins. The Receiver was not asked to do so by Desjardins and, until very recently, it was not asked to do so by the Unit Purchasers. It is also the case that, while the deposits might possibly have been misused, it is not necessarily unusual in a condominium development for freehold deposits to have been consumed by the Debtors in operations. There are no statutory trust obligations in respect of such deposits.

The Deposit Return Protocol

39. Tarion and Westmount, in consultation with the Receiver, have negotiated and agreed upon terms for the DRP for both the disclaimed Condo Purchasers and the disclaimed Freehold Purchasers. The DRP will facilitate the return of deposits and includes terms that are substantially

[28] Receiver's MR, Second Report, Tab 2, pp. 24-26, paras. 33-40; Appendix "F", Tab 2, pp. 213-234.[28]

the same as those set forth in other deposit return protocols used in similar situations. If approved by the Court, the Receiver understands that Westmount and Tarion intend to carry out the DRP imminently after closing of the Transaction.[29]

40. As further set out in the Supplementary Report, key provisions of the DRP include:

(a) a streamlined process designed to minimize delay and facilitate the efficient return of deposits to Unit Purchasers;

(b) for Condo Purchasers, the transfer of Condo Deposits and accrued interest to Aviva, which will administer and pay out deposits following Tarion's review and approval;

(c) for Freehold Purchasers, claims processed through Tarion's ordinary procedures under the *Ontario New Home Warranties Plan Act*, with deposit warranty coverage subject to applicable eligibility requirements and limits;

(d) confirmation that neither the Debtors nor the Receiver shall have any obligation to make payments in respect of deposits, thereby preserving estate resources while ensuring purchasers receive their deposits to the extent available through the established insurance and bonding mechanisms; and,

(e) the Receiver's role in the DRP is mainly administrative.

PART III – ISSUES

41. The issues on this motion are as follows:

[29] The Receiver's Supplementary Second Report dated May 12, 2026.

(a) whether the Court should grant the Approval and Vesting Order and approving the APS and the Transaction and authorizing the Receiver to terminate and disclaim the Unassumed UPAs;

(b) whether the Court should approve the DRP;

(c) whether the Court should grant the Sealing Order in respect of the confidential appendices to the Second Report (the "**Confidential Appendices**");

(d) whether the Court should authorize the Receiver to distribute the net proceeds of the Transaction (the "**Sale Proceeds**") to Desjardins, subject to a holdback reserve (the "**Holdback Reserve**"); and

(e) whether the Court should approve the Second Report and the Receiver's activities described therein, the Receiver's interim statement of receipts and disbursements (the "**Interim R&D**"), and the fees and disbursements of the Receiver and its counsel.

PART IV – LAW AND ARGUMENT

Issue 1(a): The Approval and Vesting Order Should Be Granted

42. The purpose of a receivership under section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "***BIA***"), is to "enhance and facilitate the preservation and realization of the assets for the benefit of creditors." This purpose is generally achieved through the liquidation of the debtors' assets.[30]

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

43. In *Royal Bank of Canada v. Soundair Corp*. ("***Soundair***"), the Court of Appeal stated that the following factors must be considered when considering the approval of a proposed sale:[31]

(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.

44. Each of these factors is satisfied in respect of the Transaction:

(a) **Fairness, Transparency, and Integrity**: The Court-approved Sale Process was conducted in a fair and transparent manner that maintained appropriate levels of integrity. All potential purchasers were treated fairly and equally, with interested parties being provided access to the Data Room upon execution of an NDA. The Sale Process was carried out in accordance with the terms of the SISP Order.[32]

(b) **Commercial Efficacy**: The Sale Process was conducted by CBRE, which has extensive experience selling development properties in and around the Greater Toronto Area. The Sale Process occurred over a period of approximately seven weeks of active marketing, during which prospective purchasers were able to perform due diligence as facilitated by CBRE. As a result of the Sale Process, 30 parties executed NDAs and were provided access to the Data Room, six prospective

[31] *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA), at pages 7-8 [***Soundair***].
[32] Receiver's MR, Second Report, Tab 2, pp. 27-28, paras. 47-49; Appendix "C", Tab 2, pp. 89-93.[32]

bidders attended site tours, and five parties submitted offers by the Initial Bid Deadline.

(c) **Best Possible Price**: The market was widely canvassed. CBRE marketed the Property through its exclusive database of approximately 1,000 subscribed contacts, generating over 10,000 views. Additionally, CBRE published advertisements in the Globe and Mail (National Edition), and contacted parties who had previously expressed interest in the King Bond Site. Following a multi-round bid process in which the Initial Proposed Purchaser did not advance beyond due diligence, the Receiver, in consultation with CBRE and Desjardins, selected the Purchaser's offer as it: (i) was the highest bid; (ii) presented the greatest certainty of closing; and (iii) provided a significant number of Unit Purchasers with an option to either have their UPAs disclaimed or assigned with mutually agreeable amendments.[33]

(d) **Stakeholder Interests**: The Receiver and Desjardins, being the principal secured creditor, both support the Transaction. The Transaction represents the highest recovery available to stakeholders in the circumstances. The interests of the Unit Purchasers have also been considered: the Purchaser afforded a significant number of Unit Purchasers an opportunity to have their UPAs honoured through an assignment and amendment process, and those whose UPAs are disclaimed will have access to the DRP to recover their deposits in an orderly and timely manner, with the Condo Deposits being fully protected by the statutory trust provisions of

[33] Receiver's MR, Second Report, Tab 2, pp. 29031, paras. 52-59.

the *Condominium Act, 1998*, and eligible Freehold Deposits receiving coverage under the Tarion Warranty.[34]

45. The commercial decisions of a receiver regarding a sale process are afforded broad deference by the courts.[35] 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 by conducting a detailed review of every element of the procedure by which a receiver's decision was made.[36]

46. The Receiver submits that the Transaction should be approved. 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 recovery available in the circumstances.[37]

Issue 1(b): The Court Should Authorize the Assignment and Amendment of the Assumed UPAs and the Termination and Disclaimer of the Unassumed UPAs

47. The APS contemplates the assignment of certain UPAs to the Purchaser, subject to the consent of the applicable Unit Purchaser and the execution of an Amending Agreement. Although the UPAs contain provisions permitting the vendor to assign the agreements without the consent of the Unit Purchasers[38], the Purchaser has elected to proceed on an entirely consensual basis. The Purchaser's representatives met individually with the Unit Purchasers selected for potential assignment over a period of approximately eight weeks, and each such Unit Purchaser was given the option to consent to an assignment and amendment of their UPA or to decline and instead participate in the DRP. No forced assignments or amendments of UPAs are being sought. In these

[34] Receiver's MR, Second Report, Tab 2, pp. 30-31, 36-37, paras. 58-59, 75-76.
[35] *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375, at para 19
[36] *Bank of Montreal v. Dedicated National Pharmacies Inc. et al*, 2011 ONSC 4634, at para. 43.
[37] Receiver's MR, Second Report, Tab 2, pp. 36-37, paras. 75-76.[37]
[38] Receiver's MR, Second Report, Tab 2, Appendix "D", pp. 122 (clause 18.4(r)).

circumstances, the proposed assignments to the Purchaser, and the form of Amending Agreement, are appropriate and should be authorized by this Court.[39]

48. The Court's jurisdiction to direct a receiver to disclaim pre-sale purchase agreements in the context of receivership sales of real property developments is well established.[40] Disclaimers are a valuable tool by which a receiver can maximize the value of the assets of the estate for the benefit of stakeholders.[41]

49. The considerations for determining whether a court should authorize a receiver to disclaim pre-sale purchase agreements were set out by Justice Fitzpatrick of the Supreme Court of British Columbia in *Forjay Management*:[42]

(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 equities support the result.

50. In the present case, each of these factors supports the proposed disclaimer of the Unassumed UPAs:

(a) **Legal Priority:** The UPAs expressly stipulate that they are subordinated and postponed to any mortgages granted by the Debtors and any advances made

[39] Receiver's MR, Second Report, Tab 2, pp. 33-35, paras. 63, 67-70; Appendix "K", Tab 2, pp. 287-307.
[40] *Forjay Management Ltd v 0981478 BC Ltd*, 2018 BCSC 527, at paras. 131-132; *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd*, 2020 BCSC 1013, at para. 57; *Firm Capital Mortgage Fund Inc v 2012241 Ontario Ltd*, 2012 ONSC 4816, at paras. 31-38; *C & K Mortgage Services Inc. v. Camilla Court Homes Inc.*, 2020 ONSC 5071, at paras. 47-51; *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 243(1)(c).
[41] *Forjay Management*, at para. 37; *Peoples Trust*, at para. 25.
[42] *Forjay Management*, at paras. 41-44.

thereunder from time to time.[43] Moreover, the UPAs do not create an interest in the Real Property[44], and each Unit Purchaser has agreed not to register, or permit the registration of, its UPA against title to the Real Property.[45] No UPAs are registered on title to the Real Property. For these reasons, the holders of proprietary and priority interests in the Real Property, including Desjardins, have priority over the Unit Purchasers' rights pursuant to the UPAs.[46]

(b) **Enhancement of Value:** The Purchaser will not assume the Unassumed UPAs, and accordingly, the units subject to those agreements will not be built. Unit Purchasers holding the Unassumed UPAs would be left with contracts that cannot be fulfilled. Disclaiming these UPAs enables those Unit Purchasers to participate in the DRP, rather than remaining bound by agreements with no practical value.[47]

(c) **Equities:** The equities support the proposed disclaimer. Many Unit Purchasers have expressed a preference for their UPAs to be disclaimed. The Purchaser offered Unit Purchasers the option to have their UPAs assigned with amendments, and the majority declined. Those whose UPAs are disclaimed will have access to the DRP.

51. Accordingly, the Receiver respectfully submits that it should be authorized to terminate and disclaim the Unassumed UPAs upon the closing of the Transaction.

[43] Receiver's MR, Second Report, Tab 2, Appendix "D", pp. 122 (clause 18.4(t)).
[44] Receiver's MR, Second Report, Tab 2, Appendix "D", p. 116 (clause 12.1).
[45] Receiver's MR, Second Report, Tab 2, Appendix "D", p. 122 (clause 18.4(p)).
[46] Receiver's MR, Second Report, Tab 2, pp. 35-36, para. 73(c); Appendix "D", Tab 2, pp. 95-153; Appendix "E", Tab 2, pp. 154-212.
[47] Receiver's MR, Second Report, Tab 2, pp. 35-36, paras. 71, 73-74.

Unit Purchaser Concerns

52. In the days leading up to the return of this motion, a small number of Unit Purchasers have raised concerns regarding the Transaction and the proposed treatment of their UPAs.

53. Of the approximately 99 Unit Purchasers affected by the receivership proceedings, only a handful have filed objection letters or correspondence with the Court. The concerns raised relate primarily to the return of freehold deposits, requests for a pause of the Transaction, and questions about the selection criteria for UPA assignments.

54. The Receiver has reviewed the concerns raised by the Unit Purchasers and remains of the view that the Transaction represents the best available outcome for the Debtors and their stakeholders. The Sale Process was conducted fairly and in accordance with the SISP Order. The Purchaser's offer was the highest received and provides for the orderly treatment of the UPAs through either consent assignment or disclaimer with access to the DRP. In the Receiver's view, the concerns raised do not warrant a delay or postponement of the Transaction.

55. The law is clear that objections by unit purchasers do not preclude approval of a receivership sale transaction where the *Soundair* criteria are met. In the recent decision of the Ontario Superior Court of Justice (Commercial List) in *KingSett Mortgage Corporation v. Vandyk*,[48] the Court approved a sale transaction over the objections of a purchasers' association representing approximately 390 pre-construction condominium purchasers, finding that the receiver had made sufficient effort to get the best price and had not acted improvidently. This is particularly true in a situation, such as the present case, where the senior secured creditor supports

[48] *KingSett Mortgage Corporation v. Vandyk* (27 April 2026), Toronto, Ont Sup Ct J [Commercial List] CV-23-00709180-00CL (Endorsement), at paras. 11-12 and 16

the transaction and will be at a significant loss.[49] The Receiver submits that the same principles apply here.

56. In addition, there has been concern that the Purchaser is affiliated with the Debtors. Although this should have no impact on the Transaction, as there was no prohibition on the Debtors making a bid in the SISP, the Receiver has made investigations and inquiries into a connection between the Debtors and the Purchaser. The Receiver has found no connection between the two entities.

Green City Cross-Motion is Meritless

57. On May 12, 2026, the Receiver received a cross-motion filed by James Zhang on behalf of the Debtors (the "**Cross-Motion**"). The Cross-Motion seeks, among other things: (a) dismissal of the Approval and Vesting Order motion; and (b) a six-month period to pursue a restructuring, refinancing, or alternative transaction.

58. The principal grounds for the Cross-Motion include allegations that: (i) the Transaction price is "stale" due to post-APS policy changes; (ii) the Purchaser had a prior "Term Sheet" with the Debtors concerning the same project, allegedly creating a conflict; and (iii) James Zhang submitted a $27 million "indicative offer" on February 4-5, 2026, which the Receiver allegedly did not genuinely consider before signing the APS with the Purchaser on February 6, 2026. The Cross-Motion materials are largely unsworn and do not comply with the Rules of Civil Procedure.

59. The Cross-Motion is without merit. The contemporaneous emails demonstrate that the Receiver engaged immediately with James Zhang's February 2026 inquiry regarding a potential $27 million offer, provided a draft agreement of purchase and sale, and offered to schedule a call

[49] *In the matter of One Bloor West Toronto Group Et Al.*, 2025 ONSC 6574 (CanLII).

to discuss terms. James Zhang expressly confirmed in writing: “this email does not constitute a bid,” and acknowledged that he could not meet the criteria for a late bid under the SISP.

60. James Zhang never submitted a SISP-compliant bid. This is consistent with the Debtors’ established pattern of making promises to refinance or find purchasers—promises that have repeatedly gone unfulfilled, including prior to the insolvency when the Debtors defaulted on a forbearance agreement. The Court should give these assurances no weight.[50]

61. The Cross-Motion’s proposed alternative—to terminate the Transaction and conduct a new six-month sale process—would result in additional professional fees, carrying costs, and continued deterioration of the UPAs, with no assurance of a superior outcome. The Purchaser’s actions, and its bid, were in accordance with the SISP. As set out above, a receiver’s commercial decisions are afforded broad deference, and the Cross-Motion should be dismissed.

Issue 2: The Deposit Return Protocol Should Be Approved

62. Protocols governing the return of deposits paid by purchasers under pre-construction sale agreements are common in real estate development insolvencies and have been frequently approved by this Court.[51] Such approval allows individual unit purchasers to obtain their deposits in a fair and sensible fashion and provides guidance and certainty to all parties involved.

63. The Court's jurisdiction to approve the DRP in the context of a receivership flows from: (a) its inherent jurisdiction; (b) section 101(2) of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the "***CJA***"), which states that an order under this section may include "such terms as are

[50] See Affidavit of Genevieve Riverin-Boilard affirmed April 17, 2025, sworn in the Receivership Application.
[51] See, for example, *Hazelton Development Corporation (Re)* (10 February 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00679931-00CL (Order), at paras. 4-10; *Kingsett Mortgage Corporation v Mapleview Developments Ltd et al* (16 January 2025), Toronto, Ont Sup Ct J [Commercial List] CV-24-00716511-00CL (Order (Deposit Return Protocol Approval))

considered just"; and (c) section 243(1)(c) of the *BIA*, which states that a court may authorize "any other action that the court considers advisable."[52] The expansive wording of section 243(1)(c) gives the Court the "broadest possible mandate in insolvency proceedings to enable [it] to react to any circumstances that arise" in the context of a court-ordered receivership.[53] This broad jurisdiction permits the Court to do not only what "justice dictates" but also what "practicality demands."[54]

64. In the present case, practicality demands the approval of the DRP because, once finalized:

(a) it is needed to create an orderly and efficient deposit return process for the Unit Purchasers whose UPAs are being disclaimed;

(b) it will minimize delay and uncertainty among the parties involved;

(c) it will ensure Unit Purchasers receive their deposits, in whole or in part, as quickly as possible;

(d) the DRP has been negotiated collaboratively by Tarion and Westmount, in consultation with the Receiver, ensuring that all relevant interests are considered and protected. Tarion and Westmount have reviewed and approved the DRP;

(e) Court approval and ongoing judicial oversight provide Unit Purchasers and other stakeholders with assurance that the process will be administered equitably and in accordance with applicable law; and,

[52] *Courts of Justice Act*, R.S.O. 1990, c. C.43, s. 101(2); *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, s. 243(1)(c).
[53] *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41, at para. 148, citing *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, 2021 ABCA 226, at para. 20.
[54] *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508, at para. 57

Issue 3: The Sealing Order Should Be Granted

65. Pursuant to section 137(2) of the *CJA*, the Receiver requests that the Confidential Appendices to the Second Report be temporarily sealed and not form part of the public record, pending the closing of the Transaction or further order of this Court.

66. The test for a sealing order was established by the Supreme Court of Canada in Sierra Club and subsequently recast in Sherman Estate v. Donovan. The test requires the court to consider whether:[55]

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

(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.

67. 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,[56] and courts have approved sealing orders where they are required to protect commercially sensitive information, including the ultimate purchase price.[57] In the present case, the publication of the offers received for the King Bond Site prior to closing, and the

[55] *Sherman Estate v. Donovan*, 2021 SCC 25, at para. 38.
[56] *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 2, at para. 39.
[57] *Danier Leather Inc., Re*, 2016 ONSC 1044, at para. 84

ultimate purchase price, could adversely impact the future marketability of the Property should the Transaction not close. Moreover, the Receiver seeks to seal private information about Unit Purchasers. Accordingly, sealing this information is necessary to ensure that recoveries in these Receivership Proceedings are maximized.[58]

(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.[59] In the present case, there are no reasonable alternatives to a sealing order which would prevent the risks to stakeholders outlined above.

(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. The Receiver is not aware of any party that would be prejudiced by the proposed Sealing Order, and no public interest will be served if the sealed information is made public prior to closing, thereby prejudicing stakeholder recoveries.

Issue 4: The Proposed Distribution Should Be Authorized

68. If the Transaction is approved, the Receiver seeks authorization and direction to distribute the Sale Proceeds to repay:

(a) the amounts owing under the Receiver's Borrowing Charge; and

[58] Receiver's MR, Second Report, Tab 2, p. 37, paras. 77-79.[58]
[59] *Original Traders Energy Ltd. (Re)*, 2023 ONSC 753, at paras. 60-62.

(b) a portion of the Desjardins Indebtedness, subject to the Holdback Reserve.

69. Courts commonly grant distribution orders as part of sale approvals in a receivership.[60] In *AbitibiBowater*, the court approved the distribution of proceeds from a sale on the basis of, among 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.[61]

70. The proposed distribution complies with these criteria:

(a) **Valid and Enforceable Security**: Blaney McMurtry LLP ("**Blaney**") has provided the Receiver with a legal opinion confirming that the Desjardins Security constitutes valid and enforceable security interests or charges over the Property, properly registered against title to the Real Property and perfected under the *Personal Property Security Act* (Ontario). Desjardins is in first position and is the principal secured creditor of the Debtors.[62]

(b) **Sufficient Liquidity**: The Receiver proposes to withhold such amounts as it requires, in consultation with Desjardins, as the Holdback Reserve to address potential priority claims, including a potential GST/HST assessment of approximately $97,394 and a construction lien registered by OGO Excavation Corp. in the amount of approximately $55,766. The Receiver is not aware of any other priority claims ranking ahead of the Desjardins Indebtedness. The distribution

[60] See *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, 2014 ONSC 1173, at para. 53.
[61] *AbitibiBowater inc., 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.
[62] Receiver's MR, Second Report, Tab 2, pp. 41-42, paras. 87-88; Appendix "L", Tab 2, pp. 308-337.[62]

will ensure that the Receiver retains sufficient liquidity to fund any remaining costs of the Receivership Proceedings.[63]

(c) **No Superior Claims**: The Receiver has confirmed that it has not received any supplier demands for repossession of goods, and is not aware of any claims under section 81.1 of the BIA. The Debtors did not have employees; accordingly, the Receiver is not aware of any claims under sections 81.4 or 81.6 of the BIA.[64]

Issue 5: **The Second Report, the Receiver's Activities, and the Fees and Disbursements of the Receiver and its Counsel Should Be Approved**

71. The Receiver seeks approval of the Second Report and the Receiver's activities described therein, the Interim R&D, and the fees and disbursements of the Receiver and Blaney.

72. It is well established that the court has inherent jurisdiction to review and approve the activities of a court-appointed receiver where the receiver demonstrates that it has acted reasonably, prudently and not arbitrarily. There are good policy and practical reasons for the court to approve a receiver's reports and activities, including: (i) allowing the receiver to move forward with the next steps; (ii) allowing the receiver to bring its activities before the court; (iii) enabling the court to satisfy itself that the receiver's activities have been conducted in a prudent and diligent manner; (iv) providing protection for the receiver; and (v) protecting creditors from delay caused by re-litigation of steps previously taken.[65]

73. The Receiver submits that the Second Report, together with the applicable activities described therein, should be approved. The activities of the Receiver were carried out in

[63] Receiver's MR, Second Report, Tab 2, pp. 42-43, paras. 92-94.[63]
[64] Receiver's MR, Second Report, Tab 2, p. 42, paras. 90-91.[64]
[65] *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855, at para. 54.

accordance with the orders of this Court, and the Receiver has acted reasonably and in good faith throughout.[66]

74. The role of the court in approving the fees of a receiver and its counsel is to ensure that the fees are "fair and reasonable" in the circumstances, with a focus on the value provided.[67] The Receiver and Blaney have maintained detailed records of their professional time and costs. The Receiver's fees and disbursements for the period from April 28, 2025 to February 28, 2026 total $628,842 (exclusive of applicable sales tax), and Blaney's fees and disbursements for the period from May 12, 2025 to February 28, 2026 total $235,264 (exclusive of applicable sales tax), as set out in the Fee Affidavits. These amounts are reasonable in the circumstances, have been validly incurred in accordance with the orders of this Court, and should be approved. Desjardins has been provided with the invoices and does not oppose their approval.[68]

PART V – ORDER REQUESTED

75. For the reasons set out above, the Receiver requests that this Court grant the proposed Approval and Vesting Order, the DRP Order (or, in the alternative, adjourn the DRP relief pending finalization of the DRP), the Sealing Order, the Distribution Order, and all other ancillary relief substantially in the forms set out in the Motion Record.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 12th day of May 2026.

DAVID ULLMANN/STEPHEN GAUDREAU
Lawyers for the Receiver, Deloitte Restructuring Inc.

[66] Receiver's MR, Second Report, Tab 2, pp. 37-40, para. 80(a)-(w).
[67] *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851, at paras. 44-45
[68] Receiver's MR, Second Report, Tab 2, pp. 43-44, paras. 95-99; Appendix "M", Tab 2, pp. 338-419; Appendix "N", Tab 2, pp. 420-469.

Schedule "A" – List of Authorities

1. *AbitibiBowater inc.*, 2009 QCCS 6461
2. *Bank of Montreal v. Dedicated National Pharmacies Inc. et al*, 2011 ONSC 4634
3. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851
4. *C & K Mortgage Services Inc. v. Camilla Court Homes Inc.*, 2020 ONSC 5071
5. *Danier Leather Inc., Re*, 2016 ONSC 1044
6. *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, 2021 ABCA 226
7. *Firm Capital Mortgage Fund Inc v 2012241 Ontario Ltd*, 2012 ONSC 4816
8. *Forjay Management Ltd v 0981478 BC Ltd*, 2018 BCSC 527
9. *GE Canada Real Estate Financing Business Property Company v. 1262354 Ontario Inc.*, 2014 ONSC 1173
10. *Hazelton Development Corporation (Re)* (10 February 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00679931-00CL
11. *In the matter of One Bloor West Toronto Group Et Al*., 2025 ONSC 6574 (CanLII).
12. *Kingsett Mortgage Corporation v Mapleview Developments Ltd et al* (16 January 2025), Toronto, Ont Sup Ct J [Commercial List] CV-24-00716511-00CL
13. *KingSett Mortgage Corporation v. Vandyk* (27 April 2026), Toronto, Ont Sup Ct J [Commercial List] CV-23-00709180-00CL (Endorsement)
14. *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, 2014 BCSC 1855
15. *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, 2021 ONCA 375
16. *Original Traders Energy Ltd. (Re)*, 2023 ONSC 753
17. *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41
18. *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd*, 2020 BCSC 1013
19. *Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 (ON CA)
20. *Sherman Estate v. Donovan*, 2021 SCC 25
21. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508
22. *Yukon (Government of) v. Yukon Zinc Corporation*, 2022 YKSC 2

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

Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

Section 243(1)

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

Section 101

101(1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.
(2) An order under subsection (1) may include such terms as are considered just.

Section 137(2)

137(2) A court may order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.
Condominium Act, 1998, S.O. 1998, c. 19

Section 81

81(1) A declarant shall ensure that a trustee of a prescribed class or the declarant's solicitor receives and holds in trust all money, together with interest earned on it, as soon as a person makes a payment,
(a) on account of an agreement of purchase and sale for a proposed unit entered into by the person and the declarant.
(4) Upon receiving money that is required to be held in trust under subsection (1), a trustee of a prescribed class shall hold the money in trust in a separate account in Ontario designated as a trust account at a bank listed in Schedule I or II to the Bank Act (Canada), a trust corporation, a loan corporation or a credit union.
(5) Upon receiving money that is required to be held in trust under subsection (1), the declarant's solicitor shall hold the money in trust in a trust account in Ontario.
(6) Within 10 days of the payment of the money under subsection (1), the declarant shall provide to the person who paid the money written evidence, in the form prescribed by the Minister, of compliance with subsection (1) and one of subsections (4) and (5).
(7) Despite the registration of a declaration and description, the person who holds money in trust under subsection (1) shall hold it in trust until,

(a) the person holding the money in trust disposes of it to the person entitled to it, where the disposal is done in accordance with this Act and an agreement that the person who paid the money has entered into with respect to the proposed unit; or
(b) the declarant ensures that security of a prescribed class is provided for the money, except if the money has been received under clause (1)(a) and has not been credited to the purchase price under the agreement.

Section 82

82(1) The declarant shall pay interest at the prescribed rate to the purchaser on all money that a person pays on account of the purchase price of a proposed unit or that the declarant credits to the purchase price of a proposed unit.
(2) The interest is payable on the money even if, under clause 81(7)(b), the declarant provides security of a prescribed class for the money.
(3) The interest shall be calculated from the day the person pays the money received until the day the proposed unit is available for possession or occupancy in accordance with the purchaser's agreement of purchase and sale with the declarant.

Court File No. CV-25-00750862-00CL

CAISSE DESJARDINS ONTARIO CREDIT UNION INC.
Applicant

and

GC KING BOND LIMITED PARTNERSHIP, by its general partner, GC KING BOND GP INC.
Respondents

Email addresses of recipients: See Service List

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceeding commenced at Toronto

FACTUM OF THE RECEIVER
(Approval and Vesting Order and Other Ancillary Relief – Returnable May 14th, 2026)

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