Court File No. CV-25-00740512-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ONE BLOOR WEST TORONTO GROUP (THE ONE) INC. AND ONE BLOOR WEST TORONTO COMMERCIAL (THE ONE) GP INC.

FACTUM OF THE MONITOR
CSA Plan, Deposit Return Protocol and CSA Plan Reconfiguration
(Returnable November 17, 2025)

November 11, 2025

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ADDENDA

PART I. INTRODUCTION

1. One Bloor West Toronto Group (The One) Inc. and One Bloor West Toronto Commercial (The One) GP Inc. (together with One Bloor West Toronto Commercial (The One) LP, the "**Companies**"), by their Court-appointed Monitor, Alvarez & Marsal Canada Inc. ("**A&M**" and in such capacity, the "**Monitor**"), bring this motion seeking approval of an Order (the "**CSA Plan Approval Order**"), among other things: (a) approving the plan (the "**CSA Plan**") with respect to the treatment of existing condominium sale agreements entered into by the Companies prior to the commencement of the Receivership Proceedings (the "**Existing CSAs**"); (b) approving a deposit return protocol (the "**Deposit Return Protocol**") to facilitate the refund of deposits (plus applicable interest) paid by Unit Purchasers in respect of their Disclaimed CSAs (each as defined below); (c) approving the CSA Plan Reconfiguration (as defined below); (d) approving the Monitor's reports and activities; and (e) sealing the Confidential Appendices.[1]

2. Since its appointment in October 2023, the Receiver (now Monitor) has undertaken a comprehensive process to maximize the value of the Project (as defined below). That process has included extensive consultation with stakeholders and leading professionals, and – most importantly – a thorough canvassing of the market through the Court-approved SISP.

3. The SISP resulted in the engagement of Tridel, one of Canada's leading developers, as the project manager, construction manager and sales manager of the Project. Tridel conducted its own extensive analysis of the Project, in consultation with the CRO and the Monitor, and has proposed

[1] All capitalized terms used herein and not otherwise defined have the meanings given to them in the Initial Order of this Court dated April 22, 2025 (the "**Initial Order**"), or the Second Report of the Monitor dated November 3, 2025 (the "**Second Report**").

a comprehensive CSA Plan to address Existing CSAs and facilitate a further reconfiguration of the Project, in each case in a manner that will maximize the value of the Project.

4. The Monitor and the CRO, with the support of the Senior Secured Lenders as the sole source of ongoing funding for the Project and the fulcrum creditor in these proceedings, believe that the proposed CSA Plan and CSA Plan Reconfiguration represent the best opportunity to maximize value. The implementation of the CSA Plan and the CSA Plan Reconfiguration, as well as the anticipated partnership with a five-star luxury hotel, are projected to generate incremental proceeds in excess of $200 million, substantially increasing the net realizable value generated by the Project.[2]

5. The CSA Plan and the CSA Plan Reconfiguration are closely connected and time-sensitive, as construction activities required to implement the CSA Plan Reconfiguration will begin at the end of November 2025. The approvals sought at this time are therefore necessary to avoid any delays in construction and the substantial costs associated with such delays.

6. For the reasons set out herein and in the Second Report, the Monitor respectfully requests that the Court grant the relief sought pursuant to the proposed CSA Plan Approval Order.

PART II. FACTS

A. Background

(i) The Companies and the Project

7. The Companies are entities established for the purpose of developing an 85-storey condominium, hotel and retail tower at 1 Bloor Street West in Toronto, Ontario (the "**Project**").

[2] Second Report at para 2.6 [E473].

8. The Project, when fully constructed, will include: a residential component (the "**Residential Component**") comprised of condominium units (each, a "**Unit**") occupying levels 17 through 85 of the Project; a commercial component comprised of four underground parking levels and 16 aboveground levels, including the retail space on the ground floor, the food and beverage spaces on the third floor, and the spaces designed for a premium hotel on floors five and seven through 16 (the "**Hotel Component**").

9. The Companies began selling Units in 2017, and had entered into a total of 343 Existing CSAs with unit purchasers (each, a "**Unit Purchaser**") before the Receiver was appointed. Fourteen of the Existing CSAs were disclaimed or otherwise terminated by the Receiver during the Receivership Proceedings, leaving 329 Existing CSAs.[3]

10. Many of the Existing CSAs were entered into in 2017 and 2018 at then-current market prices, with Unit Purchasers having agreed to pay an average price of $1,651 per square foot.[4]

(ii) The Deposits paid by Unit Purchasers are Insured

11. Unit Purchasers were generally required to pay deposits equal to 20% of the purchase price set out in the Existing CSAs. These funds were paid to the escrow agent for the Project, Harris, Sheaffer LLP, in trust. Unit Purchasers paid deposits totalling approximately $105 million, of which approximately $102 million were released to the Companies to fund construction of the Project before the commencement of the Receivership Proceedings. Approximately $3.17 million (excluding interest) remains in trust.[5]

[3] Second Report at para 4.12 [E479].
[4] Second Report at paras 4.13 [E480], 9.7 [E507].
[5] Second Report at para 4.14 [E480].

12. The Companies obtained a back-stop surety bond from Aviva in favour of Tarion (the "**Tarion Bond**"), as well as third-party excess deposit insurance from Aviva (the "**Excess Deposit Insurance**"), which security was required to be obtained before any deposits could be released to fund construction.[6] Aviva agreed that if the Companies failed to repay the deposits paid by Unit Purchasers under their respective Existing CSAs, then Aviva would refund the deposits (plus applicable interest) to Unit Purchasers. If Aviva made such payments, then it was entitled to claim recovery of the amounts it paid out to Unit Purchasers from the Companies. Aviva was granted and registered a second-ranking charge against the Project to secure this potential obligation.[7]

13. As a result of the foregoing arrangements, the Monitor and the CRO expect that Unit Purchasers whose Existing CSAs are disclaimed pursuant to the CSA Plan (as described below) will be paid the full amount of their deposit (plus applicable interest) by Aviva in accordance with the terms of the Tarion Bond and the Excess Deposit Insurance pursuant to the proposed Deposit Return Protocol that has been developed in consultation with Aviva and Tarion.[8]

(iii) The Companies' Insolvency Proceedings and Efforts to Maximize Value

14. On October 18, 2023, A&M was appointed Receiver of all of the assets, undertakings and properties of the Companies, including the Project. The principal purpose of the Receivership Proceedings was to bring stability and appropriate oversight to the Project, while preserving and protecting it to maximize recoveries for the benefit of stakeholders, including by ensuring the ongoing construction of the Project.[9]

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[6] Second Report at paras 4.15–4.16 [E481].
[7] Second Report at paras 4.17–4.19 [E481–E482].
[8] Second Report at para 9.6 [E506].
[9] Second Report at para 1.2 [E466].

15. The Project was in a very difficult financial position when the Receiver was appointed. Debts exceeded forecast revenues by a significant amount, and the Companies required significant additional funding to complete construction. Accordingly, as part of its mandate, the Receiver worked diligently to maximize the value of the Project and create a stable environment to facilitate the uninterrupted construction of the Project, with continued funding from the Senior Secured Lenders.

16. The Receiver's efforts to maximize value began shortly after its appointment in October 2023 with extensive consultations with leading real estate consultants and advisors,[10] and culminated in a comprehensive Court-approved sale and investment solicitation process (the "**SISP**") intended to "let the market speak" by soliciting proposals to either purchase or provide construction and development services to the Project.[11]

17. Both the Receiver's professional advisors and the developers that participated in the SISP overwhelmingly expressed the view that the Existing CSAs should be disclaimed in order to maximize the value of the Residential Component.[12]

18. Both the professional advisors and the developers that submitted Qualified Bids also advised that the Hotel Component could be leveraged to maximize the value of the Residential Component.[13] Specifically, the Receiver was consistently advised that buyers would likely pay higher prices if the Companies partnered with a luxury hotel operator and sold branded Units.

19. At the conclusion of the SISP, and with this Court's approval, the Companies engaged Tridel to complete the construction, development, and realization of value from the Project. At the

[10] Second Report at para 5.1 [E483].
[11] Second Report at paras 6.6–6.9 [E488–E489].
[12] Second Report at paras 5.2 [E483], 6.16 [E491].
[13] Second Report at paras 5.6 [E484], 5.12 [E486], 6.16 [E491].

same time, the Court approved the transition of the Receivership Proceedings to proceedings under the *Companies' Creditors Arrangement Act* (Canada) (the "**CCAA**").[14]

B. The CSA Plan

20. Over the past several months, Tridel and the Companies, through the CRO and with the assistance of the Monitor, have worked diligently to formulate a value-maximizing CSA Plan. The CSA Plan is premised on a detailed Unit-by-Unit analysis that was performed by Tridel to evaluate the expected net proceeds that would be received by closing on Existing CSAs at the contracted price versus selling all Units at each of their forecast market values.[15]

21. Each of the Monitor, the CRO, Tridel and the Senior Secured Lenders supports the approval of the proposed CSA Plan, the core elements of which include the following:

(a) the disclaimer by the Companies of substantially all (314) of the Existing CSAs (collectively, the "**Disclaimed CSAs**") to enable the resale of Units at increased market prices that are based on the proposed CSA Plan Reconfiguration and an anticipated partnership with a luxury hotel brand; and

(b) the potential retention by the Companies of 15 Existing CSAs (collectively, the "**Potentially Retained CSAs**") that were identified as being economically viable for the Project, subject to certain conditions being met, including the relevant Unit Purchaser entering into a new form of condominium sale agreement, and Aviva agreeing to make a payment to the Project in respect of the relevant Unit Purchaser's Potentially Retained CSA in an amount and on other terms and

[14] Second Report at para 1.3 [E467].
[15] Second Report at para 7.4 [E494].

conditions acceptable to the Companies, in consultation with the Monitor and the DIP Lender.[16]

22. The CSA Plan also provides that each Unit Purchaser under a Disclaimed CSA, as well as any Unit Purchaser whose Existing CSA was disclaimed prior to the date of the CSA Plan, will be offered an opportunity to purchase any available Unit at the prevailing list price for a forty-five (45) day period prior to the Units being available for sale to the general public (the "**Early Purchase Opportunity**").[17] The Early Purchase Opportunity ensures that all former Unit Purchasers who still wish to purchase a Unit in the Project will be given an opportunity to do so.

C. The Hotel Process

23. During the Receivership Proceedings, the Receiver, in consultation with JLL, determined that there were opportunities to further maximize value in respect of the Hotel Component. In light of these opportunities, one of the conditions precedent to the Tridel Transaction was that the agreements that governed the operation of the Hotel Component (the "**Existing Hotel Agreements**") would be disclaimed by the Receiver.[18] The Receiver disclaimed the Existing Hotel Agreements on February 6, 2025.

24. Since this disclaimer, Tridel, in consultation with the Monitor, the CRO and the Senior Secured Lenders, has been working with an experienced hotel investment broker to advance the hotel brand selection process (the "**Hotel Process**"). The Hotel Process has included a broad canvassing of hotel operators to identify a five-star luxury brand that will optimize the value of the Hotel Component and the Residential Component.[19]

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[16] Second Report at para 8.2 [E502].
[17] Second Report at para 8.3(ii) [E503].
[18] Second Report at para 7.21 [E500].
[19] Second Report at para 7.22 [E500].

25. To implement a branded Unit strategy, certain changes to the Units are required to ensure that they align with the standards of a luxury hotel brand. These changes will be finalized once a hotel partner is selected, but will include re-designed suites, optimized to provide elevated interior finishes, including enhanced millwork, closets, kitchen and bathroom fixtures, among other improvements, all of which are consistent with the proposed CSA Plan Reconfiguration.[20]

26. These enhancements will require additional investment in the Units. However, the CRO and the Monitor expect that the additional revenue generated by selling branded Units will significantly exceed the additional investment required to build those Units.[21]

27. Almost all Existing CSAs contemplate sales at prices that are below current and forecast market prices. The CSA Plan Reconfiguration and the branded Unit strategy are expected to provide additional incremental value for each Unit through branding and other enhancements. This will further increase the difference between the price of the Existing CSAs and the price that the Companies believe they can sell branded Units for on the open market in late 2026/early 2027.[22]

D. The CSA Plan Reconfiguration

28. Since the commencement of the Receivership Proceedings, two reconfigurations of the Residential Component have been proposed and approved by the Court. These reconfigurations have been driven by changing market conditions and evolving plans to maximize the value of the Project.[23]

29. The market for smaller investor-type condominium units has continued to face significant challenges in 2025. These smaller units are primarily purchased by investors seeking to rent them.

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[20] Second Report at para 7.25 [E501].
[21] Second Report at para 7.26 [E501].
[22] Second Report at para 7.27 [E501].
[23] Second Report at para 7.8 [E495].

Investor demand has reduced substantially in every year since 2022. However, because condominium developments are planned, marketed and partially sold long before construction is complete, builders continue to construct a large number of smaller condominium units. This has resulted in a significant oversupply of smaller condominium units in Toronto, further justifying the need to reduce the number of Units of this type in the Project.[24]

30. The leading hotel brands that participated in the Hotel Process expressed concern about the number of Units in the Project, and advised that the number should be reduced to maximize the benefits of a luxury branded Unit strategy.[25]

31. Based on the feedback received from brands in the Hotel Process, detailed reviews of current and expected condominium market conditions in Toronto, and cost benefit analyses and feasibility studies, Tridel has proposed a further reconfiguration that will reduce the total number of Units in the Project to 411, representing a reduction of 65 Units as compared to the most recent reconfiguration (the "**CSA Plan Reconfiguration**").[26]

32. The CSA Plan Reconfiguration, if implemented, would reduce the number of small investor-type Units and increase the number of luxury/ultra-luxury Units in the Project, thereby aligning the Project with expected market conditions and a five-star luxury hotel standard.[27]

33. One consequence of the CSA Plan Reconfiguration is that 93 Units sold pursuant to Existing CSAs will not be built, and the Companies will be unable to complete the transactions

[24] Second Report at para 7.13 [E497].
[25] Second Report at para 7.15 [E497].
[26] Second Report at para 7.12 [E496].
[27] Second Report at paras 7.13–7.16 [E497–E498].

contemplated by the Existing CSAs for these Units. The CSA Plan contemplates the disclaimer of all Existing CSAs for these 93 Units.[28]

34. Based on the Project's current construction schedule, the first construction activities required by the CSA Plan Reconfiguration will begin at the end of November 2025. The CSA Plan Reconfiguration (and the CSA Plan itself) is therefore time-sensitive.[29]

E. The Deposit Return Protocol

35. To avoid any delays in construction and to facilitate an orderly hearing of any objections that may be made by Unit Purchasers, the Companies, with the approval of the Monitor, issued disclaimer notices in respect of the Disclaimed CSAs on October 24, 2025, with such disclaimers to be effective 30 days later on November 23, 2025.[30]

36. Unit Purchasers have paid deposits in connection with their respective Disclaimed CSAs, which deposits (plus applicable interest) are understood to be fully protected by the Tarion Bond and the Excess Deposit Insurance issued by Aviva.[31] Accordingly, in anticipation of the disclaimer of the Disclaimed CSAs, the Companies, through the CRO, and the Monitor have developed the Deposit Return Protocol in consultation with Aviva and Tarion.

37. The proposed Deposit Return Protocol is intended to facilitate the return of deposits (plus applicable interest) paid by Unit Purchasers under Disclaimed CSAs in a fair and efficient manner. If approved by the Court, the Deposit Return Protocol will be carried out as soon as reasonably practicable, with Aviva being responsible for funding the return of deposits (plus applicable interest) and administering the process, with the assistance of its authorized agent.

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[28] Second Report at paras 7.19–7.20 [E499–E500].
[29] Second Report at para 7.7 [E495].
[30] Second Report at para 8.4 [E503].
[31] Second Report at para 10.1 [E513].

F. The Monitor's Reports and Activities

38. The proposed CSA Plan Approval Order contemplates the approval of the First Report and the Second Report of the Monitor, as well as the actions, conduct and activities of the Monitor as described therein.[32] The Monitor, in its supervisory capacity, continues to play an important role in advancing the development of the Project and these CCAA Proceedings, including, without limitation, by ensuring the ongoing construction of the Project, advancing various value-maximizing strategies, and communicating with various stakeholders in these CCAA Proceedings (including Unit Purchasers under Existing CSAs), in each case in consultation with the CRO, Tridel and, where appropriate, the Senior Secured Lenders.

G. Sealing of the Confidential Appendices

39. The Confidential Appendices appended to the Second Report are comprised primarily of market reports, analysis or other similar materials that provide the basis for the economic analysis underlying the proposed CSA Plan and CSA Plan Reconfiguration. A sealing order is being sought in respect of these materials on the basis that they contain commercially sensitive information that, if disclosed, could impair efforts to maximize the value of the Project.[33]

PART III. ISSUES AND THE LAW

40. The issues to be considered on this motion are whether the Court should approve: (a) the CSA Plan, including the disclaimer of the Disclaimed CSAs contemplated thereunder; (b) the CSA

[32] Second Report at para 2.1(ii)(d) [E471].
[33] Second Report at paras 5.4 [E483], 5.14–5.15 [E486], 6.4 [E488], 7.4 [E494].

Plan Reconfiguration; (c) the Deposit Return Protocol; (d) the Monitor's reports and activities; and (e) the sealing of the Confidential Appendices.

41. The Monitor respectfully submits that the Court should grant all of the foregoing relief pursuant to the proposed CSA Plan Approval Order.

A. The CSA Plan Should be Approved

(i) The Companies are Entitled to Disclaim the Disclaimed CSAs

42. Section 32(1) of the CCAA expressly permits a debtor company to disclaim any agreement to which the company is a party on the day on which the CCAA proceedings commence, with the approval of the monitor and on notice to the other parties to the agreement and the monitor.[34] This Court has approved the disclaimer or termination of pre-construction sale agreements in numerous prior insolvency cases.[35]

43. The test for approving the disclaimer of a condominium sale agreement is well-established, and has been recently affirmed by the Court of Appeal for Ontario in *Constantine v Mizrahi*:

(a) consideration of the respective legal priorities of the competing interests;

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[34] *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, s 32(1).

[35] See, for example, *Constantine Enterprises Inc v Mizrahi (128 Hazelton) Inc et al*, 2025 ONSC 2073 at para 127 [*Constantine v Mizrahi*], aff'd 2025 ONCA 710; *KingSett Mortgage Corporation et al v Vandyk-Uptowns Limited et al*, 2024 ONSC 6205 at para 32 [*Vandyk-Uptowns*]; *In the Matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited*, 2024 ONSC 5541 at paras 18–20 [*Shelter Cove*]; *MCAP Financial Corporation v Vandyk-The Buckingham North-Grand Central Limited et al* (21 February 2025), Toronto, Ont Sup Ct J [Commercial List] CV-23-00710573-00CL (Purchase Agreement Relief and Deposit Return Protocol Approval Order) at para 4; *Kingsett Mortgage Corporation v Mapleview Developments Ltd et al* (16 August 2024), Toronto, Ont Sup Ct J [Commercial List] CV-24-00716511-00CL (Sale Approval, Vesting and Ancillary Matters Order) at para 6; *Genesis Mortgage Investment Corporation v 1776411 Ontario Ltd et al* (8 October 2024), Toronto, Ont Sup Ct J [Commercial List] CV-23-00706813-00CL (Approval and Vesting Order) at paras 7–8; *BCIMC Construction Fund Corporation et al v The Clover On Yonge Inc et al* (15 September 2020), Toronto, Ont Sup Ct J [Commercial List] CV-20-00637301-00CL (Approval and Vesting Order (Halo)) at para 8; *BCIMC Construction Fund Corporation et al v 33 Yorkville Residences Inc et al* (11 March 2021), Toronto, Ont Sup Ct J [Commercial List] CV-20-00637297-00CL (Approval and Vesting Order) at para 8.

(b) whether the disclaimer would enhance the value of the assets, and if so, would a failure to disclaim amount to a preference in favour of a particular party; and

(c) whether, if a preference would arise, the party seeking to avoid the disclaimer has established that the equities support such a preference.[36]

44. The disclaimers of the Disclaimed CSAs, which form an essential component of the CSA Plan, satisfy the above-noted criteria, including because they will maximize the value of the Project for the benefit of the Senior Secured Lenders, consistent with their legal priority.

(ii) The Senior Secured Lenders' Security Ranks in Priority to Unit Purchasers' Contractual Rights

45. The Senior Secured Lenders have a validly perfected security interest over the entirety of the Project, which is a first-ranking interest subject only to the priority charges granted or continued in the CCAA Proceedings.[37] The total amount owing to the Senior Secured Lenders in connection with the Project, inclusive of interest, exceeds $2.0 billion.[38] Even after accounting for the improved recoveries expected to be generated by the CSA Plan, the expectation remains that the Senior Secured Lenders will not recover their indebtedness in full.

46. On the other hand, Unit Purchasers under Existing CSAs have a contractual right to purchase the Units identified in their respective Existing CSAs, subject to the terms thereof, which provide that, among other things:

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[36] See *Constantine Enterprises Inc v Mizrahi (128 Hazelton) Inc*, 2025 ONCA 710 at para 14, where the Court of Appeal for Ontario confirmed that the motion judge applied the correct test for granting a disclaimer (see para 38 of *Constantine v Mizrahi*). See also *Forjay Management Ltd v 0981478 BC Ltd*, 2018 BCSC 527 at para 44, aff'd 2018 BCCA 251 [*Forjay Management*]; *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd*, 2020 BCSC 1013 at para 26 [*Peoples Trust*]; *Vandyk-Uptowns* at para 26; *Shelter Cove* at para 19.
[37] Second Report at para 4.9 [E478].
[38] Second Report at para 4.7 [E477].

(a) the Unit Purchaser subordinates and postpones their Existing CSA to any mortgages arranged by the Vendor and any advances thereunder; and

(b) the Unit Purchaser acknowledges that by executing their Existing CSA, it has not acquired any equitable or legal interest in the applicable Unit or the property.[39]

47. Canadian courts, including this Court, have held that the interests of Unit Purchasers under pre-construction sale agreements do not stand in priority to the legal interests and priority of secured lenders.[40] The same principle applies to the present circumstances – as the priority secured creditor, the Senior Secured Lenders have a higher legal priority to the appreciation in value of the Units in the Project than the Unit Purchasers.

(iii) The Disclaimer of the Disclaimed CSAs will Enhance the Value of the Project

48. The CSA Plan is the culmination of almost two years of investigation and analysis by the Receiver and, more recently, the Monitor, the CRO and Tridel, based on input from several leading professionals. It is informed by market feedback obtained through a comprehensive SISP that involved many of Canada's leading developers and it was developed by Tridel, the leading developer selected in the SISP because of its significant expertise in the design, construction and marketing of major condominium development projects and large mixed-use projects. Based on this extensive analysis, the Monitor and the CRO believe that the CSA Plan – which requires the disclaimer of most Existing CSAs – will enhance the value of the Project.

49. The Monitor's evidence describes the extensive steps taken to investigate whether disclaiming the Existing CSAs would enhance the value of the Project. The Monitor has concluded

[39] Second Report at para 9.9 [E507] and Appendix "I" (Standard Form of CSA) at ss 15–16 [E800].
[40] See, for example, *Forjay Management* at para 90; *Peoples Trust* at para 35; *Vandyk-Uptowns* at para 27; *Constantine v Mizrahi* at paras 125–126.

that the value-maximizing strategies described in the Second Report, which include the disclaimer of the Disclaimed CSAs pursuant to the proposed CSA Plan, are likely to generate incremental proceeds of more than $200 million.[41]

50. Even after accounting for the additional costs of implementing these value-maximizing strategies, including the costs associated with the CSA Plan Reconfiguration, the luxury hotel branded Unit strategy and the remarketing of the Units, the net realizable value of the Project is expected to increase substantially.[42]

(iv) Failure to Disclaim the Disclaimed CSAs will Result in a Preference in Favour of Unit Purchasers and Aviva

51. Almost all of the Existing CSAs provide for sales at prices below both current and projected market values.[43] Accordingly, disclaimer of the Disclaimed CSAs alone would permit the resale of Units at higher prices, generating additional proceeds for the Project. Revenue increases will be even more significant when considering the anticipated impact of the CSA Plan Reconfiguration and the five-star luxury hotel partnership, which is expected to further increase the value of the Units substantially.

52. Given the increase in value of Units purchased under the Existing CSAs, as well as the substantial incremental value that is expected to be achieved by the implementation of the Companies' various value-maximization strategies, any failure to disclaim the Disclaimed CSAs would amount to a preference in favour of Unit Purchasers, which would effectively reduce the

[41] Second Report at para 2.6 [E473].
[42] Second Report at para 2.6 [E473].
[43] Second Report at para 7.27 [E501].

value of the Project to the detriment of the Senior Secured Lenders. Canadian courts have held that such a result is unacceptable.[44]

53. Specific performance of the Existing CSAs is also not an appropriate remedy in the circumstances, including because: (a) the Companies have not affirmed the Existing CSAs; (b) the Units purchased under the Disclaimed CSAs either do not yet exist or remain under construction and, in some cases, will no longer be built as a result of the proposed CSA Plan Reconfiguration; (c) substantial further funding from the Senior Secured Lenders will be required before the Project is fully developed and Units are ready for occupancy; and (d) the Units purchased under the Disclaimed CSAs are not unique, and substitutes are readily available to affected Unit Purchasers in the Toronto market, including in the Project itself should a Unit Purchaser wish to exercise the Early Purchase Opportunity.[45]

54. As for Aviva, although it is not a party to any Disclaimed CSAs and does not have a statutory right to object to their disclaimer, it is nonetheless impacted by the proposed CSA Plan because of its agreement to insure the repayment of deposits pursuant to the Tarion Bond and the Excess Deposit Insurance. It is unlikely that Aviva will be able to recover the amounts that it is contractually obligated to pay to Unit Purchasers, apart from the applicable amounts remaining in the Deposit Trust Account, as the Aviva mortgage ranks behind the Senior Secured Lenders' security and it is not expected that the entirety of the Senior Secured Lenders' debt will be repaid.[46]

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[44] See, for example, *Forjay Management* at para 93; *Peoples Trust* at para 57; *Constantine v Mizrahi* at paras 106, 125; *Vandyk-Uptowns* at paras 29–30.
[45] See, for example, *Forjay Management* at paras 80–90 where similar factors led the Supreme Court of British Columbia to conclude that specific performance was not an appropriate remedy in the circumstances. See also *Peoples Trust* at paras 36–37.
[46] Second Report at para 9.16 [E510].

55. The realization of Aviva's contractual insurance exposure is not a basis to refuse approval of the proposed CSA Plan. Aviva's insurance exposure is the consequence of commitments that it (a highly sophisticated and experienced provider of deposit insurance) agreed to make in exchange for the payment of premiums. Prohibiting the disclaimer of the Existing CSAs, or otherwise reducing the number of Disclaimed CSAs to limit Aviva's exposure, would effectively prefer Aviva's interests (as an insurer and subordinate creditor) over the interests of the Project and the Senior Secured Lenders (who bargained for priority over other creditors, including Aviva).[47]

(v) The Disclaimers are Not Inequitable

56. To the extent the value of a Unit purchased under a Disclaimed CSA has increased relative to the stated purchased price, the applicable Unit Purchaser may have a claim for damages against the Companies in respect of the lost economic opportunity resulting from the disclaimer. Any such claim would be unsecured, and the Monitor does not expect that funds will be available for distribution to unsecured creditors. Notwithstanding this outcome, Canadian courts have held that this potential "financial hardship" does not justify a departure from existing legal priorities.[48]

57. In the circumstances, any financial hardship experienced by Unit Purchasers under Disclaimed CSAs is limited to this lost economic opportunity. Unit Purchasers are expected to receive a full refund of any deposits (plus applicable interest) paid in connection with their Disclaimed CSAs pursuant to the proposed Deposit Return Protocol. In addition, Unit Purchasers will be offered an Early Purchase Opportunity to purchase a Unit in the Project before the general public, should they wish to do so. In light of these mitigating factors, the Monitor respectfully submits that the equities do not tip in favour of Unit Purchasers.

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[47] Second Report at paras 9.17 [E510].
[48] See, for example, *Vandyk-Uptowns* at para 30; *Peoples Trust* at paras 58–63.

58. Unit Purchasers have been kept apprised of key developments in the Receivership Proceedings and the CCAA Proceedings, and were expressly advised that the fair market values of the Existing CSAs would be reviewed to determine what, if any, steps would be taken with respect to the Existing CSAs.[49] The CSA Plan is a requirement under the Court-approved DIP Credit Agreement and, accordingly, any delays in Court approval of the CSA Plan risk impacting the Companies' access to essential funding needed to build the Project and continue the CCAA Proceedings.[50] Unit Purchasers were provided notice of the April 2025 hearing seeking approval of the DIP Credit Agreement.[51]

59. Unit Purchasers have also been provided notice of the Companies' hearing seeking approval of the proposed CSA Plan Approval Order (scheduled for November 17, 2025), and the Monitor and the CRO have diligently attended to Unit Purchaser inquiries regarding this hearing.[52]

60. The statutory deadline for objecting to the disclaimer of any of the 314 Disclaimed CSAs was November 10, 2025. As of the date of this Factum, the Monitor has received only one formal objection to the disclaimer of a Disclaimed CSA. The Monitor is also in discussions with counsel to another Unit Purchaser who has advised that, notwithstanding the passing of the November 10 statutory objection deadline, its client may still object to the disclaimer of its Disclaimed CSAs or seek other relief. The Monitor will provide an update to the Court on the status of any remaining objections at, or prior to, the commencement of the hearing on November 17, 2025.

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[49] Second Report at paras 9.10–9.12 [E508].
[50] Second Report at para 9.4 [E506].
[51] Second Report at Appendix "B" (Joint Report) at para 6.19 [E588].
[52] Second Report at paras 9.13–9.15 [E508–E510]. Unit Purchasers under Disclaimed CSAs were provided notice of the Companies' November 17 hearing on October 24, being 24 days before the hearing.

B. The CSA Plan Reconfiguration Should be Approved

61. The implementation of the proposed CSA Plan Reconfiguration is necessary to optimize the number, size and configuration of Units in the Project in response to condominium market conditions, advice from Tridel and feedback obtained from prospective luxury hotel partners.[53] Specifically, the changes contemplated by the CSA Plan Reconfiguration are expected to help sales velocity and absorption, align the Project with a five-star luxury standard, and increase overall proceeds from the sale of Units in the Project, thereby maximizing value.[54]

62. The CSA Plan Reconfiguration contemplates a different floorplate design for a significant number of residential levels to facilitate improvements to the residential suite layouts. As a result, if the CSA Plan Reconfiguration is implemented, certain Units subject to Existing CSAs will be built out of existence. Those Units are contemplated to be disclaimed pursuant to the proposed CSA Plan and, accordingly, the concurrent disclaimer of Disclaimed CSAs as contemplated therein is necessary to ensure the successful implementation of the CSA Plan Reconfiguration and provide certainty to affected Unit Purchasers.[55]

63. This Court has the authority to approve the CSA Plan Reconfiguration pursuant to Section 11 of the CCAA, which authorizes the Court to make any order that it considers appropriate in the circumstances.[56] Approval of the CSA Plan Reconfiguration is appropriate in the circumstances, including because it, together with the CSA Plan and the introduction of a five-star luxury hotel, will generate substantial incremental proceeds for the Project, while enhancing the Project's overall luxury and quality.

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[53] Second Report at para 7.7 [E495].
[54] Second Report at para 7.16 [E498].
[55] Second Report at para 7.20 [E500].
[56] CCAA, s 11.

C. The Deposit Return Protocol Should be Approved

64. Section 11 of the CCAA provides this Court with the discretion to approve the proposed Deposit Return Protocol, which is necessary to facilitate the timely return of deposits (plus applicable interest) to Unit Purchasers by Aviva, as the Project's deposit insurer.

65. Protocols governing the return of deposits paid by purchasers under pre-construction sale agreements are common in condominium development insolvencies and have been frequently approved by this Court.[57] Such approval allows individual unit purchasers to obtain the return of their deposits in a "fair and sensible fashion."[58]

66. Approval of the proposed Deposit Return Protocol is reasonable and appropriate in the circumstances, including because: (a) it will facilitate an orderly and efficient deposit return process, particularly given the number of Unit Purchasers whose Existing CSAs have been disclaimed; (b) it has been developed in consultation with Aviva and Tarion; (c) it will permit the Monitor, as an officer of the Court, to be kept apprised of progress made under the Deposit Return Protocol; and (d) its terms are substantially similar to the terms of other deposit return protocols approved by the Court in similar circumstances.[59]

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[57] 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 [Hazelton DRP Order]; *1473124 Ontario Limited v LDI Lakeside Developments Inc* (19 December 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00694059-00CL (Discharge and Ancillary Relief Order) at para 4; *MCAP Financial Corporation v Vandyk-Backyard Kings Mill Limited et al* (16 October 2024), Toronto, Ont Sup Ct J [Commercial List] CV-23-00710267-00CL (Deposit Return Protocol Approval Order) at paras 3–5 and the related Deposit Return Protocol, attached as Appendix "B" to the Second Report of KSV Restructuring Inc. as Receiver dated October 8, 2024 [Vandyk-Kings Mill DRP]; *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)) [Mapleview DRP Order].

[58] *Hazelton Development Corporation (Re)* (10 February 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00679931-00CL (Endorsement of Justice McEwan) at p 3.

[59] Second Report at para 10.3 [E513]. See also, for example, Mapleview DRP Order; Hazelton DRP Order; Vandyk-Kings Mill DRP.

D. The Monitor's Reports and Activities Should be Approved

67. This Court has held that there are good policy and practical reasons for approving a court officer's reports and activities, including that Court approval:

(a) allows the court officer to move forward with the next steps in the proceedings;

(b) brings the court officer's activities before the Court;

(c) allows an opportunity for the concerns of stakeholders to be addressed, and any problems to be rectified;

(d) enables the Court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent manner;

(e) provides protection for the court officer not otherwise provided by the applicable legislation; and

(f) protects creditors from the delay in distribution that would be caused by: (i) re-litigation of steps taken to date; and (ii) potential indemnity claims by the court officer.[60]

68. The Monitor's reports (being the two reports filed by the Monitor in these CCAA Proceedings to date), and the actions, conduct and activities of the Monitor as described therein, should be approved. All such activities were necessary, undertaken in good faith, and carried out pursuant to the Monitor's duties and powers set out in the Initial Order, and were at all times in the best interests of the Companies' stakeholders generally. Approval of the Monitor's reports and

[60] *Target Canada Co (Re),* 2015 ONSC 7574 at para 12; *Laurentian University of Sudbury (Re)*, 2022 ONSC 2927 at paras 13–14.

activities will assist in advancing these CCAA Proceedings. Moreover, only the Monitor, in its personal capacity and with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.[61]

E. The Confidential Appendices Should be Sealed

69. The Monitor requests that this Court seal the Confidential Appendices to the Second Report, which are comprised primarily of market reports, analysis and other similar materials that provide the basis for the economic analysis underlying the proposed CSA Plan and CSA Plan Reconfiguration. This Court has the discretion pursuant to section 137(2) of the *Courts of Justice Act* (Ontario) and its inherent jurisdiction to order that any document filed in a civil proceeding be treated as confidential, sealed and not form part of the public record.[62] With respect to materials that disclose sensitive information regarding the valuation of a company's assets, this Court has previously granted sealing orders in respect of same.[63]

70. In *Sherman Estate,* the Supreme Court of Canada held that the person asking a court to exercise discretion in a way that limits the open court presumption must establish that: (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 identified interest because reasonably alternative measures will not prevent this risk; and (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.[64]

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[61] Draft CSA Plan Approval Order at para 9 [E863].
[62] *Courts of Justice Act*, RSO 1990, c C.43, s 137(2). See also, for example, *Fairview Donut Inc v The TDL Group Corp*, 2010 ONSC 789 at para 34.
[63] See, for example, *In the Matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited* (28 May 2024), Toronto, Ont Sup Ct J [Commercial List] CV-19-00625101-00CL (Endorsement of Justice Steele) at para 5; *Pride Group Holdings Inc (Re)* (18 November 2024), Toronto, Ont Sup Ct J [Commercial List] CV-24-00717340-00CL (Endorsement of Justice Osborne) at para 31.
[64] *Sherman Estate v Donovan*, 2021 SCC 25 at paras 37–38.

71. The Monitor respectfully submits that the foregoing test is satisfied. The Confidential Appendices contain commercially sensitive information regarding Unit values and estimated values of individual components of the Project that, if disclosed, could impair efforts to maximize the value of the Project. Furthermore, there is no reasonable alternative to a sealing order to mitigate the aforementioned risk, and no party will suffer prejudice if the Confidential Appendices are filed under seal.

PART IV. CONCLUSION

72. For the reasons set out herein and in the Second Report, the Monitor respectfully requests that this Court grant the proposed CSA Plan Approval Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 11th day of November, 2025.

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SCHEDULE A
LIST OF AUTHORITIES

1. *Constantine Enterprises Inc v Mizrahi (128 Hazelton) Inc et al*, 2025 ONSC 2073, aff'd 2025 ONCA 710.

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

3. *In the Matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited*, 2024 ONSC 5541.

4. *MCAP Financial Corporation v Vandyk-The Buckingham North-Grand Central Limited et al* (21 February 2025), Toronto, Ont Sup Ct J [Commercial List] CV-23-00710573-00CL (Purchase Agreement Relief and Deposit Return Protocol Approval Order).

5. *Kingsett Mortgage Corporation v Mapleview Developments Ltd et al* (16 August 2024), Toronto, Ont Sup Ct J [Commercial List] CV-24-00716511-00CL (Sale Approval, Vesting and Ancillary Matters Order).

6. *Genesis Mortgage Investment Corporation v 1776411 Ontario Ltd et al* (8 October 2024), Toronto, Ont Sup Ct J [Commercial List] CV-23-00706813-00CL (Approval and Vesting Order).

7. *BCIMC Construction Fund Corporation et al v The Clover On Yonge Inc et al* (15 September 2020), Toronto, Ont Sup Ct J [Commercial List] CV-20-00637301-00CL (Approval and Vesting Order (Halo)).

8. *BCIMC Construction Fund Corporation et al v 33 Yorkville Residences Inc. et al* (11 March 2021), Toronto, Ont Sup Ct J [Commercial List] CV-20-00637297-00CL (Approval and Vesting Order).

9. *Constantine Enterprises Inc v Mizrahi (128 Hazelton) Inc*, 2025 ONCA 710.

10. *Forjay Management Ltd v 0981478 BC Ltd*, 2018 BCSC 527, aff'd 2018 BCCA 251.

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

12. *Hazelton Development Corporation (Re)* (10 February 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00679931-00CL (Order).

13. *1473124 Ontario Limited v LDI Lakeside Developments Inc* (19 December 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00694059-00CL (Discharge and Ancillary Relief Order).

14. *MCAP Financial Corporation v Vandyk-Backyard Kings Mill Limited et al* (16 October 2024), Toronto, Ont Sup Ct J [Commercial List] CV-23-00710267-00CL (Deposit Return Protocol Approval Order).

15. *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)).

16. *Hazelton Development Corporation (Re)* (10 February 2023), Toronto, Ont Sup Ct J [Commercial List] CV-23-00679931-00CL (Endorsement of Justice McEwan).

17. *Target Canada Co (Re),* 2015 ONSC 7574.

18. *Laurentian University of Sudbury (Re)*, 2022 ONSC 2927.

19. *Fairview Donut Inc v The TDL Group Corp*, 2010 ONSC 789.

20. *In the Matter of a Plan of Compromise or Arrangement of 2039882 Ontario Limited* (28 May 2024), Toronto, Ont Sup Ct J [Commercial List] CV-19-00625101-00CL (Endorsement of Justice Steele).

21. *Pride Group Holdings Inc (Re)* (18 November 2024), Toronto, Ont Sup Ct J [Commercial List] CV-24-00717340-00CL (Endorsement of Justice Osborne).

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

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

Date: November 11, 2025

Signature

SCHEDULE B
STATUTORY REFERENCES

Companies' Creditors Arrangement Act, RSC 1985, c C-36

General power of court

11 Despite anything in the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*, if an application is made under this Act in respect of a debtor company, the court, on the application of any person interested in the matter, may, subject to the restrictions set out in this Act, on notice to any other person or without notice as it may see fit, make any order that it considers appropriate in the circumstances.

Disclaimer or resiliation of agreements

32 (1) Subject to subsections (2) and (3), a debtor company may — on notice given in the prescribed form and manner to the other parties to the agreement and the monitor — disclaim or resiliate any agreement to which the company is a party on the day on which proceedings commence under this Act. The company may not give notice unless the monitor approves the proposed disclaimer or resiliation.

Courts of Justice Act, RSO 1990, c C.43

Sealing documents

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

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No. CV-25-00740512-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF ONE BLOOR WEST TORONTO GROUP (THE ONE) INC. AND ONE BLOOR WEST TORONTO COMMERCIAL (THE ONE) GP INC.

Applicants

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

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(CSA Plan, Deposit Return Protocol and CSA Plan Reconfiguration)
Returnable November 17, 2025

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