

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

B E T W E E N:

PRICEWATERHOUSECOOPERS INC.

(solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

Applicant

- and -

SKYMARK FINANCE CORPORATION and MERK INVESTMENTS LTD.

Respondents

**FACTUM OF THE RECEIVER
(Motion re: Sale Approval and Ancillary Relief Order)**

September 22, 2023

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PART I - OVERVIEW¹

1. This factum is filed by Alvarez & Marsal Canada Inc. (“**A&M**”) in its capacity as court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings, and properties of Skymark Finance Corporation (“**Skymark**”) and Merk Investments Ltd. (“**Merk**”, and together with Skymark, the “**Respondents**” or the “**Companies**”) in support of the Receiver’s motion for:

- (a) an Approval and Vesting Order (the “**AVO**”) substantially in the form attached at Tab 3 of the Motion Record, among other things:
 - (i) approving the sale transaction (the “**Sale Transaction**”) for the Consumer Portfolio and certain other related assets (collectively, the “**Purchased Assets**”) as set out and described in an asset purchase agreement dated August 23, 2023 (the “**APA**”) between the Receiver (the “**Vendor**”) and 5051802 Ontario Inc. (the “**Purchaser**”);
 - (ii) authorizing and approving the execution of the APA by the Receiver, and authorizing and directing the Receiver to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Sale Transaction and for the conveyance of the Purchased Assets to the Purchaser;

¹ Capitalized terms not otherwise defined herein have the meanings given to them in the Second Report, defined herein.

- (iii) vesting in the Purchaser the right, title, and interest of the Receiver and Skymark in and to the Purchased Assets, free and clear of and from any and all claims and encumbrances, upon delivery by the Receiver of a Receiver's certificate to the Purchaser confirming that all conditions to Closing in the APA have either been satisfied or waived by the Receiver (the "**Receiver's Certificate**");
 - (iv) authorizing and directing the Receiver, upon filing the Receiver's Certificate, to complete, execute, and file articles of amendment on behalf of Skymark to change the name of Skymark to "2305145 Ontario Inc."; and
 - (v) sealing Confidential Appendices "C" and "E"—which are the confidential Bid summary and unredacted APA, respectively (collectively, the "**Confidential Appendices**")—to the Second Report of the Receiver dated September 15, 2023 (the "**Second Report**"); and
- (b) an order granting certain additional ancillary relief, substantially in the form attached at Tab 4 of the Motion Record, among other things:
- (i) approving the Second Report and the activities of the Receiver described in such report;
 - (ii) approving the fees and disbursements of the Receiver and its counsel as described in the Karpel Affidavit and the Brotman Affidavit; and
 - (iii) abridging and validating the time for service of the Notice of Motion and the Motion Record and dispensing with further service thereof.

2. The Receiver respectfully submits that the relief requested on this motion should be granted on the following grounds:

- (a) the Sale Transaction—which is the culmination of a comprehensive and fair sale process that canvassed interested parties—provides for the greatest recovery available in the circumstances and is the best option available for Skymark’s stakeholders;
- (b) the requested AVO is substantially in the form of the model order, is appropriate in the circumstances, and is necessary to consummate the Sale Transaction;
- (c) the Confidential Appendices contain commercially-sensitive information about the Sale Process, the Bidders, the Bids, and the Sale Transaction pricing, the disclosure of which would undermine the integrity of the Sale Process and the Receiver’s ability to monetize Skymark’s Assets if the Sale Transaction does not close; the salutary effects of sealing the Confidential Appendices until the Sale Transaction has closed outweigh any deleterious effects;
- (d) the Receiver has undertaken several activities in connection with its mandate, all of which have been necessary and consistent with its duties and powers, and have been undertaken with efficiency and reasonableness in the interests of the Companies’ stakeholders generally; and
- (e) the fees and disbursements incurred by the Receiver and its counsel are reasonable and appropriate in the circumstances.

PART II - FACTS

3. The relevant facts are set out in detail in the Second Report at Tab 2 of the Motion Record and are only briefly summarized herein.

The Sale Process Results

4. Pursuant to an order (the “**Appointment Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 6, 2023, A&M was appointed Receiver, without security, of the Companies’ Property.

Second Report, s. 1.2, Motion Record of the Receiver (Motion re: Sale Approval and Ancillary Relief Order) dated September 15, 2023 (“MR”), Tab 2.

5. On May 25, 2023, the Court issued the SISP Approval Order, among other things, approving and authorizing the SISP and authorizing and directing the Receiver to perform its obligations thereunder.

Second Report, s. 1.4, MR, Tab 2.

6. The Sale Process which ensued canvassed the market broadly, procured several offers, and provided Bidders with multiple opportunities to improve their offers. While the initial Sale Process was unsuccessful at procuring a Bid which was acceptable to the Applicant and the Receiver, one of the Bidders returned after the Sale Process and submitted a materially improved and acceptable Bid (i.e., the Further Revised Offer, as defined in the Second Report).

Second Report, ss. 5.4-5.8, MR, Tab 2.

7. In light of the Further Revised Offer, and to ensure fairness and transparency to the Bidders who participated in the Sale Process, the Receiver consulted one last time with the Remaining Bidders (Bidders who had submitted the most competitive offers during the Sale

Process) to give them a final opportunity to submit more competitive Bids. The Receiver did not receive a Bid that was more competitive than the Further Revised Offer or that was acceptable by the Receiver and the Applicant.

Second Report, ss. 5.9-5.10, MR, Tab 2.

8. Ultimately, the Receiver, in consultation with its legal counsel and the Applicant, decided to pursue the Further Revised Offer and to proceed to negotiate the terms of a definitive asset purchase agreement with that Bidder. The APA was ultimately accepted by the Receiver on August 23, 2023, subject to Court approval.

Second Report, s. 5.11, MR, Tab 2.

9. A detailed summary of the Bids, including their economic terms, can be found at Confidential Appendix “C” to the Second Report, which has been filed with the Court on a confidential basis.

Second Report, s. 5.12, MR, Tab 2.

The Sale Transaction

10. Pursuant to the terms of the APA, the Purchaser will acquire the Consumer Portfolio in exchange for payments to the Receiver over the course of a forty-eight (48) month term, subject to adjustments to the term in connection with early repayment of the Purchase Price by the Purchaser. Payment and performance of the Purchaser’s obligations under the APA shall be secured on a first-ranking basis by a general security agreement and pledge of shares of the Purchaser, each in favour of the Receiver (collectively, the “**Vendor Take-Back Security**”).

Second Report, s. 6.3(b)(i), MR, Tab 2.

11. The Receiver and the Purchaser will enter into assignment and assumption agreements in respect of the Assumed Contracts and the Customer Contracts included in the Purchased Assets. This includes the assignment of agreements between Skymark and Enbridge in connection with a billing arrangement, which are contemplated to be assigned to the Purchaser upon Closing of the Sale Transaction.

Second Report, ss. 6.4, 12.3, MR, Tab 2. (A material amount of the Consumer Loan Payments are collected by Enbridge on Skymark's behalf from Skymark's consumer debtors; Enbridge then remits the funds collected to Skymark, net of administration fees: see Second Report, s. 12.3.)

12. The remaining key terms and conditions of the APA, including (a) payment terms, (b) reporting requirements, (c) Purchased Assets, (d) Excluded Assets, and (e) material conditions to Closing are all set out in detail at section 6.3 of the Second Report.

Second Report, s. 6.3, MR, Tab 2.

Approval of Second Report and Receiver's Activities

13. The activities of the Receiver up until May 17, 2023, the date of the First Report, have already been approved by this Court.

SISP Approval Order, para. 3, Appendix B to the Second Report, MR, Tab 2.

14. On this motion, the Receiver is seeking the approval of its Second Report and the Receiver's conduct and activities described therein, which include, among other things:

- (a) attending the Court hearing held on May 25, 2023 regarding the motion seeking the SISP Approval Order;
- (b) carrying out the SISP in accordance with its terms, engaging with Known Potential Bidders and Bidders, and negotiating the APA with the Purchaser;

- (c) administering the Non-Core Loans and progressing realization efforts with respect to same;
- (d) continuing to carry out the Receiver's duties and responsibilities in accordance with the Appointment Order, including overseeing the Companies' operations, controlling the receipts and disbursements, and addressing customer and vendor issues;
- (e) engaging with the Receiver's legal counsel on various receivership matters;
- (f) managing employee-related matters, including convening employee meetings at the Companies' premises, communicating with the employee health benefits provider, and issuing termination notices where applicable;
- (g) attending at the Companies' Premises on a regular basis;
- (h) communicating with the Applicant to provide status updates in respect of these Proceedings;
- (i) monitoring the MVCI/Golden Miles Receivership Proceedings and the Bankruptcy, and liaising with the Mahal Receiver in respect of status updates on the Mahal Receivership, including attending at the motion to seek the Mahal Distribution Order;
- (j) drafting this Second Report and the motion materials in respect of the Sale Approval Motion;

- (k) coordinating the development of and posting of relevant documents to the Case Website;
- (l) filing and remitting payment for HST and source deductions as required and, as referenced in the First Report, continuing an ongoing review of historical HST obligations in order to determine whether the Companies' pre-receivership HST arrears may be overstated;
- (m) responding to stakeholder and other enquiries; and
- (n) addressing all other matters pertaining to the administration of these Proceedings.

Second Report, s. 10.1, MR, Tab 2.

Approval of Receiver's and Its Counsel's Fees and Disbursements

15. On this motion, the Receiver is also seeking the approval of the Receiver's and its counsel's fees and disbursements. In connection with the exercise of its mandate in these Proceedings between December 23, 2022 and August 31, 2023, the Receiver incurred fees of \$701,735.50 (plus disbursements of \$15,566.54 and HST of \$93,242.85).

Second Report, s. 11.2, MR, Tab 2; Affidavit of Greg Karpel sworn September 15, 2023 (the "Karpel Affidavit"), paras. 4-5, Appendix G to the Second Report, MR, Tab 2.

16. In connection with advice sought by the Receiver and assistance provided in respect of these Proceedings between December 23, 2022 to August 31, 2023, Fasken incurred fees of \$408,507.50 (plus disbursements of \$3,620.80 and HST of \$53,420.55).

Second Report, s. 11.3, MR, Tab 2; Affidavit of Stuart Brotman affirmed September 15, 2023 (the "Brotman Affidavit"), para. 4, Appendix H to the Second Report, MR, Tab 2.

17. It is the Receiver's view that the fees and disbursements of the Receiver and its legal counsel described in the Karpel Affidavit and the Brotman Affidavit, respectively, are reasonable and appropriate in the circumstances having regard to the scope of activity undertaken in these Proceedings.

Second Report, s. 11.6, MR, Tab 2.

PART III - ISSUES

18. This motion raises the following questions:

- (a) Should the Approval and Vesting Order approving the Sale Transaction be granted?
- (b) Should the sealing order be granted in respect of the Confidential Appendices?
- (c) Should this Court approve the Receiver's activities as described in the Second Report?
- (d) Should this Court approve the Receiver's and its counsel's fees and disbursements as described in the Second Report, the Karpel Affidavit, and the Brotman Affidavit?

19. The Receiver respectfully submits that this Court should grant all of the foregoing relief for the reasons that follow.

PART IV - LAW & ARGUMENT

The Approval and Vesting Order Should be Granted

20. Pursuant to the SISP Approval Order, the Receiver was authorized and directed to conduct a SISP in respect of Skymark and the Business and Assets thereof. As described in Part II

hereof and the Second Report, the Sale Process has culminated in the Sale Transaction, which is a sale of certain Skymark assets pursuant to the APA.

21. In reviewing a proposed sale of assets in the context of a receivership, a court must consider the factors set out by the Court of Appeal in *Royal Bank of Canada v. Soundair Corp.*:

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) whether the interests of all parties have been considered;
- (c) the efficacy and integrity of the process by which offers were obtained; and
- (d) whether there has been unfairness in the working out of the process.

[*Royal Bank of Canada v. Soundair Corp.*, 1991 CanLII 2727 \(ON CA\)](#) (“*Soundair*”) at para. 46.

22. In making this assessment, the court must also uphold the business judgment of the receiver and only reject its recommendations in the most exceptional circumstances. To do otherwise would, as held by the Court in *Crown Trust Co. et al. v Rosenberg et al.*, have “immensely damaging results” to the disposition of assets by court-appointed receivers. The Court elaborated:

If the court were to reject the recommendation of the Receiver in any but the most exceptional circumstances, it would materially diminish and weaken the role and function of the Receiver both in the perception of receivers and in the perception of any others who might have occasion to deal with them. It would lead to the conclusion that the decision of the Receiver was of little weight and that the real decision was always made upon the motion for approval.

[*Crown Trust Co. et al. v Rosenberg et al.*, 1986 CanLII 2760 \(ON SC\)](#) at para. 84.

23. As set out in the Second Report, the Receiver respectfully recommends that this Court approve the Sale Transaction for the following reasons:

- (a) the Sale Process was carried out in accordance with the terms of the SISP Approval Order and was commercially reasonable, including with respect to the timelines, the extent of the canvassing of the market, and information made available to interested parties;
- (b) the duration of the Sale Process was sufficient to allow prospective purchasers to perform diligence and submit Bids;
- (c) while the offer which led to the Sale Transaction was received after the Receiver terminated the SISP, the Receiver provided all of the other Remaining Bidders with an opportunity to submit a revised offer to ensure that the process was fair and reasonable to all involved;
- (d) the Bridging Receiver was consulted throughout the SISP Process; the Bridging Receiver supports and has consented to the Sale Transaction notwithstanding that it is projected to incur a substantial shortfall on the amounts owing to it by the Companies; and
- (e) the Receiver is of the view that the Consumer Portfolio was broadly marketed, and that further time spent marketing the Consumer Portfolio would not result in a superior transaction.

Second Report, s. 13.1, MR, Tab 2.

24. Taking these considerations into account, the Receiver respectfully submits that the *Soundair* principles are satisfied:

- (a) *Sufficient effort was made to obtain the best price:* The Sale Process was comprehensive and the Consumer Portfolio was marketed broadly. The Receiver published notices in the *Globe & Mail (National Edition)* and in the *Insolvency Insider* and prepared a “Teaser” document which it circulated to 54 potentially interested parties. Sixteen (16) Known Potential Bidders executed NDAs and performed diligence on the Consumer Portfolio. Five Bidders submitted Bids for the Consumer Portfolio by the Bid Deadline, and a number of those Bids were improved throughout the course of the Sale Process and thereafter. The Sale Transaction represents the best of those Bids, and, in the Receiver’s view, further marketing efforts would not result in a superior transaction.
- (b) *The interests of all parties have been served:* The Sale Transaction provides for the best possible outcome in the circumstances for all parties with an economic interest in these Proceedings. Completion of the Sale Transaction represents a critical milestone in these Proceedings and is expected to result in material realizations for the benefit of Skymark’s creditors and reduce the ongoing administrative costs to the estate and professional fee costs of the Receiver in managing the Consumer Portfolio.
- (c) *The Sale Process was run with integrity:* The Sale Process was run in accordance with the Court-approved terms, and the Receiver ensured that all steps of the process were conducted with integrity. All interested parties were given a

meaningful opportunity to participate in the process and were provided with equal information. Such parties were given multiple opportunities to improve their Bids to ensure that no one of them had an unfair advantage. The Sale Transaction was negotiated in good faith and with due diligence. The Receiver has not received any objections or concerns regarding the Sale Process or the manner in which it was conducted.

- (d) *There was no unfairness:* In the Receiver's view, there has been no unfairness in the conduct of the Sale Process. The Sale Process was robust and conducted under the supervision of this Court. None of the interested parties have been prejudiced or excluded. Further, the Receiver had direct involvement in negotiating the terms and conditions of the Sale Transaction and believes that it is fair and reasonable in the circumstances.

Second Report, ss. 4.3, 5.9, MR, Tab 2.

25. The Approval and Vesting Order sought on this motion includes a provision authorizing and directing the Receiver, upon filing the Receiver's Certificate, to complete, execute and file articles of amendment for the sole purpose of changing the corporate name of Skymark to "2305145 Ontario Inc." This kind of provision is common in asset sale transactions where the purchaser purchases and intends to use trademarks associated with the purchased assets, as is the case in the Sale Transaction before this Court. With respect to the chosen language, this Court has approved nearly identical provisions in a number of recently granted approval and vesting orders, four of which have been attached as Appendix "A" hereto.

See Appendix "A" which includes approval and vesting orders granted by this Court in the following receivership proceedings: (a) Elementa Group Inc. (2016); (b) Ingenious Packaging Group ULC (2018); (c) Besnovo Inc. (2020); and (d) Brant Instore Corporation (2022).

26. For the foregoing reasons, the Receiver requests that this Court grant the Approval and Vesting Order approving the Sale Transaction.

The Sealing Order Should be Granted

27. The Receiver is seeking an order from this Court sealing the Confidential Appendices (i.e., Appendices “C” and “E” to the Second Report) which are (a) the confidential Bid Summary summarizing the offers received throughout the Sale Process and their economic terms, and (b) the unredacted APA. The redacted APA is attached to the Second Report and the only redactions contained therein relate to the purchase price and economic terms of the Sale Transaction.

28. Pursuant to the *Courts of Justice Act*, the Court has the discretion to order that any document filed in a civil proceeding be treated as “confidential”, sealed and not form part of the public record.

[Courts of Justice Act, R.S.O. 1990, c C. 43, s. 137\(2\).](#)

29. The Supreme Court of Canada has set forth two common law tests for the granting of sealing orders in civil matters.

30. In *Sierra Club of Canada v. Canada (Minister of Finance)*, commonly applied in the insolvency context, the Supreme Court of Canada held that courts should exercise their discretion to grant sealing orders where:

- (a) the order is necessary to prevent a serious risk to an important interest, including a commercial interest, because reasonable alternative measures will not prevent the risk; and

- (b) the salutary effects of the order outweigh its deleterious effects, including the effects on the right to free expression, which includes public interest in open and accessible court proceedings.

[Sierra Club of Canada v. Canada \(Minister of Finance\), 2002 SCC 41 at para. 53.](#)

31. More recently, in *Sherman Estate v. Donovan*, the Supreme Court reiterated that it is a fundamental element of Canadian democracy that court proceedings are open to the public. The Court noted that a person asking the court to exercise discretion in a way that limits the open court presumption must establish the following pre-requisites:

- (a) court openness poses a serious risk to an important public interest (which captures a broad array of public objectives, including commercial interests);
- (b) the order sought is necessary to prevent this serious risk to the identified 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.

[Sherman Estate v. Donovan, 2021 SCC 25 at paras. 30, 38, 41.](#)

32. In regards to the first pre-requisite, Courts have acknowledged that there is a public interest in the “general commercial interest of preserving confidential information” and in maximizing recoveries in an insolvency, each of which goes beyond the individual’s case.

See [Sherman Estate v. Donovan, 2021 SCC 25 at para. 41](#); [Danier Leather Inc., Re, 2016 ONSC 1044 at para. 84.](#)

33. The *Sierra Club* test and the *Sherman Estate* test have both commonly been applied in the insolvency context to authorize sealing orders over confidential or commercially-sensitive documents to protect the interests of debtors or other stakeholders.

See e.g., the Court's application of the *Sierra Club* test in [Elleway Acquisitions Ltd v 4358376 Canada Inc.](#), 2013 ONSC 7009 at paras. 47 and 48; [GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.](#), 2014 ONSC 1173 at paras. 32-37; [Stelco Inc., Re](#), 2006 CanLII 1772 (ON SC); [Re Canwest Publishing Inc.](#), 2010 ONSC 222 at paras. 63-65.

See e.g., the Court's application of the *Sherman Estate* test in [Ontario Securities Commission v Bridging Finance Inc.](#), 2021 ONSC 4347 at paras. 23-27; [Laurentian University of Sudbury](#), 2021 ONSC 4769 at paras. 12-14, Book of Authorities of the Receiver dated September 22, 2023 ("BOA"), Tab 1.

34. The Court in *Yukon (Government of) v. Yukon Zinc Corporation* held that it is standard practice in a sale process to keep all aspects of the bidding or sales process confidential. The Court found that sealing this information ensures the integrity of the sales and marketing process and avoids misuse of information by bidders to obtain an unfair advantage in any subsequent sale process (which may be necessary if the initial process fails in some respect). In essence, the sealing order puts all bidders on a level playing field until a transaction has been approved and consummated.

[*Yukon \(Government of\) v Yukon Zinc Corporation*, 2022 YKSC 2 at para. 39.](#)

35. If the Confidential Appendices were not sealed, the information contained therein (which includes commercially-sensitive information and the identities of the other Bidders and the terms of their bids) could negatively impact any future transactions for the Consumer Portfolio if the Sale Transaction does not close for any reason. The Receiver is not aware of any party that will be prejudiced if the Confidential Appendices are sealed on the terms requested.

Second Report, s. 13.5, MR, Tab 2.

36. The sealing order sought is the least restrictive means to maintain the confidentiality of the commercially-sensitive, competitive, and confidential information found in the Bid Summary and unredacted APA.

37. Further, the sealing order will preserve the integrity of the Sale Process, which greatly outweighs any negative effects that will result from limiting public access to a small amount of information.

38. Given the foregoing, the Receiver respectfully submits that the proposed sealing order satisfies both the tests in *Sierra Club* and *Sherman Estate* and that it is therefore appropriate for this Court to grant the sealing order, subject to further order of this Court.

The Activities of the Receiver as described in the Second Report Should be Approved

39. Where a court-appointed receiver meets the objective test of demonstrating that it has acted reasonably, prudently, and not arbitrarily, this Court has the inherent jurisdiction to approve the receiver's activities as set out in its reports.

***Bank of America Canada v. Willann Investments Ltd.*, [1993] O.J. No. 1647 (O.C.J. Gen. Div.) at paras. 2-5, BOA, Tab 2; [aff'd \[1996\] O.J. No. 2806 \(C.A.\)](#); [Lang Michener v. American Bullion Minerals Ltd.](#), 2005 BCSC 684 at para. 21.**

40. In *Target Canada*, this Court identified several good policy and practical reasons for monitors in *Companies' Creditors Arrangement Act* ("CCAA") proceedings to routinely seek court approval of their reports and activities, and for courts to grant such approval. These include: (a) allowing the monitor to bring its activities before the Court; (b) allowing an opportunity for stakeholders' concerns to be addressed; (c) enabling the Court to satisfy itself that the monitor's activities have been conducted in a prudent and diligent manner; (d) providing protection for the monitor not otherwise provided by the CCAA; and (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the monitor.

[Target Canada Co., \(Re\)](#), 2015 ONSC 7574 at paras. 2, 22-23.

41. This Court has determined that these policy and practical reasons apply equally to receivership proceedings and motions seeking approval of a receiver's report and activities.

[Hangfen Evergreen Inc., \(Re\), 2017 ONSC 7161 at para. 15.](#)

42. All of the Receiver's activities, as set out in the Second Report, were reasonable, necessary, and undertaken in good faith and in accordance with the Receiver's powers and duties as set out in the Appointment Order, and were undertaken in the best interests of the Companies' stakeholders. Accordingly, the Second Report and the activities of the Receiver described therein should be approved.

The Fees of the Receiver and its Counsel Should be Approved

43. Pursuant to the Appointment Order, the Receiver and its legal counsel are entitled to be paid their reasonable fees and disbursements, and are required to pass their accounts from time to time.

44. In *Confectionately Yours Inc. (Re)*, the Court summarized the requirements for the substance or content of the accounts:

- (a) the accounts must disclose in detail the name of each person who rendered services, the dates on which the services were rendered, the time expended each day, the rate charged, and the total charges for each of the categories of services rendered;
- (b) the accounts should be in a form that can be easily understood by those affected by the receivership so that such person can determine the amount of time spent by the receiver's employees (and others the receiver may have hired) with respect to the various discrete aspects of the receivership; and

(c) the receiver's accounts and solicitor's accounts should be verified by affidavit.

[Confectionately Yours Inc. \(Re\), 2002 CanLII 45049 \(ON CA\) at paras. 37-38.](#)

45. The accounts of the Receiver and its counsel, Fasken, meet each of these requirements.

46. The general standard of review for the accounts of a court-appointed receiver is “whether the amount claimed for remuneration and the disbursements incurred in carrying out the receivership are fair and reasonable.”

[Confectionately Yours Inc. \(Re\), \[2002\] O.J. No. 3569 \(C.A.\) at para. 42.](#)

47. The Court is to consider all of the relevant factors in a holistic manner and need not examine “dockets, hours, explanations, or disbursements line by line.” The focus on such a review should be the fair and reasonable assessment of what was accomplished, not the time it took.

[Bank of Nova Scotia v Diemer, 2014 ONSC 365 at para. 19; Bank of Nova Scotia v Diemer, 2014 ONCA 851 at para. 45.](#)

48. The Ontario Court of Appeal has endorsed a non-exhaustive list of factors to be considered in determining whether a receiver's fees are fair and reasonable, including: (a) the nature and extent of the value of the assets handled; (b) the complications and difficulties encountered; (c) the degree of assistance provided by the company, its officers, or its employees; (d) the time spent; (e) the receiver's knowledge, experience, and skill; (f) the diligence and thoroughness displayed by the receiver; (g) the responsibilities assumed; (h) results of the receiver's efforts; and (i) the cost of comparable services.

[Federal Business Development Bank v Belyea and Fowler, 1983 CanLII 4086 \(NB CA\) at para. 9; Bank of Nova Scotia v Diemer, 2014 ONCA 851 at para. 33; Confectionately Yours Inc. \(Re\), \[2002\] O.J. No. 3569 \(C.A.\) at paras. 45-46.](#)

49. A&M is a specialized licensed insolvency trustee, and has staffed this matter with insolvency specialists at various levels of seniority. Likewise, Fasken is a sophisticated full-service law firm, which has staffed this matter with subject matter experts, including insolvency experts, at various levels of seniority. A&M's and Fasken's hourly rates are consistent with the rates charged by comparable firms practicing in the area of insolvency in the Toronto market and the Receiver is of the view that A&M's and Fasken's fees and disbursements are reasonable and appropriate in the circumstances.

Second Report, s. 11.6, MR, Tab 2.

50. Accordingly, the Receiver respectfully requests approval of its fees and the fees of its legal counsel, Fasken, during the applicable period (December 23, 2022 to August 31, 2023) as set out in the Karpel Affidavit and the Brotman Affidavit.

Karpel Affidavit, Appendix G to the Second Report, MR, Tab 2; Brotman Affidavit, Appendix H to the Second Report, MR, Tab 2.

PART V - ORDER REQUESTED

51. For the reasons set out above, the Receiver respectfully requests that this Court:

- (a) grant the Approval and Vesting Order approving and effecting the Sale Transaction;
- (b) seal the Confidential Appendices, subject to further order of this Court;
- (c) approve the Second Report and the Receiver's conduct and activities described therein;
- (d) approve the fees and disbursements of the Receiver and its counsel; and

- (e) abridge and validate the time for service of the Notice of Motion and the Motion Record, and dispense with further service thereof.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 22nd day of September, 2023.

Per: *Fasken Martineau DuMoulin LLP*

Fasken Martineau DuMoulin LLP

FASKEN MARTINEAU DuMOULIN LLP

Barristers and Solicitors

333 Bay Street, Suite 2400

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Toronto ON M5H 2T6

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Tel: 416 868 3450

Lawyers for the Receiver, Alvarez & Marsal
Canada Inc.

SCHEDULE “A”

LIST OF AUTHORITIES

1. [*Royal Bank of Canada v Soundair Corp.*, 1991 CanLII 2727 \(ON CA\)](#)
2. [*Crown Trust Co. et al. v Rosenberg et al.*, 1986 CanLII 2760 \(ON SC\)](#)
3. [*Sierra Club of Canada v Canada \(Minister of Finance\)*, 2002 SCC 41](#)
4. [*Sherman Estate v Donovan*, 2021 SCC 25](#)
5. [*Danier Leather Inc., Re*, 2016 ONSC 1044](#)
6. [*Elleway Acquisitions Ltd v 4358376 Canada Inc.*, 2013 ONSC 7009](#)
7. [*GE Canada Real Estate Financing Business Property Company v 1262354 Ontario Inc.*, 2014 ONSC 1173](#)
8. [*Stelco Inc., Re*, 2006 CanLII 1772 \(ON SC\)](#)
9. [*Canwest Publishing Inc.*, 2010 ONSC 222](#)
10. [*Ontario Securities Commission v Bridging Finance Inc.*, 2021 ONSC 4347](#)
11. *Laurentian University of Sudbury*, 2021 ONSC 4769 [See BOA]
12. [*Yukon \(Government of\) v Yukon Zinc Corporation*, 2022 YKSC 2](#)
13. *Bank of America Canada v Willann Investments Ltd.*, [1993] O.J. No. 1647 (O.C.J. Gen. Div.) [See BOA]
14. [*Bank of America Canada v Willann Investments Ltd.*, 1996 CanLII 2782 \(ON CA\)](#)

15. [*Lang Michener v American Bullion Minerals Ltd.*, 2005 BCSC 684](#)
16. [*Target Canada Co., \(Re\)*, 2015 ONSC 7574](#)
17. [*Hangfen Evergreen Inc., \(Re\)* 2017 ONSC 7161](#)
18. [*Confectionately Yours Inc. \(Re\)*, 2002 CanLII 45049 \(ON CA\)](#)
19. [*Bank of Nova Scotia v Diemer*, 2014 ONSC 365](#)
20. [*Bank of Nova Scotia v Diemer*, 2014 ONCA 851](#)
21. [*Federal Business Development Bank v Belyea and Fowler*, 1983 CanLII 4086 \(NB CA\)](#)

SCHEDULE “B”

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Courts of Justice Act, R.S.O. 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.

Appendix A

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE <i>Madam</i>)	FRIDAY, THE 15 TH
)	
JUSTICE <i>Swinton</i>)	DAY OF APRIL, 2016



IN THE MATTER OF THE RECEIVERSHIP OF
ELEMENTA GROUP INC.

APPROVAL AND VESTING ORDER

THIS MOTION, made by Richter Advisory Group Inc. ("Richter") in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of Elementa Group Inc. ("Elementa") approving the designation of the agreement of purchase and sale between the Receiver and Bradam Canada Inc. (the "Purchaser") dated February 12 2016 appended to the Third Report of the Receiver dated April 8, 2016 (the "Report"), (the "Sale Agreement") as a Winning Bid pursuant to the order of Madam Justice Conway made February 19, 2016 (the "Sale Process Order"), and vesting Elementa's and its affiliates' right, title and interest in and to the assets described in the Sale Agreement as designated by the Purchaser (the "Purchased Assets") in the Purchaser, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for Bennett Jones LLP, counsel for the Independent Electricity System Operator, no one appearing for any other person on the service list, although properly served as appears from the

affidavit of Sanja Sopic sworn April 8, 2016 filed, and upon being advised that the Purchaser has designated Bradam Group LLC to be the beneficiary of the vesting ("BradamCo");

1. THIS COURT ORDERS that the time for service and filing of the Receiver's Notice of Motion and the Motion Record is hereby abridged and service thereof is hereby validated so that this motion is properly returnable today and further service thereof is hereby dispensed with.

2. THIS COURT ORDERS that the Sale Agreement and its designation as the Winning Bid pursuant to the terms of the Sale Process Order be and are hereby approved and the Receiver is hereby authorised and directed to execute such documents, transfers and conveyances necessary to complete the transactions contemplated in the Sale Agreement and to properly convey the Purchased Assets to BradamCo in accordance with the Sale Agreement, including the transfer and conveyance of such units and shares in Elementa Holdings Ltd ("EHL"), Elementa Algoma Inc. ("EAI") and Elementa Algoma LP ("LP") as designated by the Purchaser.

3. THIS COURT ORDERS AND DECLARES that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "Receiver's Certificate"), all of Elementa's and LP's, EHL's and EAI's right, title and interest, respectively in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in BradamCo, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise contractual rights, licences or similar contractual entitlements of any nature or kind (collectively, the "Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Hainey dated December 21, 2015; and, (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) on Schedule B hereto or any other personal property registry system; (collectively referred to as the "Encumbrances"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. THIS COURT ORDERS that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead

of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. THIS COURT ORDERS AND DIRECTS the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to BradamCo all human resources and payroll information in the Company's records pertaining to Elementa's past and current employees. The Purchaser and BradamCo shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by Elementa.

7. THIS COURT ORDERS that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of Elementa and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of Elementa;

the vesting of the Purchased Assets in BradamCo pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of Elementa and shall not be void or voidable by creditors of Elementa, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or

provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).

9. THIS COURT ORDERS that, notwithstanding the provisions of Section 171(3) of the *Business Corporations Act* (Ontario) (the "OBCA"), the Receiver be and is hereby authorized and directed to complete, execute and file articles of amendment for and on behalf of Elementa and any officer and director of Elementa (such articles of amendment to be deemed to have been signed by a director or an officer of Elementa and executed in accordance with the OBCA when so signed by the Receiver as directed by this Court) for the sole purpose of changing the corporate name of Elementa to a corporate name that does not include the word "Elementa" (and such amendment shall be deemed to have been duly authorized by Section 168 and 170 of the OBCA (as applicable) without shareholder or director resolution approving such amendment being required) and this Court hereby directs the Director (as defined in the OBCA) to endorse thereon a certificate of amendment upon being in receipt from the Receiver of two duplicate originals of such articles of amendment together with the prescribed fees and any other required documents under the OBCA (which the Receiver be and is hereby also authorized and directed to complete, execute and file for and on behalf of Elementa and any officer and director of Elementa if and as required) except for any such documents as have been dispensed or otherwise dealt with pursuant to the deeming provisions contained herein.

10. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

APR 15 2016



Schedule A – Form of Receiver’s Certificate

Court File No. CV-15-11198-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF
ELEMENTA GROUP INC.**

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Hailey of the Ontario Superior Court of Justice (the "Court") made December 21, 2015, Richter Advisory Group Inc. was appointed as the receiver (the "Receiver") of the undertaking, property and assets of Elementa Group Inc. ("Elementa").

B. Pursuant to an Order of the Court dated April 15, 2016, the Court approved the designation of the agreement of purchase and sale made as of February 12, 2016 (the "Sale Agreement") between the Receiver and Bradam Canada Inc. (the "Purchaser") as the Winning Bid and provided for the vesting in the Purchaser of Elementa’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in section 6 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at Toronto on April _____, 2016.

**RICHTER ADVISORY GROUP INC., in its
capacity as Receiver of the undertaking,
property and assets of Elementa Group Inc.,
and not in its personal capacity**

Per: _____
Name:
Title:

Schedule B – PPSA Registrations



Search Results
ID=3388353

CORPORATE SERVICES LTD.

Current: 14/04/2016 08:05:57
Submitted: 14/04/2016 08:02:29
Completed 14/04/2016 08:05:08

Your Ref No. ESCWEB3388353

PSSME01 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 04/14/2016
TIP73511 ENQUIRY REQUEST 08:08:04

FILE CURRENCY 13APR 2016
CHANGE ACCOUNT (Y/N) : N ACCOUNT NUMBER : 009313 0001 ACCOUNT CODE : ESCVFDE

SEARCH TYPE (BD,IN,IS,MV) : BD
SEARCH CRITERIA : ELEMENTA GROUP INC.

SUB-SEARCH

RETRIEVE REGISTRATIONS RECORDED SINCE (DDMMYYYY) :

RESPONSE TYPE (V,P) : V RESPONSE LANGUAGE (E,F) : E PICK-UP CODE :

RESPONSE MAILING ADDRESS

NAME :

:

ADDRESS :

CITY :

PROV :

POSTAL CODE :

PRINT RESPONSE LOCALLY (Y/N) : N

PSSME19 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 04/14/2016
TIP73511 RESPONSE SUMMARY/HIGH VOLUME 08:08:05
ACCOUNT : 009313-0001
FILE CURRENCY : 13APR 2016
SEARCH : BD : ELEMENTA GROUP INC.

RESPONSE CONTAINS : APPROXIMATELY 5 FAMILIES 8 PAGES

- FOR VERBAL RESPONSE, ENTER "V" IN RESPONSE TYPE.
- TO REQUEST A PRINT-OUT, ENTER "P" IN RESPONSE TYPE AND FILL IN
THE MISSING INFORMATION.
- TO TERMINATE THE ENQUIRY, ENTER "CANCEL" IN THE NAME LINE.

RESPONSE TYPE : V RESPONSE LANGUAGE (E,F) : E PICK-UP CODE : _____
RESPONSE MAILING ADDRESS

NAME : _____

ADDRESS : _____

CITY : _____ PROV : _____

POSTAL CODE : _____

PRINT RESPONSE LOCALLY (Y/N) : N

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 04/14/2016
TIP73511 DISPLAY 1C REGISTRATION - SCREEN 1 08:08:06
ACCOUNT : 009313-0001 FAMILY : 1 OF 5 ENQUIRY PAGE : 1 OF 8
FILE CURRENCY : 13APR 2016
SEARCH : BD : ELEMENTA GROUP INC.

00 FILE NUMBER : 696812553 EXPIRY DATE : 05JUN 2019 STATUS :
01 CAUTION FILING : PAGE : 001 OF 002 MV SCHEDULE ATTACHED :
REG NUM : 20140605 0927 1862 3349 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: ELEMENTA GROUP INC.

OCN :

04 ADDRESS : 509 GLENDALE AVE. EAST SUITE 302
CITY : NIAGARA-ON-THE-LAKE PROV: ON POSTAL CODE: L0S 1J0
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :

07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
BENNETT JONES LLP

09 ADDRESS : 3400 ONE FIRST CANADIAN PLACE, P.O. BOX
CITY : TORONTO PROV: ON POSTAL CODE: M5X 1A4
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
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YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT: BENNETT JONES LLP (SG/DS)
17 ADDRESS : 3400 1 FIRST CANADIAN PLACE P.O. BOX 130
CITY : TORONTO PROV: ONT POSTAL CODE: M5X 1A4

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 04/14/2016
TIP73511 DISPLAY 1C REGISTRATION - SCREEN 1 08:08:09
ACCOUNT : 009313-0001 FAMILY : 1 OF 5 ENQUIRY PAGE : 2 OF 8
FILE CURRENCY : 13APR 2016
SEARCH : BD : ELEMENTA GROUP INC.

00 FILE NUMBER : 696812553 EXPIRY DATE : 05JUN 2019 STATUS :
01 CAUTION FILING : PAGE : 002 OF 002 MV SCHEDULE ATTACHED :
REG NUM : 20140605 0927 1862 3349 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:

OCN :

04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :

07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :

09 ADDRESS : 130
CITY : PROV: POSTAL CODE:
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

10 YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT:
17 ADDRESS :
CITY : PROV: POSTAL CODE:

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PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 04/14/2016
TIP73511 DISPLAY 1C REGISTRATION - SCREEN 1 08:08:11
ACCOUNT : 009313-0001 FAMILY : 2 OF 5 ENQUIRY PAGE : 3 OF 8
FILE CURRENCY : 13APR 2016
SEARCH : BD : ELEMENTA GROUP INC.

00 FILE NUMBER : 698096322 EXPIRY DATE : 17JUL 2019 STATUS :
01 CAUTION FILING : PAGE : 001 OF 001 MV SCHEDULE ATTACHED :
REG NUM : 20140717 1127 1031 4420 REG TYP: P PPSA REG PERIOD: 05
02 IND DOB : IND NAME:
03 BUS NAME: ELEMENTA GROUP INC.

OCN :
04 ADDRESS : 509 GLENDALE AVE UNIT 302
CITY : NIAGARA ON THE LAKE PROV: ON POSTAL CODE: L0S 1J0
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :
07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
HER MAJESTY IN RIGHT OF ONTARIO REPRESENTED BY THE MINISTER OF FINANCE

09 ADDRESS : 400-130 DUFFERIN AVENUE,
CITY : LONDON PROV: ON POSTAL CODE: N6A 6G8
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

10 X X X X 31497
YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT: MINISTRY OF FINANCE,AM & COLLECTIONS BRANCH,EHT BN#899366603 248/746
17 ADDRESS : 400-130 DUFFERIN AVENUE,
CITY : LONDON PROV: ON POSTAL CODE: N6A 6G8

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PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 04/14/2016
TIP73511 DISPLAY 1C REGISTRATION - SCREEN 1 08:08:14
ACCOUNT : 009313-0001 FAMILY : 3 OF 5 ENQUIRY PAGE : 4 OF 8
FILE CURRENCY : 13APR 2016
SEARCH : BD : ELEMENTA GROUP INC.

00 FILE NUMBER : 700609284 EXPIRY DATE : 10OCT 2019 STATUS :
01 CAUTION FILING : PAGE : 001 OF 3 MV SCHEDULE ATTACHED :
REG NUM : 20141010 1024 1590 1821 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: ELEMENTA GROUP INC.

OCN : 002021929

04 ADDRESS : 509 GLENDALE EAST
CITY : NIAGARA-ON-THE-LAKE PROV: ON POSTAL CODE: L0S 1J0
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :

07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
2124732 ONTARIO INC.

09 ADDRESS : 37 PINE RIDGE AVENUE
CITY : WOODBRIDGE PROV: ON POSTAL CODE: L4L 2H8
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
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YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT: LOOPSTRA NIXON LLP / REXLAW

17 ADDRESS : 600 - 135 QUEENS PLATE DRIVE
CITY : ETOBICOKE PROV: ON POSTAL CODE: M9W 6V7

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 04/14/2016
TIP73511 DISPLAY 1C REGISTRATION - SCREEN 1 08:08:16
ACCOUNT : 009313-0001 FAMILY : 3 OF 5 ENQUIRY PAGE : 5 OF 8
FILE CURRENCY : 13APR 2016
SEARCH : BD : ELEMENTA GROUP INC.

00 FILE NUMBER : 700609284 EXPIRY DATE : 10OCT 2019 STATUS :
01 CAUTION FILING : PAGE : 002 OF 3 MV SCHEDULE ATTACHED :
REG NUM : 20141010 1024 1590 1821 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:

OCN :

04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :

07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
GARY BLOKHUIS

09 ADDRESS : 37 PINE RIDGE AVENUE
CITY : WOODBRIDGE PROV: ON POSTAL CODE: L4L 2H8
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

10 YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT:

17 ADDRESS :
CITY : PROV: POSTAL CODE:

PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 04/14/2016
TIP73511 DISPLAY 1C REGISTRATION - SCREEN 1 08:08:18
ACCOUNT : 009313-0001 FAMILY : 3 OF 5 ENQUIRY PAGE : 6 OF 8
FILE CURRENCY : 13APR 2016
SEARCH : BD : ELEMENTA GROUP INC.

00 FILE NUMBER : 700609284 EXPIRY DATE : 10OCT 2019 STATUS :
01 CAUTION FILING : PAGE : 003 OF 3 MV SCHEDULE ATTACHED :
REG NUM : 20141010 1024 1590 1821 REG TYP: REG PERIOD:
02 IND DOB : IND NAME:
03 BUS NAME:

OCN :

04 ADDRESS :
CITY : PROV: POSTAL CODE:
05 IND DOB : IND NAME:
06 BUS NAME:

OCN :

07 ADDRESS :
CITY : PROV: POSTAL CODE:

08 SECURED PARTY/LIEN CLAIMANT :
GARY BLOKHUIS D.B.A BLOKHUIS HOLDINGS

09 ADDRESS : 37 PINE RIDGE AVENUE
CITY : WOODBRIDGE PROV: ON POSTAL CODE: L4L 2H8
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE

10 YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT:

17 ADDRESS :
CITY : PROV: POSTAL CODE:

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PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 04/14/2016
TIP73511 DISPLAY 1C REGISTRATION - SCREEN 1 08:08:21
ACCOUNT : 009313-0001 FAMILY : 4 OF 5 ENQUIRY PAGE : 7 OF 8
FILE CURRENCY : 13APR 2016
SEARCH : BD : ELEMENTA GROUP INC.

00 FILE NUMBER : 702487854 EXPIRY DATE : 19DEC 2019 STATUS :
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :
REG NUM : 20141219 1427 6083 0289 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: ELEMENTA GROUP INC.

OCN : 2021929

04 ADDRESS : 509 GLENDALE AVENUE
CITY : NIAGARA ON THE LAKE PROV: ON POSTAL CODE: L0S 1J0
05 IND DOB : IND NAME:
06 BUS NAME: ENQUEST POWER CORPORATION

OCN : 2021929

07 ADDRESS : 509 GLENDALE AVENUE
CITY : NIAGARA ON THE LAKE PROV: ON POSTAL CODE: L0S 1J0

08 SECURED PARTY/LIEN CLAIMANT :
SHARON D'AMICO

09 ADDRESS : 7 PICKWICK PLACE
CITY : FONTHILL PROV: ON POSTAL CODE: L0S 1E0
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
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YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT: ESC CORPORATE SERVICES LTD.

17 ADDRESS : 445 KING STREET WEST, 4TH FL
CITY : TORONTO PROV: ON POSTAL CODE: M5V 1K4

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PSSME02 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 04/14/2016
TIP73511 DISPLAY 1C REGISTRATION - SCREEN 1 08:08:23
ACCOUNT : 009313-0001 FAMILY : 5 OF 5 ENQUIRY PAGE : 8 OF 8
FILE CURRENCY : 13APR 2016
SEARCH : BD : ELEMENTA GROUP INC.

00 FILE NUMBER : 702487881 EXPIRY DATE : 19DEC 2019 STATUS :
01 CAUTION FILING : PAGE : 001 OF 1 MV SCHEDULE ATTACHED :
REG NUM : 20141219 1429 6083 0290 REG TYP: P PPSA REG PERIOD: 5
02 IND DOB : IND NAME:
03 BUS NAME: ELEMENTA GROUP INC.

OCN : 2021929

04 ADDRESS : 509 GLENDALE AVENUE
CITY : NIAGARA ON THE LAKE PROV: ON POSTAL CODE: L0S 1J0
05 IND DOB : IND NAME:
06 BUS NAME: ENQUEST POWER CORPORATION

OCN : 2021929

07 ADDRESS : 509 GLENDALE AVENUE
CITY : NIAGARA ON THE LAKE PROV: ON POSTAL CODE: L0S 1J0

08 SECURED PARTY/LIEN CLAIMANT :
DAVID D'AMICO

09 ADDRESS : 7 PICKWICK PLACE
CITY : FONTHILL PROV: ON POSTAL CODE: L0S 1E0
CONS. MV DATE OF OR NO FIXED
GOODS INVTRY. EQUIP ACCTS OTHER INCL AMOUNT MATURITY MAT DATE
10 X 50000 18DEC2019
YEAR MAKE MODEL V.I.N.

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GENERAL COLLATERAL DESCRIPTION

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16 AGENT: ESC CORPORATE SERVICES LTD.

17 ADDRESS : 445 KING STREET WEST, 4TH FL
CITY : TORONTO PROV: ON POSTAL CODE: M5V 1K4

LAST SCREEN

PSSME01 PERSONAL PROPERTY SECURITY REGISTRATION SYSTEM 04/14/2016
TIP73511 ENQUIRY REQUEST 08:08:26

FILE CURRENCY 13APR 2016
CHANGE ACCOUNT (Y/N) : ACCOUNT NUMBER : 009313 0001 ACCOUNT CODE : ESCVFDE

SEARCH TYPE (BD,IN,IS,MV) :
SEARCH CRITERIA :

SUB-SEARCH

RETRIEVE REGISTRATIONS RECORDED SINCE (DDMMYYYY) :
RESPONSE TYPE (V,P) : V RESPONSE LANGUAGE (E,F) : E PICK-UP CODE :
RESPONSE MAILING ADDRESS
NAME :
ADDRESS :
CITY : PROV :
POSTAL CODE :
PRINT RESPONSE LOCALLY (Y/N) : N
ENQUIRY FOR "ELEMENTA GROUP INC." ENDED

**IN THE MATTER OF THE RECEIVERSHIP OF
ELEMENTA GROUP INC.**

Commercial List File No. CV-15-11198-00CL

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

APPROVAL AND VESTING ORDER

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
TORONTO, ON M5G 1V2
Fax: 416-597-3370

Mario Forte (LSUC #: 27293F)
Tel: 416-597-6477
Email: forte@gsnh.com

Sanja Sopic (LSUC #: 66487P)
Tel: 416-597-7876
Email: sopic@gsnh.com

Lawyers for Richter Advisory Group Inc., in its capacity as
the Court appointed Receiver of Elementa Group Inc.

IN THE MATTER OF THE RECEIVERSHIP OF
ELEMENTA GROUP INC.

Commercial List File No. CV-15-11198-00CL

April 15, 2016

April 15/16
I am satisfied that the bidding
process has been respected, a that
approval should be given for the
sale of the assets as offered. No one opposes,
the secured creditor Bennett Jones
agrees with the sale.

Order to go in form of draft
signed.

K. Linton J.

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

MOTION RECORD OF THE RECEIVER
(Approval and Vesting Order)
Friday, April 15, 2016

GOLDMAN SLOAN NASH & HABER LLP
480 University Avenue, Suite 1600
TORONTO, ON M5G 1V2
Fax: 416-597-3370

Mario Forte (LSUC #: 27293F)
Tel: 416-597-6477
Email: forte@gsnh.com

Sanja Sopic (LSUC #: 66487P)
Tel: 416-597-7876
Email: sopic@gsnh.com



Lawyers for Richter Advisory Group Inc., in its capacity as
the Court appointed Receiver of Elementa Group Inc.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

)

TUESDAY, THE 24TH

JUSTICE MCEWEN

)

DAY OF JULY, 2018

)

BETWEEN:



BANK OF MONTREAL

Applicant

- and -

INGENIOUS PACKAGING GROUP ULC

Respondent

IN THE MATTER OF AN APPLICATION PURSUANT TO 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

APPROVAL AND VESTING ORDER

THIS MOTION, made by Deloitte Restructuring Inc. in its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of Ingenious Packaging Group ULC (the “**Debtor**”) for an order (i) approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Asset Purchase Agreement**”) between the Debtor, the Receiver and Ingenious Packaging, Inc. (the “**Purchaser**”) dated July 20, 2018, a redacted copy of which is appended as Exhibit “B” to the affidavit of Michael Silverman sworn July 20, 2018 (the “**Silverman Affidavit**”) and an unredacted copy of which is appended to the Confidential Supplement (the “**Confidential**

Supplement”) to the Pre-Filing Report of the Receiver dated July 23, 2018 (the “**Pre-Filing Report**”), (ii) authorizing and directing the Receiver to execute the Asset Purchase Agreement and to implement the Transaction in accordance with the terms of the Asset Purchase Agreement and this Order, including, without limitation, the distributions contemplated thereby, and (iii) vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Asset Purchase Agreement (the “**Purchased Assets**”), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Confidential Supplement, the Pre-Filing Report, the affidavit of Jack Kane sworn July 20, 2018 and the Silverman Affidavit and on hearing the submissions of counsel for the Receiver, Bank of Montreal, the Debtor and the Purchaser, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service filed:

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that any defined terms used herein, unless otherwise defined in this Order, shall have the meanings ascribed to them in the Asset Purchase Agreement.
3. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and that the Receiver is hereby authorized and directed to execute the Asset Purchase Agreement, with such minor amendments as the Receiver may deem necessary or desirable, and to complete the Transaction in accordance with the terms of the Asset Purchase Agreement and this Order, including, without limitation, the distributions contemplated thereby. The Receiver and the Debtor are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.
4. **THIS COURT ORDERS** that the Receiver, in accordance with the terms of the Asset Purchase Agreement, is hereby authorized and empowered to act as escrow agent (in such capacity, the “**Escrow Agent**”) for the purposes of holding the Adjustment Escrow Amount deposited by the Purchaser in immediately available funds with the Escrow Agent to secure any

obligation of the Debtor due to an adjustment of the Purchase Price and to perform its obligations under the Escrow Agreement. The Receiver shall have no liability as Escrow Agent or in connection with the Escrow Agreement except for any liability arising from its gross negligence or wilful misconduct.

5. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule A hereto (the "**Receiver's Certificate**"), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Asset Purchase Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of this Court dated July 24, 2018; and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario), the *Personal Property Security Act* (British Columbia), or any other personal property registry system (all of which are collectively referred to as the "**Encumbrances**"), with the exception of those charges, security interests or claims evidenced by the registrations pursuant to the *Personal Property Security Act* (Ontario) and the *Personal Property Security Act* (British Columbia) set out in Schedule B hereto (the "**Permitted Encumbrances**"), and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets, except for the Permitted Encumbrances, are hereby expunged and discharged as against the Purchased Assets.

6. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale, with such proceeds to be distributed in accordance with the terms of the Asset Purchase Agreement.

7. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

8. **THIS COURT ORDERS** that (a) immediately upon the Closing of the Transaction, the Receiver or the Debtor are hereby authorized and permitted to execute and file articles of amendment or such other documents or instruments as may be required to change the legal name of the Debtor in accordance with the Asset Purchase Agreement, and such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective and shall be accepted by the registrar (as defined in the *Business Corporations Act* (British Columbia)) or other official without the requirement (if any) of obtaining director, shareholder or other approval pursuant to any federal or provincial legislation; and (b) upon the official change of the legal name of the Debtor, the name of the Debtor in the within title of proceedings shall be deleted and replaced with the new legal name of the Debtor, and any document filed thereafter in these proceedings (other than the Receiver's Certificate) shall be filed using such revised title of proceedings.

9. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

10. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

11. **THIS COURT ORDERS** that the Confidential Supplement, including all appendices thereto, be and is hereby sealed and its contents shall not form part of the public record until the Closing of the Transaction, or upon further order of this Court.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JUL 24 2018

PER / PAR: 

Schedule A – Form of Receiver’s Certificate

Court File No. CV-18-601960-00CL

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

B E T W E E N:

BANK OF MONTREAL

Applicant

- and -

INGENIOUS PACKAGING GROUP ULC

Respondent

**IN THE MATTER OF AN APPLICATION PURSUANT TO 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**

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Ontario Superior Court of Justice [Commercial List] (the “**Court**”) dated July 24, 2018, Deloitte Restructuring Inc. was appointed as receiver (the “**Receiver**”) of the undertaking, property and assets of Ingenious Packaging Group ULC (the “**Debtor**”).

B. Pursuant to an Order of the Court dated July 24, 2018, the Court approved the asset purchase agreement made as of July 20, 2018 (the “**Asset Purchase Agreement**”) between the Receiver, the Debtor and Ingenious Packaging, Inc. (the “**Purchaser**”) and provided for the

vesting in the Purchaser of the Debtor's right, title and interest in and to the assets described in the Asset Purchase Agreement (the "**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in sections 14 and 15 of the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction with the Purchaser has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Asset Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Asset Purchase Agreement;
2. The conditions to Closing as set out in sections 14 and 15 of the Asset Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction with the Purchaser has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**Deloitte Restructuring Inc., in its capacity as
court-appointed receiver of Ingenious
Packaging Group ULC and not in its personal
or corporate capacity**

Per: _____

Name:

Title:

Schedule B – Permitted Encumbrances

Personal Property Security Act (Ontario)

	<u>Debtor</u>	<u>Secured Party(ies)</u>	<u>File No. / Registration No.</u>	<u>Date/ Expiry Date</u>	<u>Collateral Classification</u>	<u>Collateral Description</u>
1.	TAPP LABEL	Fujifilm Canada Inc.	737460567 / 20180321 1407 1462 5212	March 21, 2018/ March 21, 2023 (5 years)	Equipment	Equipment: FLH85Z Plate Processor S/N 94199-0649 Fuji Asset# 501027, Chiller S/N 111289011 Fuji Asset# 501028
2.	TAPP LABEL LTD.	E.I Dupont Canada Company	710013645 / 20150916 1947 1531 2598	September 16, 2015 / September 16, 2025 (10 years)	Equipment	Equipment: Cyrel (R) Fast TD1000 Flexographic Plate Making System Serial # TD1180529

Personal Property Security Act (British Columbia)

	<u>Secured Party(ies)</u>	<u>Debtor(s)</u>	<u>Registration Number (Registration Period)</u>	<u>General Collateral Description</u>
1.	E.I. Dupont Canada Company	Tapp Label Technologies Inc.	Regn No.: 523930G Regn Date: January 3, 2012 Expiry Date: January 3, 2022	<u>General Collateral:</u> E.I. Dupont Canada Company have loaned (1) Cyrel Fast TD1000 thermal processor, serial number TD1180604, to Tapp Label Technologies Inc. under a bailment arrangement. Tapp Label Technologies Inc. does not have any right, interest or title to the equipment. The equipment is the property of E.I. Dupont Canada Company.
2.	E.I. Dupont Canada Company	Tapp Label Company, LLC (Tapp Label – Vancouver North)	Regn No.: 718745I Regn Date: July 13, 2015 Expiry Date: July 13, 2025	<u>General Collateral:</u> Cyrel (R) Fast TD1000 flexographic plate making system – serial number TD1180758 Value: \$125,000 USD

**APPLICATION PURSUANT TO 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**

Court File No.: CV-18-601960-00CL

BANK OF MONTREAL
Applicant

- and - **INGENIOUS PACKAGING GROUP ULC**
Respondent

ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) Proceeding commenced at Toronto	
APPROVAL AND VESTING ORDER	
GOODMANS LLP Barristers & Solicitors 333 Bay Street, Suite 3400 Toronto, Canada M5H 2S7 Brendan O'Neill LSO#: 43331J boneill@goodmans.ca Bradley Wiffen LSO#: 64279L bwiffen@goodmans.ca Andrew Harnes LSO#: 73321A aharnes@goodmans.ca Tel: (416) 979-2211 Fax: (416) 979-1234 Lawyers for Deloitte Restructuring Inc., in its capacity as Court-appointed Receiver	

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)	WEDNESDAY, THE 4 TH
)	
JUSTICE CONWAY)	DAY OF NOVEMBER, 2020

BETWEEN

ISABELLE ROBERTS

Applicant

and

**BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE TECHNOLOGY INC.
PENGYUAN HOLDING LIMITED, PAUL CHURCH, and XING YUAN (also known as
SHAWN YUAN) and THE REGIONAL MUNICIPALITY OF DURHAM**

Respondents

APPROVAL AND VESTING ORDER

THIS MOTION, made by Link & Associates Inc. (“**Link**”) in its capacity as the Court-appointed receiver (in such capacity, the “**Receiver**”) of the undertaking, property and assets of (collectively, the “**Property**”) of Besnovo Inc. (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an Asset Purchase Agreement (the “**Sale Agreement**”) between the Receiver and PengYuan Holding Limited (the “**PengYuan**”) dated October 25, 2020 and appended to the Second Report of the Receiver dated October 26, 2020 (the “**Report**”), and vesting in PengYuan’s nominee, 12450828 Canada Inc. (the “**Purchaser**”), the Debtor’s right, title and interest in and to the assets described in the Sale Agreement (the

“**Purchased Assets**”), was heard this day via Zoom judicial conference due to the COVID-19 pandemic.

ON READING the Report and on hearing the submissions of counsel for the Receiver, counsel for the PengYuan, the Purchaser and Xing Yuan, counsel for Cleeve Holdings Inc., Cleeve Technology Inc. and Paul Church, and counsel for Isabelle Roberts, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Paula Hoosain sworn October 26, 2020, filed:

1. **THIS COURT ORDERS** that the time for service and filing of the notice of motion and the motion record is hereby abridged so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as **Schedule “A”** hereto (the “**Receiver's Certificate**”), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing, all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system (all of which are collectively referred to as the “**Encumbrances**”), but excluding any encumbrances or charges created by the Order of the Honourable Justice McEwen dated March 12, 2020, and, for greater

certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding the provisions of subsection 171(3) of the *Business Corporations Act* (Ontario) (the "**OBCA**"), the Receiver be and is hereby authorized and directed, upon filing of the Receiver's Certificate, to complete, execute and file articles of amendment for and on behalf of the Debtor and any officer and director of the Debtor (such articles of amendment to be deemed to have been signed by a director or an officer of the Debtor and executed in accordance with the OBCA when so signed by the Receiver as directed by this Court) for the sole purpose of changing the corporate name of the Debtor to 2325208 Ontario Inc. (and such amendment shall be deemed to have been duly authorized by Section 168 of the OBCA without any shareholder or director resolution approving such amendment being required), and this Court hereby directs the Director (as defined in the OBCA) to endorse thereon a certificate of amendment upon receipt from the Receiver of two duplicate originals of such articles of amendment together with the prescribed fees and any other required documents under the OBCA (which the Receiver be and is hereby authorized and directed to complete, execute and file for and on behalf of the Debtor and any officer and director of Debtor, if and as required) except for any such documents as have been dispensed or otherwise dealt with pursuant to the deeming provisions contained herein.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the

Company's records pertaining to the Debtor's past and current employees, including personal information of those employees offered employment by the Purchaser. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

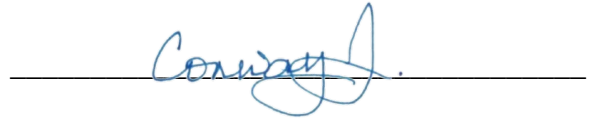
8. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be, when the Court returns to regular operations.

A handwritten signature in blue ink is written over a horizontal line. The signature is cursive and appears to read "Conway J.". The line extends to the left and right of the signature.

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-18-607866-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN:

ISABELLE ROBERTS

Applicant

and

**BESNOVO INC., CLEEVE HOLDINGS INC., CLEEVE TECHNOLOGY INC. PENGYUAN
HOLDING LIMITED, PAUL CHURCH, and XING YUAN (also known as
SHAWN YUAN) and THE REGIONAL MUNICIPALITY OF DURHAM**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice McEwen of the Ontario Superior Court of Justice (the “**Court**”) dated March 12, 2020, Link & Associates Inc. was appointed as the receiver (the “**Receiver**”) of the undertaking, property and assets of Besnovo Inc. (the “**Debtor**”).

B. Pursuant to an Order of the Court dated November 4, 2020, the Court approved the asset purchase agreement dated October 23, 2020 (the “**Sale Agreement**”) between the Receiver and PengYuan Holding Limited (“**PengYuan**”) and provided for the vesting in PengYuan’s nominee, 12450828 Canada Inc. (the “**Purchaser**”), of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;
2. The conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

**LINK & ASSOCIATES INC., in its capacity
as Receiver of the undertaking, property and
assets of BESNOVO INC., and not in its
personal capacity**

Per: _____

Robert Link, CIRP, LIT

ISABELLE ROBERTS

- and -

BESNOVO INC. et al.

Applicant

Respondents

Court File No. CV-18-607866-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceedings commenced at Toronto

**APPROVAL AND VESTING ORDER
(returnable November 4, 2020)**

AIRD & BERLIS LLP
Barristers and Solicitors
Brookfield Place
181 Bay Street, Suite 1800
P.O. Box 754
Toronto, ON M5J 2T9

D. Robb English (LSUC # 19862F)

Tel: (416) 865-4748

Fax: (416) 863-1515

Email: renglish@airdberlis.com

Sam Babe (LSO# 49498B)

Tel: (416) 865-7718

Fax: (416) 863-1515

Email: sbabe@airdberlis.com

Lawyers for Link & Associates Inc., in its capacity as the Court-appointed receiver of Besnovo Inc.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) TUESDAY, THE 20TH DAY
)
JUSTICE CAVANAGH) OF DECEMBER, 2022

APPLICATION UNDER S. 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

BETWEEN:

BANK OF MONTREAL

Applicant

and

BRANT INSTORE CORPORATION

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”) in its capacity as the Court-appointed receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Brant Instore Corporation (the “**Debtor**”) for an order approving the sale transaction (the “**Transaction**”) contemplated by an asset purchase agreement (the “**Purchase Agreement**”) between the Receiver and 1000369798 Ontario Inc. (the “**Purchaser**”) dated December 20, 2022

and appended in redacted form to the Pre-Filing Report of KSV in its capacity as proposed Receiver to be filed in these proceedings (the “**Report**”), and included, in unredacted form, in the confidential appendices to the Report (collectively, the “**Confidential Appendices**”), and vesting in the Purchaser the Debtor’s right, title and interest in and to the assets described in the Purchase Agreement (the “**Purchased Assets**”), was heard this day by Zoom judicial video conference.

ON READING the Report and the Confidential Appendices, and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, counsel for the Purchaser, and no one appearing for any other person on the service list, although properly served as appears from the affidavit of Samantha Hans sworn December 9, 2022, filed:

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Purchase Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as **Schedule “A”** hereto (the “**Receiver's Certificate**”), all of the Debtor's right, title and interest in and to the Purchased Assets described in the Purchase Agreement shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Receivership Order of the Honourable Justice Cavanagh dated December 20, 2022; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “B”** hereto (all of which are collectively referred to as the “**Encumbrances**) and, for greater certainty, this Court orders that all of the

Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

4. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

5. **THIS COURT ORDERS** that, notwithstanding the provisions of subsection 171(3) of the *Business Corporations Act* (Ontario) (the "**OBCA**"), the Receiver be and is hereby authorized and directed, upon filing of the Receiver's Certificate, to complete, execute and file articles of amendment for and on behalf of the Debtor and any officer and director of the Debtor (such articles of amendment to be deemed to have been signed by a director or an officer of the Debtor and executed in accordance with the OBCA when so signed by the Receiver as directed by this Court) for the sole purpose of changing the corporate name of the Debtor to 1886695 Ontario Inc. (and such amendment shall be deemed to have been duly authorized by Section 168 of the OBCA without any shareholder or director resolution approving such amendment being required), and this Court hereby directs the Director (as defined in the OBCA) to endorse thereon a certificate of amendment upon receipt from the Receiver of two duplicate originals of such articles of amendment together with the prescribed fees and any other required documents under the OBCA (which the Receiver be and is hereby authorized and directed to complete, execute and file for and on behalf of the Debtor and any officer and director of Debtor, if and as required) except for any such documents as have been dispensed or otherwise dealt with pursuant to the deeming provisions contained herein.

6. **THIS COURT ORDERS** that, upon filing of the articles of amendment changing the name of the Debtor in accordance with paragraph 5 above and the Receiver filing with this Court

and written confirmation that such name change has been effected, the title of these proceedings shall be and is hereby amended to the following:

APPLICATION UNDER S. 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

BETWEEN:

BANK OF MONTREAL

Applicant

and

1886695 ONTARIO INC.

Respondent

and the registrar is hereby directed to change and modify its court records as necessary so as to reflect this change in the title of proceeding.

7. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's records pertaining to the Debtor's past and current employees. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.

8. **THIS COURT ORDERS** that, notwithstanding:

(a) the pendency of these proceedings;

- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

SEALING

9. THIS COURT ORDERS that:

- (a) Confidential Appendix 1, Confidential Appendix 2 and Confidential Appendix 3 to the Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened on or after the date that is three months following the date of filing of the Receiver's Certificate; and
- (b) Confidential Appendix 4 to the Report shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further Order of the Court.

INTERIM DISTRIBUTION

10. **THIS COURT ORDERS** that, subject to maintaining sufficient reserves to satisfy the priority claims described in the Report and to complete the administration of the receivership, the Receiver is authorised to pay:

- (a) the Success Bonus as defined and described in the Report; and
- (b) the remaining proceeds of the Transaction and any monies that come into the estate at a later date, to the Bank of Montreal up to the amount of the Debtor's indebtedness owing to the Bank of Montreal.

GENERAL

11. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

12. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. on the date of this Order and is enforceable without the need for entry or filing.

A digital signature in blue ink, appearing to read 'Cavanagh', is displayed within a light blue rectangular box.

Digitally signed by
Mr. Justice Cavanagh

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-22-00691546-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

APPLICATION UNDER S. 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

BETWEEN:

BANK OF MONTREAL

Applicant

and

BRANT INSTORE CORPORATION

Respondent

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated December 20, 2022, KSV Restructuring Inc. was appointed as the receiver and manager (the “**Receiver**”) of the undertaking, property and assets of Brant Instore Corporation (the “**Debtor**”).

B. Pursuant to an Order of the Court dated December 20, 2022, the Court approved the asset purchase agreement made as of December 20, 2022 (the “**Purchase Agreement**”) between the Receiver and 1000369798 Ontario Inc. (the “**Purchaser**”) and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets, which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 7 of the Purchase Agreement have been satisfied or waived by the Receiver and the

Purchaser; and (iii) the transaction contemplated by the Purchase Agreement (the “**Transaction**”) has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Purchase Agreement.

THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Purchase Agreement;
2. The conditions to Closing as set out in Article 7 of the Purchase Agreement have been satisfied or waived by the Receiver and the Purchaser; and
3. The Transaction has been completed to the satisfaction of the Receiver.
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., in its capacity
as Receiver of the undertaking, property and
assets of BRANT INSTORE CORPORATION,
and not in its personal capacity

Per: _____

Name:

Title:

Schedule “B” – Claims to be deleted and expunged

NONE.

BANK OF MONTREAL
Applicant

- and -

BRANT INSTORE CORPORATION
Respondent

Court File No. CV-22-00691546-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

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Lawyers for the Receiver

PRICEWATERHOUSECOOPERS INC. (solely in its capacity as court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds)

-and-

SKYMARK FINANCE CORPORATION et al.

Applicant

Respondents

Court File No. CV-22-00692309-00CL

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

**Proceeding commenced at
Toronto**

**FACTUM OF THE RECEIVER
(Motion re: Sale Approval and Ancillary Relief Order)**

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