

**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 -

**2305145 ONTARIO INC. and MERK INVESTMENTS LTD.**

Respondents

**MOTION RECORD OF THE RECEIVER  
(Settlement Approval and Ancillary Relief)**

March 28, 2024

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Alvarez & Marsal Canada Inc.

**TO: THE SERVICE LIST**

**ONTARIO  
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TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
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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 -

**2305145 ONTARIO INC. and MERK INVESTMENTS LTD.**

Respondents

**NOTICE OF MOTION  
(Settlement Approval and Ancillary Relief)**

Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as the court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings, and properties of each of 2305145 Ontario Inc. (formerly Skymark Finance Corporation) (“**230**”) and Merk Investments Ltd. (“**Merk**, and together with 230, the “**Companies**”), will bring a motion to the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on April 5, 2024 at 10:00 a.m., or as soon after that time as the motion can be heard via Zoom videoconference, at the courthouse, 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard by Zoom videoconference (details to follow).

**THE MOTION IS FOR:<sup>1</sup>**

1. An order, substantially in the form included at Tab 3 of the motion record served herewith, among other things:

- a) approving the minutes of settlement dated as of March 28, 2024 (the “**KLN Settlement Agreement**”) and the accompanying full and final mutual release (the “**KLN Release**”);
- b) sealing, subject to further order of the Court, copies of the KLN Settlement Agreement and the KLN Release, which will be filed as Confidential Appendix “A” (the “**Confidential Appendix**”) to the Fourth Report of the Receiver dated March 28, 2024 (the “**Fourth Report**”);
- c) approving the Fourth Report and the conduct and activities of the Receiver described therein;
- d) approving the Receiver’s statement of receipts and disbursements for the period from February 6, 2024 to March 27, 2024, as set out in the Fourth Report; and
- e) such further and other relief as this Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

***Background***

2. The factual basis for this motion is set forth in detail in the Fourth Report, not all of which is repeated herein. Further background information is contained in the PWC Application

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings given to them in the Fourth Report at Tab 2 of the motion record served herewith.

Record, the First Report, the Second Report, and the Third Report. All such documents are available on the Receiver's case website at [www.alvarezandmarsal.com/skymark](http://www.alvarezandmarsal.com/skymark).

3. Pursuant to the Appointment Order of the Court dated March 6, 2023, A&M was appointed as Receiver of 230's and Merk's Property.

4. Under the Appointment Order, the Receiver is empowered and authorized to, among other things, settle, extend, or compromise any indebtedness owing to 230 or Merk.

5. 230 holds certain mortgages formerly registered on title to lands municipally known as 155 Adams Boulevard, Brantford, Ontario (the "**Adams Lands**"), including a \$9,600,000 charge registered on title to the Adams Lands on August 9, 2017 as instrument number BC322166 (the "**2017 Skymark Charge**").

6. Among other transfers of charges from 230 to KLN, a transfer of a charge in the amount of \$900,000 from 230 to KLN was registered on title to the Adams Lands on May 7, 2018 as instrument number BC337603 (the "**Charge Transfer**").

7. The principals of 230 have asserted that the amounts secured by the Charge Transfer were repaid to KLN and that the Charge Transfer should have been deleted from title to the Adams Lands, such that 230 should be entitled to a portion of the proceeds of sale from the Adams Lands in respect of its interest in the 2017 Skymark Charge without regard to the Charge Transfer (the "**230 Claim**"). KLN denies that any amounts were repaid to it by 230 in respect of the Charge Transfer, and asserts that the Charge Transfer is validly registered on title such that any and all amounts owing in respect of the Charge Transfer are properly payable to KLN (the "**KLN Claim**").

8. The Receiver (for and on behalf of 230) and KLN have agreed to settle the 230 Claim and the KLN Claim pursuant to the terms of the KLN Settlement Agreement.

9. The Receiver has entered into the KLN Settlement Agreement, which is conditional upon the Court's approval..

10. The Receiver is of the view that the KLN Settlement Agreement represents a fair and reasonable compromise of the aforementioned issues which, taken together, will (a) bring significant funds into the estate, (b) resolve the aforementioned issue and the related claims and contingent liabilities, (c) avoid the cost and risk to the estate, and use of the Court's resources, associated with protracted litigation related to such claims and liabilities, and (d) continue to advance these Proceedings.

11. The Bridging Receiver, the senior secured lender of the Companies and likely the sole economic stakeholder in these Proceedings, supports and has consented to the KLN Settlement Agreement.

***Sealing Order and Other Ancillary Relief***

12. The Receiver also seeks a sealing order in respect of the Confidential Appendix containing the KLN Settlement Agreement and the KLN Release. The sealing order is required in the circumstances because:

- a) the KLN Settlement Agreement contains a confidentiality provision that requires that agreement and its accompanying release be kept confidential;

- b) while the Receiver is permitted to disclose the fact of the KLN Settlement Agreement (without disclosing its specific terms), it has agreed to keep the agreements confidential;
  - c) the confidentiality provision in the KLN Settlement Agreement is a material provision upon which KLN relied in executing such agreement to protect commercially sensitive information;
  - d) the confidentiality provision is reasonable and substantially similar to those which are typically found in such agreements that have been utilized in settlement agreements in these proceedings; and
  - e) the Receiver is not aware of any party that would be prejudiced if this information is sealed on the terms sought herein, and it is of the view that KLN will be prejudiced if the agreement was disclosed.
13. The Receiver is also seeking additional, customary relief; specifically:
- a) to have its statement of receipts and disbursements approved; and
  - b) to have its Fourth Report and its activities described therein approved.
14. The Receiver is of the view that the ancillary relief sought herein is reasonable and appropriate in the circumstances and ought to be granted by the Court.

***Other Grounds***

15. Such further and other grounds as set forth in the Fourth Report and the Confidential Appendix.

16. The provisions of the *Courts of Justice Act*, R.S.O. 1990, c. C-43, as amended.
17. Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 of the Ontario *Rules of Civil Procedure*, R.S.O. 1990, Reg. 194, as amended.
18. The inherent and equitable jurisdiction of this Court.
19. Such further and other grounds as the lawyers may advise.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the motion:

1. The Fourth Report (including the Confidential Appendix to be filed directly with the judge hearing this motion); and
2. Such further and other materials as counsel may advise and this Court may permit.

March 28, 2024

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Canada Inc.

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

-and- **2305145 ONTARIO INC. et al.**

Applicant

Respondents

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

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

**Proceeding commenced at  
Toronto**

**NOTICE OF MOTION  
(Settlement Approval and Ancillary Relief)**

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TAB 2

**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 -

**2305145 ONTARIO INC. (formerly SKYMARK FINANCE CORPORATION)  
and MERK INVESTMENTS LTD.**

Respondents

APPLICATION UNDER Section 101 of the *Courts of Justice Act*, R.S.O. 1990 c.C.43, as amended, and Section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended

**FOURTH REPORT OF THE RECEIVER  
MARCH 28, 2024**

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**Confidential**

**Appendix A – KLN Settlement Agreement and KLN Release dated as of March 28, 2024**

## 1.0 INTRODUCTION

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- 1.1 This fourth report (“**Fourth Report**”) 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 (the “**Property**”, or the “**Assets**”) of each of 2305145 Ontario Inc. (formerly Skymark Finance Corporation) (“**Skymark**”) and Merk Investments Ltd. (“**Merk**”, and together with Skymark, the “**Companies**”).
- 1.2 Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated March 6, 2023 (the “**Appointment Order**”), A&M was appointed Receiver of the Property.
- 1.3 The first report of the Receiver dated May 17, 2023 (the “**First Report**”) was filed in support of the Receiver’s motion seeking an order, among other things, approving a sale and investment solicitation process (the “**SISP**”) to market for sale all or a portion of the Assets of Skymark, which Assets included its portfolio of loans and leases to consumer borrowers for home renovations, water systems, HVAC systems and smart home improvements (the “**Consumer Portfolio**”).
- 1.4 On May 25, 2023, the Court issued an order (the “**SISP Approval Order**”), among other things, approving and authorizing the SISP and authorizing and directing the Receiver to perform its obligations thereunder, both as detailed in the sale process attached as Schedule “A” to the SISP Approval Order filed previously with this Court.

- 1.5 The second report of the Receiver dated September 15, 2023 (the “**Second Report**”) was filed in support of the Receiver’s motion seeking, among other things: (i) an order (the “**Approval and Vesting Order**”) approving a sale transaction (the “**Sale Transaction**”) for the Consumer Portfolio and certain related assets (collectively, the “**Purchased Assets**”), (ii) authorizing and approving the execution of an asset purchase agreement dated as of August 23, 2023 (the “**APA**”) by the Receiver and 5051802 Ontario Inc. (the “**Purchaser**”) and (iii) authorizing and directing the Receiver, to complete, execute and file articles of amendment on behalf of Skymark to change the name of Skymark to 2305145 Ontario Inc;
- 1.6 On September 26, 2023, the Court issued the Approval and Vesting Order.
- 1.7 The third report of the Receiver dated February 15, 2024 (the “**Third Report**”) was filed in support of the Receiver’s motion (the “**First Settlement Approval Motion**”) seeking an order (the “**First Settlement Approval Order**”), among other things:
- a) approving the Orr Settlement (as defined therein) as agreed to in minutes of settlement dated as of January 24, 2024 (the “**Orr Settlement Agreement**”), and the accompanying mutual full and final release (the “**Orr Release**”);
  - b) approving the Industrial Road Loan Settlement (as defined therein) as agreed to in minutes of settlement dated as of February 14, 2024 (the “**FIJ Settlement Agreement**”), and the accompanying mutual full and final release (the “**FIJ Release**”);
  - c) approving the Bridging Assignment (as defined therein) as agreed to in an assignment and assumption agreement dated as of February 15, 2024 (the

“**Bridging Assignment Agreement**”) pursuant to which the Receiver agreed to assign its interest in a loan made by Skymark to 2581150 Ontario Inc. (“**258**”) to the Bridging Receiver (as defined therein), in consideration of a release from the Bridging Receiver of claims it had against Skymark in respect of a substantially similar loan that Bridging advanced to Skymark; and

d) sealing, subject to further order of the Court, copies of the Orr Settlement Agreement, the Orr Release, the FIJ Settlement Agreement, and the FIJ Release, which were filed as Confidential Appendices “B” and “C” to the Third Report, respectively.

1.8 On February 22, 2024, the Court issued the First Settlement Approval Order.

1.9 This Fourth Report is filed in support of the Receiver’s motion (the “**Second Settlement Approval Motion**”) seeking an order (the “**Second Settlement Approval Order**”), among other things:

a) approving the KLN Settlement (as defined herein) as agreed to in minutes of settlement dated as of March 28, 2024 (the “**KLN Settlement Agreement**”) and the accompanying mutual full and final release (the “**KLN Release**”);

b) sealing, subject to further order of the Court, copies of the KLN Settlement Agreement and the KLN Release, which will be filed as **Confidential Appendix “A”** to this Fourth Report;

c) approving this Fourth Report and the conduct and activities of the Receiver described herein; and

- d) approving the Receiver's statement of receipts and disbursements for the period  
March 6, 2023 to March 27, 2024, as set out in this Fourth Report.

## 2.0 TERMS OF REFERENCE AND DISCLAIMER

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- 2.1 In preparing this Fourth Report, the Receiver has relied upon unaudited financial information, books and records and other documents provided by the Companies and discussion with management (collectively, the “**Information**”).
- 2.2 The Receiver has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook*, and accordingly, the Receiver expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.
- 2.3 Future-oriented financial information referred to in this Fourth Report was prepared based on estimates and assumptions. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections. Even if the assumptions materialize, the variations in such future-oriented financial information could be significant.
- 2.4 This Fourth Report has been prepared to provide the Court with general information and an update regarding these receivership proceedings (the “**Proceedings**”) and to assist the Court in deciding whether to grant the Second Settlement Approval Order. This Fourth Report should not be relied upon for any other purpose or by any other person. The Receiver shall not be held responsible for any losses or liability incurred as a result of the circulation,

publication, reproduction or use of this Fourth Report contrary to the provisions of this paragraph.

2.5 Unless otherwise stated, all monetary amounts contained in this Fourth Report are expressed in Canadian dollars.

### 3.0 BACKGROUND

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- 3.1 The background in respect of the Companies, as well as a description of the activities and circumstances leading to the appointment of the Receiver are contained in the application record filed by PricewaterhouseCoopers Inc. (“**PWC**”) as receiver and manager (in such capacity, the “**Bridging Receiver**”) of Bridging Finance Inc. and certain related entities and investment funds (collectively “**Bridging**”), in particular, the affidavit of Christine Sinclair (the “**Sinclair Affidavit**”) which was filed by PWC in support of its application to appoint the Receiver (collectively, the “**PWC Application Record**”).
- 3.2 The primary business of Skymark was providing financing and leasing to consumer borrowers for home renovations, water systems, HVAC systems and smart home improvements (described above as the Consumer Portfolio). In addition, Skymark’s assets include a series of “non-core” loans (the “**Non-Core Loans**”) made to third-parties outside of Skymark’s primary business.
- 3.3 Additional background information regarding the Companies, the Assets, including the Non-Core Loans and the Companies’ obligations to Bridging and other creditors is provided in the First Report, the Second Report, and the Third Report (collectively, the “**Receiver Reports**”).
- 3.4 The PWC Application Record, the Receiver Reports and other Court-filed documents, notices and orders in these Proceedings have been posted to the Receiver’s case website at [www.alvarezandmarsal.com/skymark](http://www.alvarezandmarsal.com/skymark) (the “**Case Website**”).

## 4.0 THE MAHAL AND GOLDEN MILES LOANS & THE KLN SETTLEMENT

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### *Background*

- 4.1 As discussed in the previous Receiver Reports, on application by Skymark and pursuant to an order issued on October 1, 2021, the Court appointed KSV Restructuring Inc. (“**KSV**”) as receiver and manager (the “**Mahal Receiver**”) of the assets, undertakings and properties of MVCI and Golden Miles owned or used in connection with a flour mill located on the Mahal Property (the “**MVCI/Golden Miles Receivership Proceedings**”).
- 4.2 On November 15, 2021, the Mahal Receiver filed an assignment in bankruptcy on behalf of MVCI and Golden Miles under the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, pursuant to which KSV was appointed as the trustee in bankruptcy of MVCI and Golden Miles (the “**Bankruptcy**”).
- 4.3 On April 11, 2022, the Court granted an order approving the sale of all or substantially all of the assets of MVCI and Golden Miles to 12175622 Canada Inc. That sale (the “**Mahal Transaction**”) closed on May 18, 2022, for aggregate net proceeds of \$18.47 million.
- 4.4 As outlined in the Fifth Report to Court of the Mahal Receiver dated August 15, 2023, after accounting for accrued costs, the Mahal Receiver was holding \$16.7 million of proceeds from the Mahal Transaction. Approximately \$15 million of this was allocated to the Mahal Property (the “**Mahal Net Proceeds**”) and approximately \$1.7 million was allocated to the personal property owned by Golden Miles (the “**Personal Property Net Proceeds**”).
- 4.5 On August 23, 2023, the Mahal Receiver obtained an order (the “**Mahal Distribution Order**”) authorizing certain distributions to creditors from the Mahal Net Proceeds and the

Personal Property Net Proceeds, including the following distribution to the Receiver (on behalf of Skymark) totaling \$5,364,556 comprised of: (a) \$5,097,556 from the Mahal Net Proceeds; (b) \$247,000 from the Personal Property Net Proceeds; and (c) \$20,000 in respect of Skymark's costs in connection with a priority dispute in respect of the Personal Property Net Proceeds that was decided in favour of the Mahal Receiver and Skymark. The distribution was remitted to the Receiver on August 24, 2023.

4.6 The Mahal Distribution Order also contemplated various holdback amounts which, until recently, were the subject of priority disputes involving Skymark, including: (a) \$3,650,000 (the "**198Co Holdback**"), in respect of which 1989474 Ontario Inc. ("**198Co**") had asserted a claim in priority to Skymark's as a result of an alleged trust declaration made by Merk and/or Skymark in favour of 198Co (the "**Orr Priority Claim**"); and (b) \$1,047,826 (the "**KLN Holdback**"), in respect of which KLN Holdings Inc. ("**KLN**") had asserted a claim in priority to Skymark's as a result of an alleged transfer to KLN of a portion of a mortgage that Skymark held against the Mahal Property (the "**KLN Priority Claim**").

4.7 The Orr Priority Claim was resolved as part of the Orr Settlement, which was approved by the Court in the First Settlement Approval Order. The KLN Priority Claim has now also been resolved pursuant to the KLN Settlement (defined below), which is the subject of this Fourth Report and the Second Settlement Approval Motion.

#### ***The KLN Holdback and Proposed KLN Settlement***

4.8 On a number of occasions, Skymark transferred to KLN portions of mortgages it had registered on title to the Mahal Property as security for loans that KLN made to Skymark. In

the days prior to the Mahal Receiver seeking the Mahal Distribution Order, the former principals of Skymark provided the Receiver with certain documents and records which suggested, on the face of the documents, that funds allegedly advanced by KLN to Skymark in respect of one of the mortgage transfers had been repaid by Skymark.

4.9 The former principals of Skymark asserted that the transfer of a portion of the mortgage to KLN should not have been registered on title to the Mahal Property as the underlying debt obligation had been repaid. KLN denies that this payment was connected to the transfer of the mortgage at issue, and asserts that the mortgage transfer is validly registered on title such that any and all amounts owing in respect of the mortgage transfer are properly payable to KLN. As a result of these developments, the Mahal Receiver agreed to hold back the funds at issue from its distribution, which is defined herein as the KLN Holdback.

4.10 The Receiver's legal counsel has held a number of discussions with legal counsel for KLN. Those discussions have culminated in a settlement agreement (the "**KLN Settlement**") in respect of the KLN Holdback, whereby the Receiver (on behalf of Skymark and Merk) and KLN have agreed, subject to the terms and conditions contained in the KLN Settlement Agreement, to settle their dispute with respect to the mortgage transfer which will allow the Mahal Receiver to distribute the amounts that are subject to the KLN Holdback.

4.11 The terms of the KLN Settlement Agreement are confidential. A copy of each of the KLN Settlement Agreement and the KLN Release are provided in **Confidential Appendix "A"**. The Receiver is seeking an order sealing the Confidential Appendix in the Court file.

- 4.12 The effectiveness of the KLN Settlement is subject to Court approval in these Proceedings, as well all as the issuance of a Court order in the MVCI/Golden Miles Receivership Proceedings approving the respective distributions from the KLN Holdback to KLN and the Receiver in the amounts specified in the KLN Settlement Agreement.
- 4.13 The Receiver has advised the Mahal Receiver of the KLN Settlement, and the Mahal Receiver has agreed that the Second Settlement Approval Motion should be heard at the same time as the Mahal Receiver's motion for an order (the "**Second Mahal Distribution Order**") in MVCI/Golden Mile Receivership Proceedings approving the distribution of the 198Co Holdback and, subject to this Court's approval of the KLN Settlement, the KLN Holdback as well.
- 4.14 In the Receiver's view, the KLN Settlement represents a reasonable compromise between KLN and the Receiver, which will result in funds flowing to the estate and a resolution of the Receiver's (on behalf of Skymark and Merk) and KLN's claims in respect the KLN Holdback.

## 5.0 RECEIVER'S ACTIVITIES SINCE THE DATE OF THE THIRD REPORT

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5.1 In addition to those activities described throughout this Fourth Report, the Receiver's activities since the date of the Third Report have included the following:

- attending the Court hearing held on February 22, 2024, regarding the motion seeking the First Settlement Approval Order;
- continuing to carry out the Receiver's duties and responsibilities in accordance with the Appointment Order, including controlling the receipts and disbursements;
- engaging with the Purchaser of the Purchased Assets with respect to matters related to the consumer loan portfolio and performance under the vendor take back note arrangement ("VTBN");
- engaging with the Receiver's legal counsel on various receivership matters, including, without limitation, the UK Property Loan (as defined in the Third Report) and the KLN Holdback;
- reviewing and retrieving records in compliance with the production order issued by this Court on February 22, 2024;
- communicating with the Applicant to provide status updates in respect of these Proceedings;
- monitoring the MVCI/Golden Miles Receivership Proceedings and the Bankruptcy, and liaising with the Mahal Receiver and its legal counsel in respect of status updates on the Mahal Receivership;

- negotiating and drafting the KLN Minutes of Settlement and the KLN Release;
- drafting this Fourth Report and the motion materials in respect of the Second Settlement Approval Motion;
- coordinating the development of and posting of relevant documents to the Case Website;
- communicating with the former external accountant of Skymark in respect of tax matters;
- responding to enquiries from stakeholders and others; and
- addressing all other matters pertaining to the administration of these Proceedings.

## 6.0 RECEIVER'S RECEIPTS AND DISBURSEMENTS

6.1 A summary of the Receiver's receipts and disbursements for the period from March 6, 2023 to March 27, 2024 (the "Reporting Period") related to Skymark is set out below:

| <b>Skymark Finance Corporation</b>                    |                       |
|---|-----------------------|
| <b>Receiver's Summary Receipts and Disbursements</b>  |                       |
| <b>for the Period March 6, 2023 to March 27, 2024</b> |                       |
|   | <b>Amount (CAD\$)</b> |
| <b>Receipts</b>                                       |                       |
| Proceeds from Non-Core Loans                          | 5,789,556             |
| Consumer Portfolio collections (note 1)               | 2,139,867             |
| Interest  | 148,635               |
| <b>Total Receipts</b>                                 | <b>8,078,058</b>      |
| <b>Disbursements</b>                                  |                       |
| Professional fees and disbursements                   | 1,839,255             |
| Wages, benefits and source deductions                 | 186,777               |
| HST, net  | 139,363               |
| Rent and utilities                                    | 35,627                |
| Other legal fees and disbursements                    | 34,634                |
| Paralegal and security discharge costs                | 29,203                |
| General and administration                            | 11,743                |
| <b>Total Disbursements</b>                            | <b>2,276,601</b>      |
| <b>Net Cash Flows</b>                                 | <b>5,801,456</b>      |

1. Consumer Portfolio collections include: (i) amounts collected prior to Closing; and (ii) monthly VTBN payments.

6.2 The Skymark receipts for the Reporting Period are comprised predominantly of: (a) Non-Core Loans proceeds, which include distributions received from the Mahal Receiver and certain settlement proceeds approved in the First Settlement Approval Order; and (b) Consumer Portfolio collections comprised of (i) monthly lease and loan payments (the "Consumer Loan Payments") collected in respect of the Consumer Portfolio during the Reporting Period, (ii) amounts remitted directly by consumer debtors who had chosen to pay out their Consumer Loan(s) in full prior to the maturity date (the "Prepayments"), and (iii) monthly Vendor Take-Back Note payments through January 2024 (the February payment is due and payable at the end of March).

- 6.3 Disbursements during the Reporting Period include: (a) the professional fees of the Receiver, Fasken, and UK counsel incurred in support of these Proceedings; (b) paralegal and other costs incurred in association with discharging NOSIs (as defined in the Third Report) in cases where Prepayments were made during the Reporting Period; (c) other costs incurred to operate the Consumer Loans business including general and administration costs.
- 6.4 As at March 27, 2024, the balance in (a) the Receiver's Skymark trust account was approximately \$5.8 million; (b) the Reserve Account established in accordance with the APA and described in Section 9.0 of the Third Report was approximately \$115,077; and (c) the Receiver's Merk trust account was approximately \$700.
- 6.5 There have been no cash flows generated by Merk during the Reporting Period as Merk is not operating, has no employees and has had no activity during the Reporting Period.

## 7.0 CONCLUSION AND RECOMMENDATION

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7.1 The Receiver respectfully recommends that the Court make an order granting the relief sought in the Second Settlement Approval Motion for the following reasons:

- a) the KLN Settlement will result in a material realization to the Skymark estate and eliminate the costs and risk associated with complex and protracted litigation in respect thereof;
- b) the KLN Settlement was negotiated among two sophisticated parties and represents a reasonable compromise of the claims and issues related to the KLN Holdback;
- c) the Bridging Receiver (likely the sole economic stakeholder in these Proceedings) supports and has consented to the KLN Settlement;
- d) the KLN Settlement Agreement contains a confidentiality provision which requires that the KLN Settlement Agreement and KLN Release be kept confidential;
- e) the confidentiality provision in the KLN Settlement Agreement is a material provision upon which KLN relied in executing such agreements;
- f) in the Receiver's experience, confidentiality provisions are typical in settlement agreements;
- g) while the Receiver is permitted to disclose the fact of the KLN Settlement (without disclosing its specific terms) it agreed to keep the underlying agreements confidential;

- h) the Receiver is therefore seeking a Court Order to seal **Confidential Appendix “A”** containing the KLN Settlement Agreement and the KLN Release in the Court file; and
- i) the Receiver is not aware of any party that would be prejudiced if this information is sealed on the terms described above.

7.2 Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief sought on the Second Settlement Approval Motion and detailed in Section 1.9 of this Fourth Report.

\*\*\*\*\*

All of which is respectfully submitted,

**Alvarez & Marsal Canada Inc., solely in its capacity as court-appointed receiver and manager of 2305145 Ontario Inc. (formerly Skymark Finance Corporation) and Merk Investments Ltd. and not in its personal or corporate capacity.**

DocuSigned by:  
  
0C8B73192A3A446

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Per: Greg Karpel, Senior Vice-President

**CONFIDENTIAL**  
**APPENDIX “A”**

TAB 3

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

THE HONOURABLE ) FRIDAY, THE 5TH  
JUSTICE STEELE ) DAY OF APRIL, 2024

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 -

**2305145 ONTARIO INC. and MERK INVESTMENTS LTD.**

Respondents

**ORDER  
(Settlement Approval and Ancillary Relief)**

**THIS MOTION**, made by Alvarez & Marsal Canada Inc. (“**A&M**”), in its capacity as the court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of all of the assets, undertakings, and properties of each of 2305145 Ontario Inc. (formerly Skymark Finance Corporation) (“**230**”) and Merk Investments Ltd. (“**Merk**”, and together with 230, the “**Companies**”), for an order, among other things, authorizing and approving the settlement agreement dated as of March 28, 2024 between KLN Holdings Inc. (“**KLN**”) and the Receiver

(for and on behalf of 230 and Merk) (the “**KLN Settlement Agreement**”), was heard this day by video conference at the courthouse, 330 University Avenue, Toronto Ontario.

**ON READING** the Motion Record of the Receiver dated March 28, 2024, the fourth report of the Receiver dated March 28, 2024 (the “**Fourth Report**”), together with Confidential Appendix “A” to the Fourth Report (the “**Confidential Appendix**”), and on hearing the submissions of counsel for the Receiver and counsel for KLN, and counsel for the other parties listed on the participant information form, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Connie Deng sworn April 1, 2024, filed:

#### **SERVICE AND DEFINITIONS**

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 capitalized terms used but not defined herein have the meanings given to them in the Fourth Report.

#### **APPROVAL OF SETTLEMENT AGREEMENT**

3. **THIS COURT ORDERS** that the KLN Settlement Agreement is hereby authorized and approved, and the Receiver and KLN are authorized and directed to take all steps necessary to give effect to the terms of the KLN Settlement Agreement.
4. **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 Companies and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Companies,

the approval of the KLN Settlement Agreement pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Companies and shall not be void or voidable by creditors of the Companies, nor shall it constitute or 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**

5. **THIS COURT ORDERS** that the Confidential Appendix shall be sealed, kept confidential and shall not form part of the public record, but 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 subject to further order of this Court.

#### **REPORT AND ACTIVITIES OF THE RECEIVER**

6. **THIS COURT ORDERS** that the Fourth Report, the Confidential Appendix, and the conduct and activities of the Receiver as described therein, be and are hereby approved, provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

**STATEMENT OF RECEIPTS AND DISBURSEMENTS**

7. **THIS COURT ORDERS** that the Receiver's statement of receipts and disbursements for the period February 6, 2024 to March 27, 2024, as set out in Section 6.0 of the Fourth Report, be and is hereby approved.

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

-and- **2305145 ONTARIO INC. et al.**

Applicant

Respondents

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

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

**Proceeding commenced at  
Toronto**

**ORDER  
(Settlement Approval and Ancillary Relief)**

**FASKEN MARTINEAU DuMOULIN LLP**

Barristers and Solicitors  
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Tel: 416 868 3450

Lawyers for the Receiver,  
Alvarez & Marsal Canada Inc.

TAB 4

**SERVICE LIST**  
**(as of March 28, 2024)**

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|------------|--|
| <b>TO:</b> | <p><b>THORNTON GROUT FINNIGAN LLP</b><br/>TD West Tower, Toronto-Dominion Centre<br/>100 Wellington Street West, Suite 3200<br/>Toronto, ON M5K 1K7<br/>Fax: 416 304 1313</p> <p><b>John L. Finnigan</b><br/>jfinnigan@tgf.ca<br/>Tel: 416 304 0558</p> <p><b>Grant B. Moffat</b><br/>gmoffat@tgf.ca<br/>Tel: 416 304 0599</p> <p><b>Adam Driedger</b><br/>adriedger@tgf.ca<br/>Tel: 416 304 1152</p> <p>Lawyers for the Applicant, PricewaterhouseCoopers Inc. in its capacity as Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds</p> |
|------------|--|

|                |   |
|----------------|---|
| <b>AND TO:</b> | <p><b>PRICEWATERHOUSECOOPERS INC.</b><br/>18 York Street, Suite 2600<br/>Toronto, ON M5J 0B2</p> <p><b>Michael McTaggart</b><br/>michael.mctaggart@pwc.com<br/>Tel: 416 687 8924</p> <p><b>Christine Sinclair</b><br/>christine.l.sinclair@pwc.com<br/>Tel: 416 687 8938</p> <p><b>Tyler Ray</b><br/>tyler.ray@pwc.com<br/>Tel: 416 687 8200</p> <p>Court-appointed receiver and manager of Bridging Finance Inc. and certain related entities and investment funds</p> |
| <b>AND TO:</b> | <p><b>LAX O'SULLIVAN LISUS GOTTLIEB LLP</b><br/>Suite 2750, 145 King Street West<br/>Toronto, ON M5H 1J8<br/>Fax: 416 598 3730</p> <p><b>Matthew Gottlieb</b><br/>mgottlieb@lolg.ca<br/>Tel: 416 644 5353</p> <p><b>Shaun Laubman</b><br/>slaubman@lolg.ca<br/>Tel: 416 360 8481</p> <p><b>David Ionis</b><br/>dionis@lolg.ca<br/>Tel: 416 956 0117</p> <p>Lawyers for the Respondents</p>  |

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| <b>AND TO:</b> | <p><b>FASKEN MARTINEAU DUMOULIN LLP</b><br/>Bay Adelaide Centre<br/>333 Bay Street, Suite 2400<br/>Toronto, ON M5H 2T6</p> <p><b>Dylan Chochla</b><br/>dchochla@fasken.com<br/>Tel: 416 862 4204</p> <p><b>Mitch Stephenson</b><br/>mstephenson@fasken.com<br/>Tel: 416 868 3502</p> <p><b>Montana Licari</b><br/>mlicari@fasken.com<br/>Tel: 416 868 3450</p> <p>Lawyers for Alvarez &amp; Marsal Canada Inc. as Court-appointed Receiver</p> |
| <b>AND TO:</b> | <p><b>ALVAREZ &amp; MARSAL CANADA INC.</b><br/>Royal Bank Plaza, South Tower<br/>200 Bay Street, Suite 2900<br/>Toronto, ON M5J 2J1<br/>Fax: 416 847 5201</p> <p><b>Greg Karpel</b><br/>gkarpel@alvarezandmarsal.com<br/>Tel: 416 847 5170</p> <p><b>Melanie Mackenzie</b><br/>mmackenzie@alvarezandmarsal.com<br/>Tel: 416 847 5158</p> <p>Court-appointed Receiver</p>   |

|                |  |
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| <b>AND TO:</b> | <b>ENBRIDGE GAS INC. and ENBRIDGE GAS INC. O/A UNION GAS</b><br>500 Consumers Road<br>North York, ON M2J 1P8<br><br><b>Armanda Pinho</b><br>armanda.pinho@enbridge.com<br><br><b>Scott Wallace</b><br>scott.wallace@enbridge.com<br><br><b>Scott Foster</b><br>scott.foster@enbridge.com<br><br><b>Amir Hasan</b><br>amir.hasan@enbridge.com<br><br><b>Shakeel Arshed</b><br>shakeel.arshed@enbridge.com |
| <b>AND TO:</b> | <b>ENLIGHTENED FUNDING CORPORATION</b><br>1100 Burloak Drive, Suite 702<br>Burlington, ON L7L 6B2<br><br><b>Eamonn Glavey</b><br>eg@enlightenedcapital.net<br>info@enlightenedcapital.net<br><br>PPSA registrant with respect to Skymark Finance Corporation   |
| <b>AND TO:</b> | <b>AUTO ONE GROUP LIMITED</b><br>150 Oakdale Road<br>Toronto, ON M3N 1V9<br><br>hello@autoone.ca<br><br>PPSA registrant with respect to Merk Investments Ltd.  |

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|----------------|---|
| <b>AND TO:</b> | <b>DEPARTMENT OF JUSTICE (CANADA)</b><br>Ontario Regional Office<br>120 Adelaide Street West, Suite 400<br>Toronto, ON M5H 1T1<br><br>AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca  |
| <b>AND TO:</b> | <b>MINISTER OF FINANCE</b><br><b>INSOLVENCY UNIT</b><br>6th Floor, 33 King Street West<br>Oshawa, ON L1H 8H5<br><br><b>Leslie Crawford</b><br>leslie.crawford@ontario.ca<br>Tel: 905 433 5657<br><br><b>Insolvency Unit</b><br>insolvency.unit@ontario.ca   |
| <b>AND TO:</b> | <b>BENNETT JONES LLP</b><br>3400 One First Canadian Place, P.O. Box 130<br>Toronto, ON M5X 1A4<br><br><b>Lincoln Caylor</b><br>CaylorL@bennettjones.com<br>Tel: 416 777 6121<br><br><b>Raj Sahni</b><br>SahniR@bennettjones.com<br>Tel: 416 777 4804<br><br><b>Nathan Shaheen</b><br>ShaheenN@bennettjones.com<br>Tel: 416 777 7306<br><br>Lawyers for 7539088 Canada Inc. and 1989474 Ontario Inc. |

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| <b>AND TO:</b> | <p><b>GARDINER ROBERTS LLP</b><br/>Bay Adelaide Centre – East Tower<br/>22 Adelaide Street West, Suite 3600<br/>Toronto, ON M5H 4E3</p> <p><b>Rob Winterstein</b><br/>rwinterstein@grllp.com<br/>Tel: 416-865-6790</p>  |

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(as of March 28, 2024)**

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

-and- **2305145 ONTARIO INC. et al.**

Applicant

Respondents

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

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

**Proceeding commenced at**  
**Toronto**

**MOTION RECORD OF THE RECEIVER**  
**(Settlement Approval and Ancillary Relief)**

**FASKEN MARTINEAU DuMOULIN LLP**

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