

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

B E T W E E N :

CMLS FINANCIAL LTD.

Applicant

- and -

BRONTE LAKESIDE LTD. and BRONTE LIMITED PARTNERSHIP

Respondents

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

**FACTUM OF THE RECEIVER  
(returnable April 7, 2026)**

March 31, 2026

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**TO: THE ATTACHED SERVICE LIST**

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## **PART I - INTRODUCTION**

1. Albert Gelman Inc. (“**AGI**”), in its capacity as the court-appointed receiver (in this capacity, the “**Receiver**”) of Bronte Lakeside Limited (the “**Debtor**”) seeks an order:
  - (a) approving the sale and offer solicitation process (the “**Sale Process**”), as outlined in the First Report of the Receiver dated March 30, 2026 (the “**First Report**”);
  - (b) approving the First Report, including the activities of the Receiver and its counsel described therein, and the confidential appendices thereto (the “**Confidential Appendices**”);
  - (c) approving the listing agreement between the Receiver and Cushman & Wakefield ULC dated March 3, 2026 (“**CW**”) (the “**Listing Agreement**”), *nunc pro tunc*, for the marketing and sale of the Real Property (as defined below) and to take such steps as the Receiver deems necessary or advisable to carry out the terms thereof;
  - (d) approving the Receiver’s Statement of Receipts and Disbursements as at March 20, 2026;
  - (e) approving the fees and disbursements of the Receiver and its counsel up to March 20, 2026, as set out in the affidavits of Tom McElroy, sworn March 27, 2026, and Michael Ng, sworn March 27, 2026 (collectively, the “**Fee Affidavits**”); and
  - (f) sealing the Confidential Appendices until: (i) the completion of the sale of the Real Property (as defined below); or (ii) further order of this Court (the “**Sealing Order**”).

## **PART II - SUMMARY OF FACTS**

2. The facts of this motion are set out in the First Report. Capitalized terms used herein but otherwise undefined have the meanings given to them in the First Report.

### **A. Parties and Background**

3. By order of the Honourable Justice Dietrich of the Ontario Superior Court of Justice (Commercial List) dated December 2, 2025 (the “**Receivership Order**”), AGI was appointed

receiver and manager without security, of all of the assets, undertakings, and properties of the Debtor.<sup>1</sup>

4. The Debtor's principal asset is the real property municipally known as 77, 87, and 93 Bronte Road and 2432–2452 Lakeshore Road West, Oakville, Ontario (the "**Real Property**"). The Debtor holds legal title to the Real Property in trust for Bronte Limited Partnership, a limited partnership formed under the *Limited Partnerships Act* (Ontario).<sup>2</sup>

5. The Real Property was acquired for the purpose of developing a six-storey, 203-unit luxury condominium project marketed as "The Residences at Bronte Lakeside". The Debtor has completed demolition on the Real Property; however, construction of the Project has not been commenced, and no improvements have been built on the Real Property.<sup>3</sup>

6. CMLS Financial Ltd. ("**CMLS**") is the applicant and senior secured creditor of the Debtor.

## **B. Listing Agreement**

7. The Receiver commissioned an appraisal of the Real Property from Altus Group. An unredacted version of the appraisal (the "**Appraisal**") is included in the Confidential Appendices.<sup>4</sup>

8. The Receiver invited three (3) experienced commercial realtors to submit listing proposals for the marketing and sale of the Real Property. An unredacted summary of the proposals is included in the Confidential Appendices.<sup>5</sup>

9. Based on a review of the proposals, the Receiver recommends approving listing the Real Property with CW. The Real Property will be listed for sale in accordance with the terms of a listing agreement that was executed between the Receiver and CW on March 3, 2026. The unredacted Listing Agreement is included in the Confidential Appendices.

## **C. Sale Process**

10. The proposed Sale Process is summarized below. The full terms are set out in the First Report.<sup>6</sup> In accordance with the Receiver's mandate and for reasons of efficiency and value

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<sup>1</sup> Motion Record of the Receiver, March 30, 2026 ("**MR**"), Tab 2, First Report of the Receiver, March 30, 2026 ("**First Report**"), p 11, para 1

<sup>2</sup> MR, Tab 2, First Report, p. 11, para 4.

<sup>3</sup> MR, Tab 2, First Report, p. 11, para 5.

<sup>4</sup> MR, Tab 2, First Report, p. 15, para 19(h), p. 55, Appendix "D".

<sup>5</sup> MR, Tab 2, First Report, p. 19, para 37.

<sup>6</sup> MR, Tab 2, First Report, pp. 19-21, paras 41-46.

maximization, the Sale Process has already been commenced on a rolling basis, with Court approval now sought concurrently.

11. The Sale Process commenced during the week of March 30, 2026. It is designed to solicit interest from both purchasers seeking to complete development of the Project and those pursuing alternative redevelopment strategies. Purchasers in the former category are subject to pending project timelines and require a prompt closing. Maintaining momentum is necessary to preserve that time-sensitive interest. In these circumstances, there is no benefit to delaying commencement pending Court approval.

12. Milestone	Deadline
Commencement Date	Beginning the week of March 30 to maximize exposure to the market (the " <b>Commencement Date</b> ")
Marketing Period	Starting on the Commencement Date and continuing on an ongoing basis, subject to extension by the Receiver in its sole discretion, in consultation with the Listing Broker.
Bid Deadline (if any)	<p>To be established by the Receiver, in consultation with the Listing Broker. Based on market interest, the Listing Broker may recommend the implementation and timing of a bid deadline.</p> <p>If a bid deadline (the "<b>Bid Deadline</b>") is established, the Listing Broker will notify all parties who, at the time, have obtained access to the data room within 10 calendar days. If a Bid Deadline is established and multiple bids are received, the Listing Broker and Receiver will review and assess the bids.</p>
Successful Offer Selection Deadline	<p>Flexible and ongoing. The Receiver, in consultation with the Listing Broker, will review offers as received or following any Bid Deadline.</p> <p>There is no fixed bid selection date. The Receiver may accept the best available offer at any time including prior to or after any Bid Deadline.</p>
Hearing for Approval and Vesting Order	To be scheduled by the Receiver, acting reasonably, and subject to Court availability.

13. Additional aspects of the Sale Process include:

(a) The Real Property will be marketed on an "as is, where is" basis;

- (b) The Receiver reserves the right not to accept any offer, including the highest offer;
- (c) The Receiver will consider offers that assume existing Agreements of Purchase and Sale and those that do not; and
- (d) The Receiver may waive strict compliance with the Sale Process, including any deadline in the table above, and may modify the Sale Process or adopt procedures that better promote the sale of the Real Property or increase recoveries.<sup>7</sup>

#### **D. Sealing Order**

14. The Confidential Appendices contain: (i) the Appraisal; (ii) details of the listing proposals received; and (iii) the Listing Agreement.<sup>8</sup>

15. The Confidential Appendices contain commercially sensitive information, which, if disclosed, could negatively impact a future sale of the Real Property. Accordingly, the Receiver requests a Sealing Order for the Confidential Appendices until the earlier of: (i) the completion of a sale of the Real Property; or (ii) a further order of this Court.

### **PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES**

16. This factum addresses the following issues before the Court:

- (a) approval of the Listing Agreement;
- (b) approval of the Sale Process;
- (c) sealing of the Confidential Appendices; and
- (d) approval of the First Report, including the interim fees and disbursements of the Receiver and its counsel set out therein.

#### **A. Listing Agreement Should be Approved**

17. The Receiver seeks approval of the Listing Agreement with CW. CMLS approves listing the Real Property with CW and the proposed Listing Agreement.<sup>9</sup> Courts recognize that receivers

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<sup>7</sup> MR, Tab 2, First Report, p. 21, para 45.

<sup>8</sup> MR, Tab 2, First Report, pp. 12, 15 and 19, paras 13(b), 19(h) and 37.

<sup>9</sup> MR, Tab 2, First Report, pp. 12-13, para 13.

commonly retain real estate brokers when marketing real property and generally defer to the receiver's business judgment in doing so.<sup>10</sup>

18. Courts have approved listing agreements *nunc pro tunc*. Courts have recognized that approval may appropriately be sought concurrently in order to reduce costs to the estate and promote administrative efficiency.<sup>11</sup> Courts have also recognized that there is a broad discretion under s. 243(1)(c) of the *Bankruptcy and Insolvency Act* to approve broker engagements, including where the receiver has conducted a selection process, consulted stakeholders, and selected a qualified broker on commercially reasonable terms.<sup>12</sup>

## **B. Sale Process Should Be Approved**

19. This Court has the jurisdiction to approve the Sale Process pursuant to section 243(1)(c) of the *Bankruptcy and Insolvency Act*.<sup>13</sup>

20. While the decision to approve a particular form of sale process is distinct from the approval of a proposed sale transaction, the reasonableness and adequacy of any sale process must be assessed with a view to the considerations for the approval of a proposed sale. The Court of Appeal summarized these factors in *Royal Bank v Soundair Corp.*<sup>14</sup>

- (a) whether the receiver has made a sufficient effort to get the best price and not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers are obtained; and
- (d) whether there is unfairness in the working out of the process.<sup>15</sup>

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<sup>10</sup> *Marchant Realty Partners Inc v 2407553 Ontario Inc.*, [2021 ONCA 375](#) at [para 8](#); *Choice Properties Limited Partnership v Penady (Barrie) Ltd*, [2020 ONSC 3517](#) at [para 39](#)

<sup>11</sup> Receivership of Antamex Industries ULC in *Export Development Canada v Antamex Industries ULC*, Endorsement from Kimmel J dated October 2, 2024; *Melvyn Eisen Trustee v Diam Danforth Property Inc*, Order from Koehnen J dated May 22, 2020.

<sup>12</sup> *KEB Hana Bank v Mizrahi Commercial (The One) LP et al*, [2024 ONSC 3739](#) at paras [35-43](#).

<sup>13</sup> *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3, s 243\(1\)\(c\)](#)

<sup>14</sup> *Royal Bank of Canada v Soundair Corp.*, [1991 CanLII 2727](#) (ONCA) [*Soundair*]

<sup>15</sup> *CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd*, [2012 ONSC 1750](#) at [para 6](#) [*CCM*] citing *Soundair*

21. The exercise that a court must perform when deciding whether to approve a sale process is to keep the *Soundair* factors in mind while assessing:

- (a) the fairness, transparency, and integrity of the proposed process;
- (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
- (c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.<sup>16</sup>

22. A proposed sale process need not be perfect, only commercially reasonable.<sup>17</sup> Courts generally defer to a receiver's judgment because there is a "well-established reluctance on the part of courts to second-guess the expertise and considered business decisions of their receivers in arriving at their recommendations."<sup>18</sup>

23. The Sale Process is commercially reasonable. It establishes a structured marketing process while preserving flexibility to respond to market conditions. The Receiver will commence the Sale Process on or about April 1, 2026, to increase market exposure and preserve momentum, while seeking Court approval concurrently. CMLS has been consulted and approves the Sale Process.<sup>19</sup>

24. The Receiver notes that:

- (a) The Appraisal will inform the Sale Process;
- (b) CW has been selected based on the three proposals received (as further outlined in the Confidential Appendices); and
- (c) any sale pursuant to the Sale Process is subject to further approval of the Court.

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<sup>16</sup> CCM, at [para 6](#); *Ontario Securities Commission v Bridging Finance Inc.*, [2021 ONSC 5338](#) at [paras 7-8](#).

<sup>17</sup> *Marchant Realty Partners Inc v 2407553 Ontario Inc*, [2021 ONCA 375](#) at [para 19](#)

<sup>18</sup> *Royal Bank of Canada v 2668144 Ontario Inc et al*, [2024 ONSC 1680](#) at [para 30](#) citing *Regal Constellation Hotel Ltd, Re*, [2004 CanLII 206](#) (ONCA) at [para 23](#)

<sup>19</sup> MR, Tab 2, First Report, p 19, para 41

**C. Sealing Order Should Be Granted**

25. Section 137(2) of the *Courts of Justice Act*<sup>20</sup> provides this Court jurisdiction to issue the Sealing Order.

26. In *Sherman Estate v Donovan*,<sup>21</sup> the Supreme Court confirmed that in granting a sealing order, the following considerations must be addressed:

- (a) court openness poses a serious risk to an important public interest;
- (b) the sealing 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.<sup>22</sup>

27. The Supreme Court also observed that commercial interest in the context of litigation is an important interest requiring protection.<sup>23</sup>

28. In the present circumstances, the Confidential Appendices contain commercially sensitive information, which, if made public, could negatively impact a future sale of the Real Property by the Receiver. The benefits of the Sealing Order outweigh the negative consequences related to restricting public access to the court record, which will be for a limited duration because the Sealing Order would remain in effect only until the Receiver is discharged or further order of this Court.

29. Accordingly, the Receiver requests that the Confidential Appendices be sealed until: (i) the completion of the sale of the Real Property; or (ii) a further order of this Court.

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<sup>20</sup> *Courts of Justice Act*, [RSO 1990 c C.43, s 137\(2\)](#)

<sup>21</sup> *Sherman Estate v. Donovan*, [2021 SCC 25](#) [*Sherman*]; the Supreme Court of Canada affirmed the test established in *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#) [*Sierra Club*].

<sup>22</sup> *Sherman*, at [para 38](#)

<sup>23</sup> *Sherman*, at [para 41](#); *Sierra Club*, at [para 53](#)

**D. Activities and Fees of the Receiver and its Counsel Should be Approved**

30. The Receiver seeks approval of its activities and conduct, as set out in the First Report. The approval of a court officer's activities and reports is relief that is "routinely granted".<sup>24</sup>

31. The activities of the Receiver described in the First Report were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Appointment Order.

32. The jurisdiction of the Court to pass the accounts of the Receiver and its counsel is confirmed in the Appointment Order, which directs that: "the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a Judge of the Ontario Superior Court of Justice (Commercial List)".<sup>25</sup>

33. On a motion to pass accounts, courts must consider the "Overriding principle of reasonableness", focusing on the overall value contributed by the Receiver and its counsel. In *Bank of Nova Scotia v. Diemer*, the Ontario Court of Appeal stated, "the focus of the fair and reasonable assessment should be on what was accomplished, and not how much time it took".<sup>26</sup>

34. As detailed in the fee affidavits of the Receiver and its counsel, the Receiver seeks approval of:

- (a) the Receiver's interim Statement of Receipts and Disbursements in the amount of \$18,464.00 for the period from December 2, 2025 to March 21, 2026;
- (b) the Receiver's fees in the amount of \$100,967.20 inclusive of disbursements and HST up to February 28, 2026; and
- (c) the Receiver's counsel's fees in the amount of \$145,864.36 plus HST and disbursements for the period from December 2, 2025 to March 20, 2026.

35. The Receiver and its counsel have charged standard hourly rates that are consistent with the market rates for insolvency services of this nature. All steps taken by the Receiver have been

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<sup>24</sup> *Bank of America Canada v. Willann Investments Ltd.*, [1996 CanLII 2782](#) (ONCA); *Target Canada Co. (Re)*, [2015 ONSC 7574](#), paras [22-23](#); *Re Hangfen Evergreen Inc.*, [2017 ONSC 7161](#), para [15](#)

<sup>25</sup> MR, Tab 2, First Report, Appendix A at para 19, p. 34.

<sup>26</sup> *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at para [45](#).

in an effort to assess and determine the best options available with respect to maximizing realization for the Debtor and its secured creditors.

**PART IV - ORDER REQUESTED**

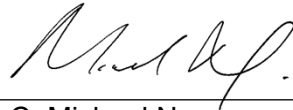
36. For the reasons set out above, the Receiver respectfully requests an order substantially in the form attached at Tab 3 of the Receiver's Motion Record.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 31<sup>st</sup> day of March, 2026.



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Domenico N. Magisano



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C. Michael Ng

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Lawyers for the Receiver

## SCHEDULE "A" - LIST OF AUTHORITIES

1. *Marchant Realty Partners Inc v 2407553 Ontario Inc.*, [2021 ONCA 375](#)
2. *Choice Properties Limited Partnership v Penady (Barrie) Ltd*, [2020 ONSC 3517](#)
3. *Receivership of Antamex Industries ULC in Export Development Canada v Antamex Industries ULC*, Endorsement from Kimmel J dated October 2, 2024
4. *Melvyn Eisen Trustee v Diam Danforth Property Inc*, Order from Koehnen J dated May 22, 2020
5. *KEB Hana Bank v Mizrahi Commercial (The One) LP et al*, [2024 ONSC 3739](#) at paras [35-43](#)
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8. *Ontario Securities Commission v Bridging Finance Inc.*, [2021 ONSC 5338](#)
9. *Royal Bank of Canada v 2668144 Ontario Inc et al*, [2024 ONSC 1680](#)
10. *Regal Constellation Hotel Ltd, Re*, [2004 CanLII 206](#)
11. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
12. *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#)
13. *Bank of America Canada v. Willann Investments Ltd.*, [1996 CanLII 2782](#) (ONCA)
14. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
15. *Re Hangfen Evergreen Inc.*, [2017 ONSC 7161](#)
16. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)

## **SCHEDULE "B" - TEXT OF STATUTES, REGULATIONS & BY - LAWS**

### **Bankruptcy and Insolvency Act, RSC 1985, c. B-3**

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

(a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;

(b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or

(c) take any other action that the court considers advisable.

### **Courts of Justice Act, RSO 1990, c. C43**

#### **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.

CMLS FINANCIAL LTD.  
Applicant

and BRONTE LAKESIDE LTD. et al.  
Respondent

Court File No. CL-25-00753553-0000

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

Proceeding commenced at TORONTO

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**FACTUM OF THE RECEIVER  
(returnable April 7, 2026)**

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