

FORCE FILED



No. S-267204
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

BANK OF MONTREAL

PETITIONER

AND

**CANSTAR RESTORATIONS LIMITED PARTNERSHIP, by its general partner,
CANSTAR RESTORATIONS GP INC., CANSTAR RESTORATIONS GP INC., and
L.U.N.A RESTORATIONS INC.**

RESPONDENTS

NOTICE OF APPLICATION

Name of applicant: AlixPartners Restructuring, Inc.

To: The Service List, a copy of which is attached hereto as Schedule "A".

TAKE NOTICE that, subject to the condition noted below, an application will be made by the applicant to the Honourable Justice Stephens at the courthouse at 800 Smithe Street, Vancouver, British Columbia on September 28, 2026 at 10:00 a.m. for the orders set out in Part 1 below. The applicant's application is conditional upon this Court granting the Petitioner's application to appoint AlixPartners Restructuring, Inc., as receiver over all of the properties, assets and undertakings of the Respondents (the "**Receivership Application**"), which Receivership Application has been scheduled immediately prior to the within Notice of Application.

The applicant estimates that the application will take 2.5 hours.

This matter is not within the jurisdiction of an associate judge. The date and time of this application has been set by Scheduling.

Part 1 ORDERS SOUGHT

1. An order, substantially in the form attached hereto as Schedule "B", for, among other things, the following relief:

- (a) abridging the time for and validating service of this Notice of Application and related Motion Record, and directing that any further service thereof be dispensed with, such that this Application is properly returnable on September 28, 2026;
- (b) approving the Agreement of Purchase and Sale dated September 15, 2026 (the “**Agreement**”) between the Respondents, Canstar Restorations Limited Partnership (“**Canstar LP**”), Canstar Restorations GP Inc. (“**GP Co**”), and L.U.N.A Restorations Inc. (“**LUNA**” and, together with Canstar LP and GP Co, the “**Canstar Group**” or the “**Debtors**”), as vendors, and Premium Restorations Ltd. (“**Premium**”), as purchaser (the “**Purchaser**”), a redacted copy of which is attached as Appendix “E” to the Pre-Filing Report of AlixPartners Restructuring, Inc. (“**AlixPartners**” and, in its capacity as receiver and manager of the Canstar Group, the “**Receiver**”) dated September 25, 2026 (the “**Pre-Filing Report**”), and an unredacted copy of which is attached as Confidential Appendix “2” to the Receiver’s Confidential Supplement to the Pre-Filing Report dated September 25, 2026 (the “**Confidential Report**”), and approving the transaction contemplated by the Agreement (the “**Transaction**”);
- (c) approving the Transition Services Agreement to be entered into between the Canstar Group and 1608083 BC Ltd. (“**ResidualCo**”) after the closing of the Transaction, in substantially the form of agreement attached as Appendix “F” to the Pre-Filing Report (the “**TSA**”);
- (d) authorizing the Receiver to take such steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction;
- (e) upon closing of the Transaction:
 - (i) issuing to and vesting in the Purchaser the Subscribed Shares and the New LP Units, and all right, title, interest and entitlement granted to the holder thereof, free and clear of all Claims and Encumbrances;

- (ii) transferring to and vesting in ResidualCo all of the Canstar Group's right, title and interest in and to the Excluded Assets and the Excluded Liabilities, such that the Excluded Liabilities shall become liabilities of ResidualCo;
- (iii) terminating the Excluded Employees and the Transition Employees, and deeming the Transition Employees to be employees of ResidualCo;
- (iv) deeming ResidualCo to be the tenant under each Transition Lease, and authorizing ResidualCo to permit the Canstar Group, the Purchaser and their respective affiliates, employees, agents, contractors and representatives to occupy, access and utilize the premises subject to the Transition Leases;
- (v) releasing and discharging the Canstar Group from and in respect of all Excluded Liabilities;
- (vi) redeeming, cancelling, terminating and extinguishing the GP Shares, the LUNA Shares and the LP Interest that are issued and outstanding immediately prior to closing, without any liability, payment or other compensation in respect thereof;
- (vii) terminating these receivership proceedings in respect of the Canstar Group and the Property (as defined in the Receivership Order, which term is further defined hereinafter), including the termination, release, and discharge of the Receiver's Charge and the Receiver's Borrowings Charge in respect of the Property; and
- (viii) appointing the Receiver as the receiver and manager of ResidualCo, and deeming all charges granted pursuant to the Receivership Order (including, without limitation, the Receiver's Charge and the Receiver's Borrowings Charge) to apply to and affect all assets, undertakings, and properties of ResidualCo, in accordance with the terms set out in the Receivership Order; and

- (f) approving releases in favour of the Canstar Group, the Purchaser, ResidualCo and Summit Cap Advisors Ltd. (and their respective directors, officers, employees, legal counsel and advisors), the ResidualCo Director, and the Receiver and its legal counsel, in respect of the commencement of these receivership proceedings, the Sale Process, the entering into and execution of the Agreement and ancillary documents, and the implementation of the Transaction; and
- (g) declaring that the Receiver and its affiliates shall not be considered the employer of the Transition Employees and shall incur no liability in respect of employee-related obligations and claims relating to the Transition Employees, provided that ResidualCo shall remain liable to the Transition Employees in respect of all employee-related obligations and claims,

(the “RVO”).

- 2. An order, substantially in the form attached hereto as Schedule “C”, which directs that the Confidential Report be sealed on the Court record until the earlier of 120 days from the closing of the Transaction, or further order of this Court.

Part 2 FACTUAL BASIS

- 3. Capitalized terms used and not otherwise defined in this notice of application shall have the meanings ascribed to them in the receivership order which may be granted in these proceedings on or about September 28, 2026 (the “**Receivership Order**”), the Pre-Filing Report, or the Agreement, as applicable.

Background

- 4. The Debtors carry on business providing commercial restorations, renovations and repair services in British Columbia, Alberta and Saskatchewan. They do so under several brands, including “Canstar Restorations”, “Lydale Restorations”, “Lydale Construction”, “Norhaz Solutions”, “Universal Restoration Systems”, “Lydale Property Restorations”, and “ABK Restoration Services”.

5. Canstar LP is a limited partnership, with GP Co being the general partner of Canstar LP. LUNA is a wholly-owned operating subsidiary of Canstar LP.
6. The Debtors are indebted to the Bank of Montreal ("**BMO**"), in an aggregate amount which exceeds \$16.85 million, under, among other things, an operating facility and non-revolving term loan facility. Beginning in or around early 2026, the Debtors defaulted under their credit facilities with BMO. On March 11, 2026, April 21, 2026 and August 14, 2026, the Debtors and BMO entered into certain forbearance agreements (collectively, the "**Forbearance Agreement**"), pursuant to which BMO ultimately agreed that it would refrain from enforcing its security until September 30, 2026 or such earlier date as may be determined by BMO in its sole discretion. Under the terms of the Forbearance Agreement, the Canstar Group was required to carry out a Sale Process (the "**Sale Process**") in accordance with the milestones and deadlines thereunder, which Sale Process is discussed in further detail below.
7. The Debtors, or certain of them, are also indebted to certain of their shareholders, including to Fulcrum Capital Partners Inc. ("**Fulcrum**") and Canstar Construction Ltd. ("**Canstar Construction**"), directly or indirectly, in an amount not less than \$23.4 million, pursuant to subordinate secured debt instruments, and to a Fulcrum affiliate, Fulcrum Capital Partners V, LP ("**Fulcrum V**") in the amount of \$5 million, which amount is subordinate to BMO by virtue of a Participation and Administration Agreement dated June 29, 2026, between Fulcrum V and other Fulcrum affiliates and BMO. Fulcrum is also the majority owner of the Debtors, controlling the majority of the limited partnership interests in Canstar LP and the shares of GP Co.
8. In addition to the indebtedness owing to BMO, Fulcrum and Canstar Construction, the Canstar Group also owes the approximate aggregate amount of \$13.6 million to various suppliers, vehicle financiers, landlords and other creditors.
9. As a result of their financial difficulties, as further detailed in the Pre-Filing Report, on or about February 14, 2026, the Debtors engaged AlixPartners (through its related entity, AlixPartners Advisory, Inc.) to provide advisory services in connection with the Debtors' restructuring efforts.

10. Against this backdrop, and in consultation with BMO and Fulcrum, the Debtors engaged Summit Cap Advisors Ltd. (“**Summit**”) on or around April 21, 2026 to assist with the Sale Process, with the view of identifying and pursuing a going-concern transaction which would preserve the value of their business. As further detailed below, the Debtors launched the Sale Process, with the assistance of Summit, and under the oversight of, and with the involvement of, AlixPartners, in anticipation of the within receivership proceedings.
11. Ultimately, the Sale Process culminated in the execution of the Agreement and the preparation of the TSA, which the Debtors and ResidualCo (by and through the Receiver) intend to execute prior to the closing of the Transaction, if approved by this Court.
12. Following the execution of the Agreement, and in order to facilitate the proposed Transaction structure, on September 17, 2026 BMO gave written notice to the Debtors it was terminating the forbearance period, as contemplated by the Forbearance Agreement. Further, on September 17, 2026, BMO delivered to the Debtors a notice of intention to enforce security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).
13. This Application is brought concurrently with the Receivership Application. As set out above, the relief sought by the Receiver in this Application is conditional upon this Honourable Court granting the Receivership Order and appointing AlixPartners as receiver and manager of the Property. If appointed, the Receiver seeks approval of the Agreement, the Transaction, the TSA, the RVO and the related sealing order on the basis described herein and in the Pre-Filing Report, with such relief to be effective only after, and subject to, the Receiver’s appointment.

Implementation and Result of the Sale Process

14. As indicated above, the purpose of the Sale Process was to generate interest in, and solicit offers for, a restructuring, recapitalization or other form of reorganization of the business and affairs of the Debtors as a going concern.
15. The Debtors, in consultation with Summit and AlixPartners, took several steps to solicit interest in their business, including, among others, as follows:

- (a) in the weeks leading up to the launch of the Sale Process, the Debtors prepared confidential information relating to their business and operations for inclusion in a virtual data room (the “VDR”) maintained by Summit. Upon execution of a confidentiality agreement (the “CA”), interested parties were provided with access to the VDR and a copy of the Confidential Information Memorandum (the “CIM”) prepared by Summit, which contained a summary of information intended to assist prospective purchasers in evaluating a potential transaction;
 - (b) on May 15, 2026, the Debtors launched the Sale Process by distributing an offering summary and a form of CA to more than 50 prospective purchasers, which included financial buyers and strategic acquirers, such as restoration companies, insurers, facility services and environmental remediation businesses;
 - (c) on June 3, 2026, Summit delivered to interested parties a Bid Process Letter, which:
 - (i) advised of the Bid Deadline for LOIs of 5:00 p.m. (Eastern Time) on June 30, 2026; and
 - (ii) indicated that the Debtors’ objective was to enter into a binding transaction no later than July 31, 2026.
16. During the course of the Sale Process, 33 parties signed CAs, were granted access to the VDR and provided with the CIM, and four parties submitted LOIs by the Bid Deadline, including a bid from Premium. Following a review of the offers received, and further negotiations with certain of the bidders, the Debtors determined, in consultation with BMO, Fulcrum, Summit and AlixPartners, that the LOI submitted by Premium was the best offer received. Thereafter, the Debtors and Summit, in consultation with AlixPartners, negotiated and advanced the contemplated transaction with Premium, resulting in the Agreement and the contemplated TSA, as further discussed below.
17. Through the course of the parties’ negotiations to finalize the definitive transaction documents, Premium advised that one of the parties, who had separately participated in the Sale Process and submitted its own bid, would be financing a portion of Premium’s

acquisition under the Transaction. Premium disclosed this third party's participation in its bid after a determination had already been made to pursue Premium's bid as the successful bid.

18. In the Receiver's view, the Premium offer is the best available in the circumstances. In reaching this conclusion, the Receiver has considered the manner in which the Sale Process was conducted, the results of the Sale Process, the offers received, the Debtors' financial circumstances, the risks associated with any further marketing or negotiation process, and the likely outcome if the Transaction does not proceed. Each of BMO and Fulcrum are supportive of the Transaction.

The Proposed Transaction and the "Reverse Vesting" Structure

The Agreement and the TSA

19. The Agreement is structured to facilitate an expedited timeline with an outside closing date of October 30, 2026, although the parties intend to conclude the Transaction earlier, if possible. Pursuant to the Agreement, the Purchaser will acquire the Subscribed Shares (being newly issued shares in the capital stock of GP Co and LUNA) and the New LP Units, and become the sole shareholder of GP Co and LUNA, and the sole limited partner of Canstar LP.
20. The essential terms of the Agreement are summarized below; a more detailed description of the Agreement is set out in section 6 of the Pre-Filing Report, and reference should be made to the Agreement itself for a complete understanding of its terms:
 - (a) Purchased Interests: at closing, the Receiver will cause (i) GP Co and LUNA to issue the Subscribed Shares, and (ii) Canstar LP to issue the New LP Units, in each case to the Purchaser, free and clear of Claims and Encumbrances;
 - (b) Purchase Price: the Purchaser will pay cash consideration equal to the Purchase Price, subject to a Net Working Capital adjustment to be determined in accordance with the Agreement, and as more particularly described at paragraph 2(j) of section 6 of the Pre-Filing Report;

- (c) Deposit: a Deposit is currently being held in trust by the Receiver in accordance with the terms of the Agreement. The Deposit was payable in two installments, with the Second Deposit being received by the Receiver's legal counsel on September 24, 2026;
- (d) Retained Assets: the Canstar Group will retain, among other things:
 - (i) all assets used in or relating to the Business, other than the Excluded Assets;
 - (ii) the Retained Contracts; and
 - (iii) its rights under insurance policies relating to the Retained Assets or the Business, subject to certain exclusions set out in the Agreement;
- (e) Retained Liabilities: the Canstar Group will remain responsible for, among other things:
 - (i) all Liabilities relating to the Retained Assets, including under the Retained Contracts, arising from and after closing, exclusive of certain Cure Costs to be paid by ResidualCo from the sale proceeds;
 - (ii) all Liabilities of the Debtors under the Authorizations accrued from and after the Time of Closing;
 - (iii) all Retained NWC Liabilities, being generally those Liabilities relating to trades and operating vendors on active projects, which could therefore give rise to potential builders' lien claims; and
 - (iv) all Liabilities relating to Employees accruing from and after closing;
- (f) Excluded Assets: the Excluded Assets, which will be transferred to ResidualCo at closing, include, among other things:
 - (i) all assets not used in or relating to the Business, including the Excluded Contracts;

- (ii) cash, including the cash portion of the Purchase Price;
 - (iii) the Excluded Insurance Claims;
 - (iv) any equity interest in any Entity held by a Debtor (other than any Purchased Interests and the general partner interest in Canstar LP held by Canstar GP);
 - (v) tax credits, refunds and rebates, and recoveries relating to the periods ending prior to closing;
 - (vi) the Debtors' rights under Employee Plans; and
 - (vii) the assets listed in Schedule 1.1(cc) to the Agreement;
- (g) "As is, where is": consistent with an insolvency transaction, the Agreement provides for a Transaction on an "as is, where is" basis, subject to limited representations and warranties customary in such transactions;
- (h) Employee Treatment: in connection with the Transaction:
- (i) substantially all of the Canstar Group's existing 339 Employees will continue their employment with the Canstar Group, which employment shall be on their existing terms;
 - (ii) approximately nine Employees as at the date of filing this Application, will be terminated immediately prior to closing and become Excluded Employees; and
 - (iii) approximately seven other Employees will have their employment with the Canstar Group terminated and will automatically become employees of ResidualCo by operation of the RVO, on substantially the same terms and conditions as their existing employment, except as to the term of employment, for purposes of the TSA (collectively the **"Transition Employees"**). The Purchaser is considering whether it may ultimately offer

the Transition Employees full-time employment at the end of the proposed transition period;

- (i) Transition Services Agreement: in contemplation of the effective assumption of the Debtors' existing business by the Purchaser and in view of the time and logistics necessary to transition the business to the Purchaser, it is intended that the Purchaser and ResidualCo will enter into the TSA at closing. At a high level, the TSA contemplates that:
 - (i) ResidualCo will employ the Transition Employees and hold the Transition Leases for a 90-day period following closing (the "**Transition Period**");
 - (ii) the Canstar Group and the Purchaser will be permitted to continue to access and use the premises that are subject to the Transition Leases during the Transition Period, and utilize the services of the Transition Employees during the Transition Period; and
 - (iii) the costs of the TSA, including the costs of the Transition Employees and the Transition Leases incurred in connection with the TSA, will be for the account of the Canstar Group, including the Receiver's professional fees and disbursements incurred in connection with administering the TSA up to the amount of \$2,000 per month, unless otherwise agreed by Canstar, all of which will be secured by a deposit paid to ResidualCo in an amount representing one month's estimated costs under the TSA;
- (j) Conditions to Closing: closing is conditional upon, among other things, the issuance of a final and non-appealable RVO; and
- (k) Outside Date: is October 30, 2026.

Rationale for Reverse Vesting Structure

- 21. In determining that the Transaction should be completed pursuant to an RVO, the Receiver has considered a number of factors, and concluded as follows.

22. The reverse vesting structure is necessary in the circumstances. A significant number of the Canstar Group's customer contracts would require third-party consents or waivers (the "Authorizations") for them to be transferred to the Purchaser. Obtaining these Authorizations on an individual basis would involve significant time, cost, and delay, and would jeopardize the Transaction, which the Purchaser has advised must close on an expedited basis. The reverse vesting structure allows the valuable customer contracts to be preserved and the Transaction to proceed without the delay associated with seeking the Authorizations, thereby avoiding a result that would place the Transaction and the going-concern value of the Canstar Group at risk.
23. The reverse vesting structure provides a more favourable economic result compared to alternatives. The contemplated Transaction and RVO structure produce an economic result that is superior to the alternatives. The Debtors have already conducted a comprehensive Sale Process to solicit market interest, resulting in the identification of the Purchaser's bid as the best offer, and there is no money available to conduct a further sale process. The Receiver is of the view that a further marketing process will not result in a superior transaction, and would actually be prejudicial to the Debtors' stakeholders. Furthermore, the Transaction will result in superior recoveries to the Debtors' creditors than a liquidation, which would likely result if the Transaction fails to proceed. The Transaction also preserves employment for substantially all of the Debtors' existing employees, whereas such employment would be lost in a liquidation scenario.
24. There is no prejudice to the stakeholders. No stakeholder is worse off under the proposed RVO structure than under any other viable alternative. The Excluded Liabilities are being transferred to ResidualCo in accordance with the priorities that would otherwise apply, and distributions to creditors will also be made in accordance with those same priorities. Additionally, where a claim relates to an active project which could give rise to potential builders' lien claims, such claims are Retained Liabilities.
25. The consideration being paid reflects the importance and value of preserved contracts and other intangible assets. The preservation of existing contracts which will form the Retained Contracts, as well as the Authorizations, is critical to the Transaction. The Receiver

believes the consideration being paid by the Purchaser is directly attributable to the importance and value of these contracts, in turn providing the best available outcome for the Debtors' stakeholders.

The Releases Sought in the RVO

26. The proposed form of RVO contains release provisions in favour of the Debtors, the Purchaser, ResidualCo, Summit and BMO (and their respective directors, officers, employees, legal counsel and advisors), the ResidualCo Director (as defined in the RVO), and the Receiver and its legal counsel (collectively, the "**Released Parties**") from all claims in respect of the commencement of these receivership proceedings, the carrying out and conduct of the Sale Process, the entering into and execution of the Agreement and ancillary documents, or the implementation of the Transaction.
27. The proposed releases would not release the Released Parties from any claims arising from fraud, gross negligence or wilful misconduct.
28. As detailed in the Pre-Filing Report at section 7, paragraph 6:
 - (a) the Released Parties are necessary and essential to the restructuring of the Debtors;
 - (b) the claims to be released are rationally connected and necessary to the Transaction and the proposed RVO;
 - (c) the releases are an integral component of the Transaction;
 - (d) the Released Parties have contributed to the Transaction; and
 - (e) the contemplated releases benefit the Debtors and their creditors generally.

Sealing of the Confidential Report

29. The Receiver has submitted the Confidential Report in support of this Application. The Confidential Report contains, as appendices, (a) a report prepared by Summit which sets out the bids received during the Sale Process, (b) an unredacted copy of the Agreement, containing the financial terms of the Transaction. The Confidential Report also contains a

summary (the “**Liquidation Analysis Summary**”) of a liquidation analysis (the “**Liquidation Analysis**”) prepared by the Receiver.

30. The information found in the Confidential Report, if disseminated before the closing of the Transaction, would materially and negatively affect the Receiver’s ability to pursue another realization process should the Transaction fail to close. Therefore, public access to the Confidential Report poses a serious risk to an important public interest, being the orderly sale of the receivership assets with a view to maximizing value for stakeholders.

Part 3 LEGAL BASIS

31. The Receiver relies on the following:

- (a) section 183 and subsection 243(1)(c) of the *BIA*;
- (b) the British Columbia *Supreme Court Civil Rules*, B.C. Reg. 168/2009, and in particular Rules 8-1 and 22-4(2);
- (c) the inherent and equitable jurisdiction of this Honourable Court; and
- (d) such further and other legal bases and authorities as counsel may advise and this Honourable Court may permit.

The Agreement and the Transaction Should Be Approved, and the RVO Granted

The Transaction Accords with the Soundair Principles

32. The Receiver is authorized by section 243(1)(c) of the *BIA* and the Receivership Order to market and sell the Debtors’ property outside the ordinary course of business. Specifically, sub-paragraphs 2(k) and 2(l) of the Receivership Order provide that the Receiver is authorized “to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate...” and “to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business...”, subject to the approval of this Honourable Court.

Bankruptcy and Insolvency Act, RSC 1985, c B-3, as amended, s 243(1)(c); Receivership Order dated September 28, 2026 at paras 2(k), 2(l); *British Columbia v Peakhill Capital Inc*, 2024 BCCA 246 at paras 21-22, [2025] 3 WWR 420.

33. It is well-established that this Court's discretion to approve or decline a proposed transaction is to be guided by the *Soundair* principles, being:

- (a) whether the receiver has made a sufficient effort to obtain the best price and has 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 has been unfairness in the working out of the process.

Aquilini Development Limited Partnership v Garibaldi at Squamish Limited Partnership, 2024 BCSC 764 at para 100, 13 CBR (7th) 346, citing *Royal Bank v Soundair Corp*, 1991 CanLII 2727 (ONCA) at para 16, [1991] OJ No 1137.

34. Courts are to apply the *Soundair* analysis in a manner that gives deference to a receiver's commercial expertise in a given factual circumstance, including such things as the prevailing economic environment, and the risks/rewards associated with an extended or additional sales process, and should accept the recommendation of the receiver, as an officer of the court, absent exceptional circumstances. Were the court to substitute its own view in place of the receiver's commercial expertise, court-supervised insolvency sales processes would be materially undermined.

Shape Capital Corp v Keltic (Prior) Development Limited, 2026 BCSC 464 at para 34, [2026] BCJ No 487, citing *2403177 Ontario Inc v Bending Lake Iron Group Limited*, 2016 ONSC 199 at paras 73, 76, [2016] OJ No 948; *RBC Investor Services Trust v Asfars Holdings Ltd*, 2024 BCSC 2142 at para 32, 2024 CarswellBC 3441; *0989705 B.C. Ltd. (Re)*, 2026 BCSC 761 at paras 173, 183, 2026 ACWS 2167, citing *Sanjel Corp, Re*, 2016 ABQB 257 at para 57, [2016] AWLD 2474 [*Sanjel*]; see also *Sanjel* at para 112; *PricewaterhouseCoopers Inc v 1905393 Alberta Ltd*, 2019 ABCA 433 at paras 13-14, 98 Alta LR (6th) 1.

35. In applying the *Soundair* principles, courts have also approved asset sales by receivers in the absence of a court-supervised sale process or formal marketing process in what are known as “quick flip” or “pre-pack” transactions. For example, in *Tool-Plas*, Justice Morawetz of the Ontario Superior Court of Justice approved a quick flip sale where a viable transaction was elicited prior to the receiver’s appointment. Justice Morawetz was satisfied that the *Soundair* factors had been met and stated that, while a quick flip transaction is not the norm, it may be the best or only option available in the circumstances.

Tool-Plas Systems Inc, Re, [2008] OJ No 4218 at paras 15,20, 172 ACWS (3d) 112 [*Tool-Plas*].

36. Where approval of a quick flip transaction is sought, the court should consider its impact on the various parties and assess whether they would realistically be treated any differently if an extended sale process was followed. A quick flip transaction may be appropriate where:

- (a) there are substantial risks associated with a further marketing process;
- (b) the proposed price exceeds the going concern and liquidation value of the assets;
- (c) the transaction will be a successful outcome for certain stakeholders, including secured creditors; and
- (d) where it is inevitable that certain parties will receive no recoveries.

Tool-Plas at paras 10-11, 15-17, 20.

37. The use of quick flip transactions has become increasingly common in receivership proceedings. Courts have recognized that, in certain circumstances, a quick flip transaction “may well represent the best, or only, commercial alternative to liquidation”. While the *Soundair* factors continue to apply, pre-pack transactions require special care to be paid to the adequacy and fairness of the sale process. In this regard, this Court has cited with approval the following passage from the Court of King’s Bench of Alberta decision in *Sanjel*, which arose from proceedings under the *Companies’ Creditors Arrangement Act* (Canada):

A pre-filing SISP is not of itself abusive of the CCAA. Nothing in the statute precludes it. Of course, a pre-filing SISP must meet the principles and requirements of section 36 of the CCAA and must be considered against the Soundair principles. The Trustee submits that such a SISP should be subject to heightened scrutiny. It may well be correct that a pre-filing SISP will be subject to greater challenges from stakeholders, and that it may be more difficult for the debtor company to establish that it was conducted in a fair and effective manner, given the lack of supervision by the Court and the Monitor, who as a court officer has statutory duties.

Mountain Equipment Co-Operative (Re), 2020 BCSC 1586 at para 103, 324 ACWS (3d) 467, citing *Sanjel* at para 70; *Montrose Mortgage Corporation v Kingsway Arms Ottawa Inc*, 2013 ONSC 6905 at para 10, 233 ACWS (3d) 638.

38. In *Sanjel*, Justice Romaine approved a pre-pack transaction even in the face of opposition. In approving the transaction, Justice Romaine specifically noted, among other things, that:
- (a) the sale process was reasonable despite not being conducted as a Court-supervised process as it was not unreasonably brief in the given economic climate and deteriorating financial position of the debtor company;
 - (b) the sale process was robust and competitive with sufficient efforts made to obtain the best price possible and it was unlikely that an extended sale process would result in a materially better offer;
 - (c) the proposed sale was more beneficial to creditors than a sale or disposition in bankruptcy and creditors had been involved in the sale process; and
 - (d) while only one creditor would see a return from the transaction, all other viable and reasonable options had been considered.

Sanjel at paras 2, 112.

39. In summary, where approval of a pre-pack transaction is sought, the transaction should still be approved if the previous marketing process was nonetheless fair and reasonable and “no purpose would be served by a further marketing process”.

Romspen Investment Corporation v Tung Kee Investment Canada Ltd, 2023 ONSC 5911 at para 48, [2023] OJ No 4771.

40. In this instance, the Agreement and the proposed Transaction are commercially reasonable and fair, and satisfy the *Soundair* principles, given that:
- (a) the Debtors, in consultation with the now-Receiver and Summit, conducted a robust sales process and, in so doing, have thoroughly canvassed the market to obtain the best value for the Property;
 - (b) the involvement of AlixPartners overseeing and consulting on the Sale Process, was undertaken with a view to the likely requirement that the transaction would need to be approved by a court in an insolvency proceeding and accordingly, the process was designed to have attributes consistent with a court-supervised insolvency sale process. In this regard, AlixPartners was involved in and oversaw all aspects of the Sale Process;
 - (c) the Transaction is the culmination of a comprehensive process with outreach to targeted potential interested parties, and represents the best offer received for the Property from among multiple offers;
 - (d) the Transaction provides cash consideration that will flow to ResidualCo for distribution to creditors. The Receiver's estimated waterfall analysis contemplates that the first-ranking secured creditor, BMO, will be repaid in full, and Fulcrum, as the second-ranking secured creditor, is also anticipated to receive a distribution, albeit it will suffer a significant shortfall;
 - (e) the Sale Process was carried out in an efficient and fair manner, and there has been no unfairness in the working out of the process leading up to the Agreement and the proposed Transaction;
 - (f) the Debtors do not have sufficient funds to pursue a further sale process, and the Receiver does not believe such further process would yield a superior offer. In fact, the Debtors' accrued accounts payable listing has been increasing over the summer months, indicating a deteriorating financial position;

- (g) the proposed consideration exceeds the liquidation value of the assets, based on the Liquidation Analysis; and
- (h) the Transaction will be a successful outcome for a number of stakeholders, including the secured creditors BMO and Fulcrum, Employees whose employment will remain ongoing post-closing, contract counterparties to the Retained Contracts, and certain vendors and suppliers whose outstanding accounts are being retained by the Debtors on active job sites.

41. In addition to the *Soundair* principles outlined above, courts have also considered the additional *Harte Gold* factors when a transaction is structured as a “reverse vesting” transaction, being the following:

- (a) whether the RVO is necessary in the circumstances;
- (b) whether the RVO structure produces an economic result at least as favourable as any other viable alternative;
- (c) whether the general stakeholders are not worse off under the RVO structure than they would have been under any other viable alternative; and
- (d) whether the consideration being paid for the debtor’s business reflects the importance and value of the intangible assets being preserved under the RVO structure.

Harte Gold Corp (Re), 2022 ONSC 653 at para 38, 343 ACWS (3d) 284 [*Harte Gold*].

42. While RVOs should not be the “norm”, courts have found RVOs to be necessary and appropriate in circumstances where the debtor’s valuable assets include key agreements and authorizations essential to the debtor’s ongoing operations, that would be difficult or impossible to assign through a conventional asset purchase transaction.

Harte Gold at para 75; *Arrangement relatif à Blackrock Metals Inc.*, 2022 QCCS 2828 at para 114, 2022 ACWS 5339; *Just Energy Group Inc et al v Morgan Stanley Capital Group Inc et al*, 2022 ONSC 6354 at paras 33-34, 39, 45, 2022 ACWS 5355.

43. The Transaction and the RVO sought satisfy the *Harte Gold* test and should be approved. Among other things:

- (a) the RVO is necessary: the reverse vesting structure enables ongoing business operations without the inefficiencies, delays, and uncertainties associated with seeking the necessary Authorizations for those contracts that the Debtors will retain post-closing. Obtaining the Authorizations on an individual, contract-by-contract basis would involve significant time, cost and delay, and would jeopardize the Transaction, which the Purchaser has advised must close on an expedited basis. The RVO structure enables the applicable contracts (and their associated going-concern value) to be preserved without the delay that would otherwise be occasioned by seeking the Authorizations individually. Further, the reverse vesting structure facilitates the preservation of certain of the Debtors' tax attributes.
- (b) the RVO structure produces a more favourable economic result than any other viable alternative: the Debtors, with the assistance of Summit and under the oversight of the Receiver, already conducted a comprehensive Sale Process in which 33 parties signed confidentiality agreements and four parties, including the Purchaser, submitted letters of intent. There is no funding available to conduct a further sale process. The Receiver does not believe that further marketing efforts would yield a superior transaction, and, absent the Transaction, the Debtors' business will be liquidated, which the Liquidation Analysis demonstrates would produce inferior recoveries for stakeholders;
- (c) no stakeholders are worse off as a result of the RVO structure: to the contrary, stakeholders would be better off with the contemplated Transaction as it provides the highest possible recovery. Further, the Excluded Liabilities are being transferred to, and assumed by, ResidualCo in accordance with the priorities that would otherwise apply to such claims, and distributions to creditors will likewise be made in accordance with these priorities, such that no stakeholder's position is adversely impacted as a result of the RVO structure. It is anticipated that BMO will be repaid in full and certain distributions will be made to Fulcrum and Canstar

Construction. Furthermore, certain vendors on active job sites will have their outstanding accounts retained. The Transaction also preserves ongoing employment for substantially all of the Debtors' current 339 employees, whose employment would otherwise be terminated in a liquidation; and

- (d) the consideration being paid reflects the importance and value of the Debtors' intangible assets; the Debtors' contracts and the Authorizations were extensively marketed for sale during the Sale Process, and the consideration payable by the Purchaser is directly attributable to the importance and value of the Authorizations being preserved through an RVO structure, thereby providing the best available outcome for the Debtors' stakeholders.

- 44. The Receiver acknowledges that the Transaction results in different treatment as between the Retained NWC Liabilities, which will be satisfied by the Canstar Group following closing, and the Excluded Liabilities, which will be transferred to and assumed by ResidualCo. That distinction is not arbitrary, and it does not render the general body of unsecured creditors worse off than they would be under any other viable alternative. The Retained NWC Liabilities are owed to trades and operating vendors engaged on active projects, whose continued performance is necessary to complete work in progress and to preserve the customer relationships and Retained Contracts that constitute the going-concern value reflected in the Purchase Price, and the vast majority of whose accounts could otherwise give rise to builders' lien claims against the Debtors' customers and the lands on which the Business is performing work. Critically, the holders of the Excluded Liabilities are no worse off by reason of that distinction. As set out above, the Transaction is not anticipated to generate sufficient proceeds to repay Fulcrum's and Canstar Construction's secured indebtedness in full, such that no distribution would be available to unsecured creditors from the proceeds of the Transaction in any event, and the Liquidation Analysis indicates that recoveries in a liquidation would be materially lower. The Excluded Liabilities are neither compromised nor extinguished by the RVO: they are preserved as against ResidualCo and will be addressed in accordance with the priorities that would otherwise apply to them.

The TSA is Integral to the Agreement and the Transaction, and Should Be Approved

45. Courts have approved transition services agreements as part of larger insolvency transactions in order to facilitate the transition of the management of the business to a purchaser. There is no independent legal test which applies to a court's assessment of a proposed transition services agreement; instead, courts assess such an agreement as part of the approved transaction structure. As Justice Marion of the Court of King's Bench of Alberta has observed in *Wallace & Carey*, it is "often appropriate to reasonably facilitate transitions" when approving proposed transactions, provided that the approval process is transparent and affected third parties are treated fairly and equitably.

See, for example: *Arctic Glacier Income Fund, Re*, 2012 CarswellMan 838, [2012] MJ No 451; *In the Matter of a Plan of Compromise or Arrangement of Sandvine Corporation et al*, 2025 ONSC 7323 at paras 2, 16, 2025 ACWS 452; *Wallace & Carey Inc (Re)*, 2025 ABKB 750 at paras 10-11, 13, 121-123, [2026] AWLD 515.

46. Further, as has been confirmed by the Supreme Court of Canada in *Peace River Hydro Partners v Petrowest Corp*, courts have broad discretion under subsection 243(1)(c) of the *BIA* to make any orders that may be appropriate in the circumstances, including authorizing the Receiver to make any action the Court considers advisable and just or convenient. The discretion conferred by this provision gives supervising judges "the broadest possible mandate in insolvency proceedings to enable them to react to any circumstances that may arise". Put otherwise, this Court is empowered to do not only what "justice dictates" but also what "practicality demands" to respond to the unique circumstances of these proceedings.

BIA, s 243(1)(c); *Peace River Hydro Partners v Petrowest Corp*, 2022 SCC 41 at para 148, [2022] 3 SCR 265; *DGDP-BC Holdings Ltd v Third Eye Capital Corporation*, 2021 ABCA 226 at para 20, [2021] 11 WWR 480.

47. Additionally, section 183 of the *BIA* provides courts with broad jurisdiction "at law and in equity as will enable them to exercise original, auxiliary and ancillary jurisdiction" in any proceedings under the *BIA*, which has been described as the provision authorizing a court to exercise its inherent jurisdiction.

BIA, s 183; *Syndic de Chronométrique inc.*, 2023 QCCA 1295 at para 57, 2023 CaswellQue 14729 [*Chronométrique*], citing

Eagle River International Ltd, Re, 2001 SCC 92 at para 20, [2001] 3 SCR 978.

48. Inherent jurisdiction enables a court, as a “pragmatic problem solver”, to exercise its jurisdiction to effect a remedy or fill statutory gaps. However, the exercise of inherent jurisdiction is not without limits. For example, it cannot be used to negate the “unambiguous expression of legislative will”, and should only be exercised in the context of applicable legislation, in this case the *BIA*.

Chronométrique at para 58, citing *Residential Warranty Co. of Canada Inc., Re*, 2006 ABCA 293 at paras 20-21, [2006] AWLD 3143.

49. The Receiver submits that the approval of the TSA, which forms an integral component of the Transaction and is necessary to facilitate an orderly transition of the business to the Purchaser following closing, is consistent with the express purpose of the *BIA*, within the Court’s express statutory jurisdiction, or alternatively, inherent jurisdiction, and is just, convenient, and advisable in the circumstances.
50. Here, the TSA was negotiated as part of the Transaction that emerged from the Sale Process and forms an essential component of the overall value-maximizing transaction. In particular, the TSA preserves the going-concern value reflected in the Purchase Price by permitting continued access to certain leased premises and the services of the Transition Employees during a limited transition period of 90 days. The Receiver has reviewed the TSA and is satisfied that its terms are commercially reasonable and in the best interests of the Debtors’ stakeholders, including the Transition Employees.
51. The TSA contemplates that a limited number of employees will continue to provide services during the 90-day transition period as Transition Employees. The proposed RVO provides that the employment of the Transition Employees with the Canstar Group will be terminated immediately prior to closing and that the Transition Employees will automatically become employees of ResidualCo. The Receiver is of the view that this aspect of the proposed Transaction facilitates an orderly transition of the Business and to preserve going-concern value.

52. The Receiver further submits that the proposed treatment of the Transition Employees is fair and reasonable in the circumstances. The Transition Employees will continue their employment on substantially the same terms and conditions, except as to term, as existed immediately prior to closing and their employment-related rights and claims will be preserved against ResidualCo. The transition period will enable the Purchaser further time to determine whether a Transition Employee will be offered employment going-forward, thereby further benefiting the Transition Employee with the potential of a future employment opportunity.
53. Accordingly, the proposed structure provides affected employees with an opportunity for continued employment for a period of time following closing of the Transaction, and potentially full-time employment with the Canstar Group (who will then be owned by the Purchaser, or its nominee), in circumstances where their employment would otherwise be terminated at closing.
54. The Receiver submits that this Court has jurisdiction to approve this aspect of the proposed Transaction pursuant to sections 183 and 243(1)(c) of the *BIA*, together with its inherent jurisdiction.
55. As detailed above, the Transaction arises from a robust, comprehensive, and fair Sale Process, representing the best offer for the Debtors' business as a going concern. The proposed TSA, including the proposed treatment of the Transition Employees, is critical to the success of the Transaction as a whole, preserves stakeholder value, and does not result in prejudice to the affected employees. It is just, reasonable and necessary in the circumstances for this Court to approve the TSA.

The Releases Sought in the RVO Should Be Granted

56. Courts have considered the factors set out in the Ontario Superior Court's decision *Lydian International Limited (Re)* when determining whether to approve releases in reverse vesting orders, which are as follows:
- (a) whether the parties to be released from claims were necessary and essential to the restructuring of the debtor;

- (b) whether the claims to be released were rationally connected to the purpose of the plan and necessary for it;
- (c) whether the plan could succeed without the releases;
- (d) whether the parties being released were contributing to the plan; and
- (e) whether the release benefitted the debtors as well as the creditors generally.

Lydian International Limited (Re), 2020 ONSC 4006 at para 54 [*Lydian*], 321 ACWS (3d) 618, as cited in *Peakhill Capital Inc v Southview Gardens Limited Partnership*, 2023 BCSC 1476 at para 79, 2023 ACWS 4242.

57. Here, paragraph 32 of the RVO contemplates releases in favour of the Released Parties, being: the Debtors, the Purchaser, ResidualCo, Summit, and BMO (and their respective directors, officers, employees, legal counsel and advisors), the ResidualCo Director, and the Receiver and its legal counsel from all claims in respect of the entrance and commencement of these receivership proceedings, the entering into and execution of the Agreement, or the implementation of the Transaction.
58. In this case, BMO's inclusion among the Released Parties reflects the active role it has taken to support and facilitate the proposed Transaction. Among other things, BMO has (a) extended its forbearance twice while continuing to fund the Debtors' business during the course of the Sale Process, (b) consented to Summit's retention and fees, and the proposed Sale Advisor Charge, (c) agreed to provide funding to Premium to facilitate the Transaction. In the context of *CCAA* proceedings, courts have approved releases in favour of senior lenders where the senior lenders have provided financial contributions (including through forbearances) and support which are critical to a proposed plan, and in favour of plan sponsors with material economic contributions to the plan. Here, funding and support provided by BMO are likewise instrumental to the success of these proceedings, the Transaction, and the continuation of the Canstar Group as a going concern.

See, for example: *Lydian* at paras 50-57, 62; *Target Canada Co, Re*, 2016 ONSC 3651 at paras 43-44, 274 ACWS (3d) 259.

59. In addition, and as ancillary to the TSA, paragraphs 27 and 28 of the RVO provide that the Proposed Receiver and its affiliates shall not be considered the employer of the Transition Employees, who shall be employees of ResidualCo, and therefore shall incur no liability in respect of employee-related obligations and claims relating to the Transition Employees. ResidualCo will remain liable to the Transition Employees in respect of all employee-related obligations and claims.
60. The Receiver respectfully submits that the releases contemplated in the RVO should be granted as:
- (a) the Released Parties are all necessary and essential to the realization of the value of the Property in favour of the Debtors' stakeholders, and have contributed to the Sale Process, the Agreement and related agreements, as well as the preparation for and the contemplated implementation of the proposed Transaction, including through ongoing funding provided by BMO to support the business, the Sale Process and the Transaction, which in the Receiver's submission is to the benefit of the Debtors' stakeholders generally;
 - (b) the claims being released are rationally connected to the Transaction and the RVO, and any such claimant can seek recourse against ResidualCo, which is created pursuant to the RVO to address any existing claims which may be asserted in respect of unassumed liabilities;
 - (c) the contemplated Transaction cannot succeed without the proposed releases, as no purchaser would be prepared to acquire any portion of the Property without certainty that the transaction would be immune from future challenge by unsatisfied creditors;
 - (d) the releases benefit the debtors and creditors generally. Creditors can still assert their claims against ResidualCo in the same priorities as would have been accorded to them in bankruptcy proceedings, and the release in favour of the Debtors, in particular, will allow it to exit the receivership proceedings and continue business as a going concern to the benefit of all stakeholders;

- (e) the releases are limited in scope to claims arising in connection with the Receivership Proceedings, the Sale Process, the Agreement, the Transaction, the RVO and related implementation steps. In the absence of a release of such claims, reserves or charges may otherwise be required, which would reduce the value of the estate; and
- (f) the releases do not cover any claims arising from fraud, gross negligence or wilful misconduct.

The Sealing Order Should be Approved

61. As clarified by the Supreme Court of Canada in *Sherman Estate*, the test for a sealing order is predicated upon the following core requisites:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.

Sherman Estate v Donovan, 2021 SCC 25 at para 38, [2021] 2 SCR 75.

62. The Confidential Report contains the summary of the bids received during the Sale Process, the financial terms of the Transaction, and the Liquidation Analysis Summary, all of which the Receiver submits should be sealed in order to protect the Debtors' marketing efforts and the integrity of the Transaction. In insolvency matters decided since *Sherman Estate*, courts have continued to find that sealing orders are justified to protect the integrity of a receiver's sales or marketing efforts and to avoid the misuse of information by bidders in a subsequent process to obtain an unfair advantage. For example, in the receivership proceedings of Yukon Zinc Corporation, Chief Justice Duncan of the Yukon Supreme Court held:

In the insolvency context, especially where there is a sale process, it is a standard practice to keep all aspects of the bidding or sales process confidential. Courts have found this appropriately meets the *Sierra Club* test

as modified by *Sherman Estate*, as sealing this information ensures the integrity of the sales and marketing process and avoids misuse of information by bidders in a subsequent process to obtain an unfair advantage. The important public interest at stake is described as the commercial interest of the Receiver, bidders, creditors and stakeholders in ensuring a fair sales and marketing process is carried out, with all bidders on a level playing field. [underlining added]

Yukon (Government of) v Yukon Zinc Corporation, 2022
YKSC 2 at para 39, 343 ACWS (3d) 8.

63. In *Ontario Securities Commission v Bridging Finance Inc*, Chief Justice Morawetz of the Ontario Superior Court likewise characterized the interest at stake as being the “Receiver’s efforts to maximize value for stakeholders”. In granting the requested sealing order, Chief Justice Morawetz found that there were “no reasonable alternatives to the sealing order in the circumstances and... [that] no stakeholders [would] be materially prejudiced by sealing the Receiver’s Confidential Report and the salutary effects of granting the relief outweigh any deleterious effects”.

Ontario Securities Commission v Bridging Finance Inc, 2022
ONSC 1857 at para 53, 2022 ACWS 646.

64. In this case, the bids received during the course of the Sale Process, the financial terms of the Transaction, and the Liquidation Analysis Summary, if disseminated prior to the closing of the Transaction, would jeopardize any potential subsequent sale process and transaction (including in a liquidation scenario). No reasonable alternative measure is available in respect of this category. The commercially sensitive information is not confined to discrete passages capable of redaction; it comprises the substance of the appendices to the Confidential Report, being the bid summary prepared by Summit, the Receiver’s Liquidation Analysis Summary, and the unredacted Agreement. The Receiver has, however, taken steps to limit the intrusion upon the open court principle: redacted copies of the Agreement are appended to the Pre-Filing Report and are available on the public record, and the seal sought over this category is temporary only, expiring 120 days following closing, by which time the commercial sensitivity of the information will have dissipated. The salutary effects of the order accordingly outweigh its deleterious effects, and the requested sealing of the Confidential Report should be granted.

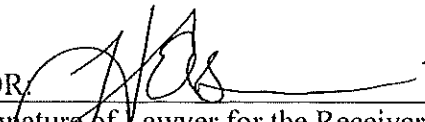
Part 4 MATERIAL TO BE RELIED ON

- 65. The Receiver's Pre-Filing Report, dated September 25, 2026.
- 66. The Receiver's Confidential Supplement to the Pre-Filing Report, dated September 25, 2026.
- 67. The Affidavit of Jesse Agassiz made September 21, 2026.
- 68. Such further and other material as counsel may advise and this Honourable Court deems admissible.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Dated: 25-Sep-2026

FOR: 
Signature of Lawyer for the Receiver,
AlixPartners Restructuring, Inc.
Kibben Jackson / Jessica Cameron / Tiffany
Bennett

To be completed by the court only:

Order made

☐ in the terms requested in paragraphs of Part 1 of
this Notice of Application

☐ with the following variations and additional terms:

.....
.....
.....

Date:

.....
Signature of ☐ Judge ☐ Master

The Solicitors for the applicant, AlixPartners Restructuring, Inc., in its capacity as Receiver, are Fasken Martineau DuMoulin LLP, whose office address and address for delivery is 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3 Telephone: +1 604-631-3131 Facsimile: +1 604 631 3232. kjackson@fasken.com, jcameron@fasken.com and tbennett@fasken.com (Reference: Kibben Jackson, Jessica Cameron and Tiffany Bennett /267908.00039)