

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

B E T W E E N:

MIZUE FUKIAGE, AKIKO KOBAYASHI, YOSHIKI FUKIAGE, KOBAYASHI KYOHODO CO., LTD., TORU FUKIAGE, AND KWANG-CHENG (TONY) WEI, IN HIS PERSONAL CAPACITY AS A TAIWANESE INVESTOR AND IN HIS CAPACITY AS AGENT FOR THE OTHER TAIWANESE INVESTORS

Applicants

- and -

CLEARVIEW GARDEN ESTATES INC., TALBOT CROSSING INC., NIAGARA ESTATES OF CHIPPAWA II INC., LONDON VALLEY INC., LONDON VALLEY II INC., LONDON VALLEY III INC., LONDON VALLEY IV INC., LONDON VALLEY V INC., FORT ERIE HILLS INC., 2533430 ONTARIO INC., CGE CAPITAL MANAGEMENT INC., TGP-TALBOT CROSSING INC., NEC II CAPITAL MANAGEMENT INC., LV CAPITAL MANAGEMENT INC., LV II CAPITAL MANAGEMENT INC., LV III CAPITAL MANAGEMENT INC., LV IV CAPITAL MANAGEMENT INC., LV V CAPITAL MANAGEMENT INC., FORT ERIE HILLS CAPITAL MANAGEMENT INC., HALTON PARK INC., NIAGARA FALLS PARK INC., TSI-HP INTERNATIONAL CANADA INC., TSI INTERNATIONAL-GRANDTAG A2A NIAGARA IV INC., GREENVALLEY ESTATES INC., GREENVALLEY ESTATES II INC., LYONS CREEK NIAGARA FALLS PARK INC., GREENVALLEY ESTATES CANADA INC., TSI INTERNATIONAL-GRANDTAG A2A GE II INC., AND TGP – LYONS CREEK NIAGARA FALLS PARK INC.

Respondents

FACTUM OF THE RECEIVER

September 25, 2026

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PART I - OVERVIEW

1. AlixPartners Restructuring, Inc. (“**AlixPartners**”), formerly known as KSV Restructuring Inc., was appointed as receiver and manager (the “**Receiver**”) of, *inter alia*, the assets, undertakings and property of various companies pursuant to an application made by a group of investors.¹ These investors had invested in certain land banking projects across Ontario, and had brought a receivership application as a result of, among other things, the alleged improper transfer and sale of certain real properties and the alleged improper distribution of sale proceeds.² AlixPartners was appointed as Receiver under section 101 of the *Courts of Justice Act* (the “**CJA**”) pursuant to an Order granted on March 6, 2025 (the “**Initial Appointment Order**”), as amended and restated pursuant to an Order granted on October 23, 2025 (the “**ARRO**”), and further amended and restated pursuant to an Order granted on June 15, 2026 (the “**Second ARRO**”).³

2. Since its appointment, the Receiver has, among other things, (i) completed the sale of six Nominee Properties;⁴ (ii) taken significant steps to investigate the allegations raised in the receivership application and to protect investors’ interests by pursuing assets of the Respondents, including by litigation; (iii) corresponded with stakeholders to keep them informed and understand their interests; and (iv) substantially completed its administration of the claims process established pursuant to the Claims Process and Interest Holdings Identification Order dated October 23, 2025, as amended by an Order dated December 9, 2025 (the “**First Claims Process**”), subject to a relatively small number of Proofs of Claim and Amendment Requests that remain under review.⁵

3. At this time, the Receiver seeks three orders:

- (a) an approval and vesting order (the “**AVO**”) in respect of the sale of certain real property located at 0 Dingman Drive in London, Ontario and legally described under PIN 08203-0076 (LT) (the “**GVE II Property**”) pursuant to an agreement of

¹ Seventh Report of AlixPartners Restructuring, Inc. dated September 17, 2026 (the “**Seventh Report**”) at [para 1](#), [Tab “G”](#) of the Motion Record of the Receiver dated September 18, 2026 (the “**Motion Record**”).

² Seventh Report at [paras 11-13](#).

³ Seventh Report at [para 1](#) and [Appendices “1” to “3”](#).

⁴ Seventh Report at [para 16](#).

⁵ Seventh Report at [paras 15](#), [18-24](#) and [120](#).

purchase and sale dated August 6, 2026 between the Receiver, as vendor, and Copperstone Farms Inc. (“**Copperstone**”), as purchaser (the “**Transaction**”);⁶

- (b) a second claims process order (the “**Second CPO**”) to assist the Receiver in identifying and quantifying Claims against Greenvalley Estates Inc., Greenvalley Estates II Inc., Lyons Creek Niagara Falls Park Inc., Greenvalley Estates Canada Inc., TSI International-Grandtag A2A GE II Inc., and TGP – Lyons Creek Niagara Falls Park Inc. (collectively, the “**Specified Respondents**”) and confirming with Interest Holders certain Holdings Information (as defined in the form of Second CPO included in the Receiver’s Motion Record);⁷ and
- (c) an order (the “**Ancillary Order**”), in substance, (i) approving each of the Supplement to the Fourth Report of the Receiver dated December 8, 2025 (the “**Supplement to the Fourth Report**”), the Fifth Report of the Receiver dated May 5, 2026 (the “**Fifth Report**”), the Supplement to the Fifth Report of the Receiver dated May 26, 2026 (the “**Supplement to the Fifth Report**”), the Sixth Report of the Receiver dated June 9, 2026 (the “**Sixth Report**”), and the Seventh Report (collectively, the “**Reports**”), and the actions and activities of the Receiver and its counsel described therein; and (ii) approving the fees and disbursements of the Receiver and its counsel for the respective periods described in the Seventh Report, as set out in the applicable fee affidavits.⁸

- 4. Capitalized terms not expressly defined in this Factum are defined in the Seventh Report.

PART II - SUMMARY OF FACTS

A. Background

- 5. Mizue Fukiage, Akiko Kobayashi, Yoshiki Fukiage, Kobayashi Kyohodo Co., Ltd. and Toru Fukiage (collectively, the “**Kobayashi Group**”) and other members of their family had made investments in certain land banking projects across Ontario.⁹

⁶ Seventh Report at [paras 45-54](#).

⁷ Seventh Report at [paras 25-44](#).

⁸ Seventh Report at [paras 5\(j\)](#) and [121-124](#).

⁹ Seventh Report at [paras 10-11](#).

6. Various companies were formed to hold title to various pieces of real estate in Ontario as nominees and bare trustees. The investments made by the Kobayashi Group and other investors (known as “**Co-Owners**”) were used to finance the acquisition and maintenance of such real estate.¹⁰

7. The Kobayashi Group became concerned about, among other things, the alleged improper transfer and sale of the real estate subject to these land banking projects without the approval of the requisite percentage of Co-Owners and the alleged improper distribution of sale proceeds without the knowledge or approval of the Co-Owners. Accordingly, the Kobayashi Group initiated these receivership proceedings with a view to bringing the Property under the supervision and control of the Receiver and securing the underlying collateral.¹¹

B. Marketing and Proposed Sale of the GVE II Property

8. Prior to the Receiver’s appointment in respect of the Specified Respondents and the GVE II Property, Copperstone entered into an agreement of purchase and sale dated February 7, 2025 with GVE II to purchase the GVE II Property (the “**Terminated APS**”). Copperstone paid a deposit to Remax West Realty Inc. Brokerage (“**Remax**”) in connection with the Terminated APS, but terminated the Terminated APS upon learning of the Hamilton Proceedings.¹²

9. The GVE II Property was marketed by Remax for 130 days on the Toronto and London/Niagara Falls multiple listing services beginning in or around August 2024. Remax also installed a “For Sale” sign on the GVE II Property, conducted targeted outreach to approximately 120 surrounding landowners, marketed the GVE II Property online and through social media, and sent an email marketing communication to its database of approximately 9,000 contacts.¹³

10. Remax continued to actively market the GVE II Property after the expiry of the multiple listing services listing, including through its database and social media channels. The Terminated APS was the only offer received following commencement of the marketing process in August

¹⁰ Seventh Report at [para 12](#).

¹¹ Seventh Report at [para 13](#).

¹² Seventh Report at [paras 45-46](#).

¹³ Seventh Report at [para 48\(a\)-\(d\)](#).

2024. Remax advised that the limited interest was attributable to certain environmental and other factors affecting the GVE II Property, which limit the potential buyer pool.¹⁴

11. Remax advised that, based on the current real estate market for vacant land, the purchase price under the Terminated APS was reasonable and recommended completing the transaction if the Receiver could revive it. The Receiver subsequently contacted Copperstone's counsel, which confirmed that Copperstone remained interested in acquiring the GVE II Property.¹⁵

12. In order to obtain an independent view of the marketing process conducted by Remax and the value of the potential transaction, the Receiver consulted Jones Lang LaSalle Real Estate Services, Inc. ("**JLL**"), a prominent national real estate brokerage, regarding, among other things, whether the purchase price was reasonable based on recent comparable transactions, the current real estate market in London, Ontario, the current use and development potential of the GVE II Property and whether there were any reasons to extend the marketing process and risk losing the proposed transaction.¹⁶

13. The Receiver consulted a JLL representative with significant and recent experience in London, Ontario. Based on these discussions and Remax's feedback, the Receiver determined that completing a transaction with Copperstone would be reasonable in the circumstances and that remarketing the GVE II Property would present uncertainty regarding the timing of a transaction and, ultimately, the net realizations therefrom.¹⁷

14. Accordingly, the Receiver entered into an agreement of purchase and sale dated August 6, 2026 with Copperstone in respect of the GVE II Property (the "**APS**"). Because the Terminated APS had been submitted before the Receiver's appointment over the GVE II Property, the Receiver negotiated certain revisions to include standard terms and conditions typically included in real estate transactions completed in receivership proceedings. The only remaining substantive condition under the APS is Court approval, which, under the terms of the APS, must be obtained within 90 days of execution of the APS (placing the deadline in early November 2026).¹⁸

¹⁴ Seventh Report at [para 48\(e\)-\(g\)](#).

¹⁵ Seventh Report at [paras 48\(h\) and 49](#).

¹⁶ Seventh Report at [para 50](#).

¹⁷ Seventh Report at [para 51](#).

¹⁸ Seventh Report at [para 52](#).

15. The Receiver recommends that the Court approve the Transaction and grant the AVO because:

- (a) Remax's marketing process was commercially reasonable and consistent with the customary manner in which real estate is marketed and sold in receivership proceedings, including because the GVE II Property was marketed for several months;
- (b) extending the marketing process would add costs, put the Transaction at risk and may result in lower net sale proceeds;
- (c) based on feedback from Remax and JLL, the marketing period was sufficiently recent and of sufficient duration, and the Purchase Price is reasonable in light of the current depressed market for raw land in London, Ontario and the environmental and development considerations affecting the GVE II Property;
- (d) the terms and conditions of the APS are consistent with those typically approved in court-supervised receivership proceedings;
- (e) Copperstone has paid a material, non-refundable Deposit and the Transaction is unconditional except for Court approval;
- (f) the Receiver previously completed a transaction with Copperstone in these proceedings and understands that Copperstone has the economic means to close the Transaction; and
- (g) Representative Counsel supports the Transaction.¹⁹

C. Proposed Second Claims Process

16. Capitalized terms not expressly defined in this section are defined in the form of Second CPO included in the Receiver's Motion Record.

17. The Receiver is seeking Court approval of the proposed Second CPO to:

¹⁹ Seventh Report at [para 55](#).

- (a) identify and quantify Claims against the Specified Respondents, including Claims of Unknown Interest Holders; and
- (b) confirm with Interest Holders certain Holdings Information based on the books and records of the Specified Respondents, including the identities of such Interest Holders and the value of any interests held by or in the name of such Interest Holders.²⁰

18. Completion of the Second Claims Process will assist the Receiver in distributing the proceeds of the Property to Interest Holders and other stakeholders of the Specified Respondents in accordance with their legal entitlements. The Second Claims Process is required because, subject to Court approval, the Receiver will have proceeds from the sale of the GVE II Property and is advancing litigation in respect of certain Specified Respondents that is intended to generate additional proceeds for distribution to their creditors and Interest Holders.²¹

19. The First Claims Process did not solicit Claims against the Specified Respondents because they were not subject to these or any other receivership proceedings when the First CPO was granted. Following the addition of the Specified Respondents to these proceedings pursuant to the Second ARRO, the Receiver determined that the Second Claims Process should be conducted in the same or substantially similar manner as the First Claims Process. The Receiver considers that approach appropriate because the Proofs of Claim submitted in the First Claims Process appear to be largely consistent with the books and records of the Respondents available to the Receiver.²²

20. The Second Claims Process contemplates that Interest Holders are not required to take any steps to confirm the interests they hold in the Specified Respondents, other than to advise the Receiver of any redemption payments received by an Interest Holder and to correct any errors contained in the Holdings Information attached to the Notice to Interest Holders to be delivered to each Interest Holder. Based on the books and records of the Specified Respondents available to the Receiver, the Receiver has information regarding the beneficial interests of certain Interest Holders.²³

²⁰ Seventh Report at [paras 25 and 27](#).

²¹ Seventh Report at [para 28](#).

²² Seventh Report at [paras 27 and 29](#).

²³ Seventh Report at [paras 37-38](#).

21. Interest Holders are not otherwise required to take any steps in connection with any Interest Holder Claims, being claims that Interest Holders may have against the Specified Respondents that are derived from their beneficial ownership or other interest in any Property held by or through the Specified Respondents. Interest Holder Claims are Excluded Claims under the Second CPO, other than any Interest Holder Claim asserted by an Unknown Interest Holder.²⁴

22. Other than those holding an Excluded Claim, all Persons that may have a Claim against the Specified Respondents as at the Appointment Date or that arose after the Appointment Date but prior to the Claims Bar Date are required to prove their Claim pursuant to the Second CPO. Failure to prove a Claim in accordance with the Second CPO will forever bar and extinguish that Claim and preclude the Claimant from participating in any distribution in respect of that Claim.²⁵

23. The following provides an overview of the key stages of the Second Claims Process:

- (a) **Interest Holder Notice.** Within ten (10) Business Days following the granting of the Second CPO, or as soon as practicable thereafter, the Receiver will deliver to Representative Counsel a Notice to Interest Holders for each Interest Holder other than Unknown Interest Holders. Representative Counsel will then send, or cause to be sent, each Notice to Interest Holders to the applicable Interest Holder within twenty (20) Business Days. Each Notice to Interest Holders will include the applicable Holdings Information, an Amendment Request and a Proof of Claim.²⁶
- (b) **Notice to Claimants.** The Receiver will send a Notice to Claimants and Unknown Interest Holders, including a Proof of Claim form, to (i) each Known Claimant within five (5) Business Days following the granting of the Second CPO; and (ii) each Person who has requested such notice or a Proof of Claim form within five (5) Business Days of such request. The Receiver will publish the Notice to Claimants and Unknown Interest Holders in The Globe and Mail (National Edition) and on Canadian and U.S. Newswire. The Receiver will also post the Notice to Claimants and Unknown Interest Holders, the Notice to Interest Holders and the Second CPO

²⁴ Seventh Report at [para 43](#); draft Second Claims Process Order (the “**Second CPO**”) at [para 2](#), [Tab “D”](#) of the Motion Record.

²⁵ Second CPO at [paras 13, 19](#) and [21](#).

²⁶ Seventh Report at [para 31](#); Second CPO at [para 8](#).

on the Receiver's website. Upon issuance of the Second CPO, the Receiver will also send notice of the Second CPO directly to its email distribution list of known Interest Holders, to the extent email addresses are available.²⁷

- (c) **Amendment Request.** Interest Holders who disagree with the Holdings Information provided in their Notice to Interest Holders, or who have received redemption payments in respect of their investment, must deliver to the Receiver an Amendment Request prior to 5:00 p.m. on the Claims Bar Date, failing which such Holdings Information shall be deemed correct and confirmed. The proposed Claims Bar Date is January 26, 2027, being 120 days from this motion.²⁸
- (d) **Proof of Claim.** All Claimants, including Unknown Interest Holders, are required to deliver to the Receiver a Proof of Claim, including all relevant supporting documentation, prior to 5:00 p.m. on the Claims Bar Date. Any Person who fails to file a Proof of Claim in respect of any Claim prior to 5:00 p.m. on the Claims Bar Date shall be forever barred from asserting such Claim against the Specified Respondents, and such Claim shall be forever barred and extinguished.²⁹
- (e) **Review of Proofs of Claim and Amendment Requests.** The Receiver will review all Proofs of Claim and Amendment Requests that are received prior to 5:00 p.m. on the Claims Bar Date and may request additional information from a Claimant and/or Interest Holder and accept, revise or disallow, in whole or in part, the validity, amount and/or status of any Claim or Holdings Information, as applicable. The Receiver will deliver a Notice of Revision or Disallowance to an Interest Holder or Claimant, as applicable, if an Amendment Request or Proof of Claim is revised or disallowed. An Interest Holder or Claimant, as applicable, who wishes to dispute a Notice of Revision or Disallowance must respectively deliver a Notice of Holdings Information Dispute or a Notice of Dispute within fourteen (14) calendar days of receipt of the Notice of Revision or Disallowance.³⁰

²⁷ Seventh Report at [paras 32-34](#); Second CPO at [paras 14-16](#) and [42](#).

²⁸ Seventh Report at [paras 36](#) and [38](#); Second CPO at [para 8](#).

²⁹ Seventh Report at [paras 36](#) and [39](#); Second CPO at [paras 13](#), [19](#) and [21](#).

³⁰ Seventh Report at [paras 40-41](#); Second CPO at [paras 9-10](#) and [22-25](#).

- (f) **Disputes.** Disputed Claims and Disputed Holdings Information that are not consensually resolved will be determined by the Court on a motion for advice and directions brought by the Receiver. Except for the procedures expressly established by the Second CPO, any further procedures for reviewing and determining Claims will be established by further Order of the Court.³¹

24. The Second Claims Process is not intended to address the priority of Interest Holder Claims or Proven Claims. The Receiver will work with its legal counsel to address any priority issues that may result from the Second Claims Process, which will be subject to further Court order. The Second CPO also provides that the Receiver shall not distribute proceeds of the Property to Interest Holders or Persons holding Proven Claims unless authorized to do so by further Order of the Court.³²

25. The Receiver has consulted with Representative Counsel in developing the Second Claims Process. Based on the Receiver's experience conducting the First Claims Process and its discussions with Representative Counsel, the Receiver believes that it can administer the Second Claims Process with Representative Counsel's assistance and without appointing a Claims Officer at this time.³³

26. The establishment of a Second Claims Process is critical at this time as the Receiver will, subject to Court approval, have proceeds from the sale of the GVE II Property and is advancing litigation intended to generate further proceeds for the creditors and Interest Holders of certain Specified Respondents. Claims against these funds need to be determined in order to understand legal entitlements, at which point the Receiver would be in a position to bring a distribution motion.³⁴

D. Steps Taken to Protect Investors' Interests

27. As further set out in the Seventh Report, the Receiver, on behalf of London Valley IV Inc. ("LV IV"), commenced an action (the "**Pilehver Action**") in August 2025 against Behzad

³¹ Seventh Report at [para 42](#); Second CPO at [paras 28-29](#).

³² Second CPO at [para 38](#).

³³ Seventh Report at [para 44\(h\)](#).

³⁴ Seventh Report at [para 28](#).

Pilehver, Mahtab Nali and 2621598 Ontario Inc. doing business as Nali and Associates (collectively, the “**Pilehver Action Defendants**”). The Pilehver Action concerns the alleged improper sale of the property formerly owned by LV IV and the alleged misappropriation of the proceeds of that sale.³⁵

28. In the Pilehver Action, the Receiver obtained a *Mareva* injunction and *Norwich* Order, which were subsequently extended until further Order of the Court. On November 17, 2025, the Receiver obtained default judgment against the Pilehver Action Defendants, jointly and severally, including judgment for \$1,071,551.06, punitive damages of \$150,000 and costs of \$296,197.30. The judgment also requires the Pilehver Action Defendants to provide a full accounting of certain funds and provides LV IV with tracing rights, a constructive trust and an equitable lien in respect of such funds and assets obtained using such funds.³⁶

29. The Receiver has recovered \$34,000 paid from trust and \$4,204.97 garnished from a bank account held by Mr. Pilehver and Ms. Nali in partial satisfaction of the judgment. Although counsel for Mr. Pilehver subsequently requested the Receiver’s consent to setting aside the noting in default and the default judgment, the Receiver declined to provide that consent. Mr. Pilehver has not satisfied the balance of the judgment or provided the required accounting.³⁷

30. The Receiver also commenced an action on behalf of LV IV against Randy Hoffner (the “**Hoffner Action**”). The Hoffner Action alleged, among other things, that Mr. Hoffner improperly offered the property formerly owned by LV IV as collateral to secure a mortgage over his personal property. During the Hoffner Action, the Receiver obtained alternative security of \$731,331.20 from the proceeds of the sale of Mr. Hoffner’s property and completed documentary and oral discovery.³⁸

31. In August 2026, the Receiver settled the Hoffner Action on terms that included the payment of \$731,331.20 to LV IV, to be satisfied from the alternative security. The Receiver received those

³⁵ Seventh Report at [paras 59-62](#).

³⁶ Seventh Report at [paras 63-64](#).

³⁷ Seventh Report at [paras 65-69](#).

³⁸ Seventh Report at [paras 70-72](#).

settlement funds on August 17, 2026, and the Hoffner Action was subsequently dismissed without costs on consent.³⁹

32. The Receiver has also taken steps to recover amounts owing to Halton Park Inc. (“**Halton Park**”) in connection with a \$7.8 million vendor take-back mortgage formerly granted in favour of Halton Park (the “**Halton Park VTB**”). The Receiver obtained an Order directing that \$5,893,350 of proceeds payable under the Halton Park VTB be released to the Receiver pending further Order of the Court.⁴⁰

33. On June 16, 2026, Halton Park obtained judgment against First Global Financial Corp. (“**First Global**”) for \$7.8 million pursuant to a promissory note. The Court ordered that the \$5,893,350 held by the Receiver be released to it for the benefit of Halton Park in partial satisfaction of that judgment. The Receiver received those funds on June 16, 2026. The balance of the judgment remains unpaid.⁴¹

34. On July 16, 2026, the Receiver commenced an action on behalf of Greenvalley Estates Inc. (“**GVE**”) against First Global, Elena Salvatore, Vincent Salvatore (Sr.), Tiberis Capital Corp. (“**Tiberis**”), Vincent Salvatore (Jr.) and Mr. Hoffner (the “**GVE Action**”). The GVE Action concerns the sale of real property formerly owned by GVE for \$9.9 million and the subsequent transfer of a \$4.95 million vendor take-back mortgage granted to GVE to Tiberis for stated consideration of \$2.⁴²

35. The sale of the GVE Property and the transfer of the vendor take-back mortgage allegedly occurred without notice to or consent of the investors in and beneficial owners of the GVE Property, and none of the sale proceeds or vendor take-back mortgage proceeds have been paid to those investors. In the GVE Action, the Receiver claims, among other relief, recovery of those proceeds. As at the date of the Seventh Report, none of the defendants had defended the GVE Action.⁴³

36. The Receiver has also investigated the distribution and current location of the net proceeds from a power of sale of property formerly owned by Niagara Falls Park Inc. The Receiver

³⁹ Seventh Report at [paras 73-76](#).

⁴⁰ Seventh Report at [paras 77-81](#).

⁴¹ Seventh Report at [paras 82-85](#).

⁴² Seventh Report at [paras 86](#) and [91-95](#).

⁴³ Seventh Report at [paras 94-95](#) and [101](#).

requested an explanation and supporting documents from relevant parties, including the trust ledgers reflecting the distribution of the net proceeds, but had not received the requested explanation or documents as at the date of the Seventh Report.⁴⁴

37. In addition, the Receiver submitted Proofs of Claim on behalf of Fort Erie Hills Inc. and Niagara Estates of Chippawa II Inc. in the receivership proceeding of CBJ – Fort Erie Hills Inc. The Receiver continues to investigate the transactions and allegations underlying those Proofs of Claim.⁴⁵

E. Professional Fees

38. The fees of the Receiver and A&B for the period from May 1, 2025 to September 30, 2025 were approved by Order dated October 23, 2025. The Receiver now seeks approval of the fees and disbursements of (i) the Receiver for the period from October 1, 2025 to July 31, 2026; and (ii) A&B for the period from October 1, 2025 to August 31, 2026.⁴⁶

39. The Receiver's fees for the applicable ten-month period total \$336,844.00, and A&B's fees for the applicable eleven-month period total \$1,217,931.00, in each case excluding disbursements and HST. The average hourly rates of the Receiver and A&B during their respective billing periods were \$782.18 and \$515.68, respectively.⁴⁷

40. The Receiver is of the view that the hourly rates charged by A&B are consistent with those charged by law firms practising in restructuring and insolvency in the downtown Toronto market and that the fees and disbursements of the Receiver and A&B are reasonable and appropriate in the circumstances.⁴⁸

PART III - ISSUES

41. The issues on this motion by the Receiver are:

⁴⁴ Seventh Report at [paras 107-110](#).

⁴⁵ Seventh Report at [paras 114-119](#).

⁴⁶ Seventh Report at [paras 121-122](#).

⁴⁷ Seventh Report at [paras 122-123](#).

⁴⁸ Seventh Report at [para 124](#).

- (a) whether the AVO approving the Transaction and vesting the Purchased Assets in Copperstone, including the limited sealing order therein, should be granted;
- (b) whether the Second CPO should be granted;
- (c) whether the Reports and the actions, conduct and activities of the Receiver and A&B described therein should be approved; and
- (d) whether the fees and disbursements of the Receiver and its counsel should be approved.

PART IV - LAW AND ARGUMENT

A. The Transaction Should Be Approved

(i) The Legal Framework

42. In *Royal Bank of Canada v. Soundair Corp.* (“*Soundair*”), the Court of Appeal stated that the following factors must be considered when considering the approval of a proposed sale: (i) whether the Receiver has made a sufficient effort to get the best price and has not acted improvidently; (ii) the efficacy and integrity of the process by which offers are obtained; (iii) whether there has been unfairness in the working out of the process; and, (iv) the interests of all parties.⁴⁹

43. Courts will generally defer to a court-appointed receiver’s business expertise in reviewing a sale and will not second-guess its recommendation absent exceptional circumstances.⁵⁰ Where a receiver has acted reasonably, prudently and not arbitrarily, the court will not conduct a detailed review of each aspect of the procedure by which a receiver’s decision was made with respect to a sales process.⁵¹

44. In the Receiver’s view, the marketing process conducted by Remax was fair and reasonable, such that the *Soundair* principles have been satisfied.

⁴⁹ *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#).

⁵⁰ *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, [2021 ONCA 375](#) at [para 15](#) citing *Regal Constellation Hotel Ltd., Re.*, [2004 CanLII 206 \(ON CA\)](#) at [para 23](#). See also *Ontario Securities Commission v. Bridging Finance Inc.*, [2022 ONSC 1857](#) at [paras 43-45](#).

⁵¹ *Bank of Montreal v. Dedicated National Pharmacies Inc. et al.*, [2011 ONSC 4634](#) at [para 43](#).

(ii) The Soundair Principles Have Been Satisfied

45. Each of the foregoing factors is satisfied in respect of the proposed Transaction:

- (a) **Fairness, Transparency, and Integrity:** Remax’s marketing process was commercially reasonable as it marketed the GVE II Property for 130 days on the Toronto and London/Niagara Falls multiple listing services beginning in or around August 2024. The Receiver understands from Remax that it also installed a “For Sale” sign on the GVE II Property, conducted targeted outreach to approximately 120 surrounding landowners, marketed the GVE II Property online and through social media, and sent an email marketing communication to its database of approximately 9,000 contacts. In the Receiver’s view, Remax’s marketing process was commercially reasonable given that it marketed the GVE II Property for several months using multiple methods, including the multiple listing services, signage, direct outreach to surrounding landowners, online and social media advertising, and email marketing. The marketing methodology employed by Remax is consistent with customary ways in which real estate is marketed and sold inside and outside of formal insolvency proceedings.⁵²
- (b) **Commercial Efficacy:** In the Receiver’s view, extending the marketing process for the GVE II Property would add additional costs, put the Transaction at risk and may result in lower net sale proceeds.⁵³
- (c) **Best Possible Price:** Based on feedback from Remax and JLL, the Purchase Price is reasonable, particularly given that the marketing period was sufficiently recent and of sufficient duration, the current depressed market for raw land in London, Ontario and the environmental and development considerations affecting the GVE II Property.⁵⁴

⁵² Seventh Report at [para 55\(a\)](#).

⁵³ Seventh Report at [para 55\(b\)](#).

⁵⁴ Seventh Report at [para 55\(c\)](#).

46. In the Receiver's view, further marketing efforts are not required given that the process conducted by Remax has met the *Soundair* principles. For the reasons set out above and in the Seventh Report, the Receiver recommends that the Court approve the proposed Transaction.

B. The AVO Should Be Granted

(i) The Legal Framework

47. The Receiver seeks an approval and vesting order to convey the Purchased Assets free and clear of any claims and encumbrances, other than Permitted Encumbrances, as set out in the APS. The APS provides for the sale of the GVE II Property and any chattels described therein.⁵⁵

48. The Court has the power to grant approval and vesting orders pursuant to section 100 of the CJA. This section states that “[a] court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed.”⁵⁶

49. Vesting orders are a routine part of insolvency practice.⁵⁷ As set out by the Court of Appeal for Ontario in *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.* (“*Third Eye*”), the court will adopt a rigorous cascade analysis. It will consider the nature and strength of the interest that is proposed to be extinguished, which can be determinative. The court can also consider whether the parties have consented to the vesting of the interest at the time of sale before the court, or through prior agreement.⁵⁸ If these factors prove inconclusive, the court can engage in a consideration of equities to determine if a vesting order is appropriate.⁵⁹

(ii) Encumbrances

50. The Receiver proposes to vest off the following instruments registered on title to the GVE II Property: (i) the charge in the amount of \$110,000,000 registered by 1001045239 Ontario Inc. as Instrument No. ER1601208; (ii) the tax certificate registered by the Corporation of the City of London as Instrument No. ER1661799; (iii) the caution registered by Representative Counsel as

⁵⁵ Seventh Report, [Appendix “10”](#), Redacted Agreement of Purchase and Sale between Copperstone and the Receiver. An unredacted copy can be found at [Confidential Appendix “11”](#) to the Seventh Report.

⁵⁶ *Courts of Justice Act*, [R.S.O. 1990, c. C.43, s. 100](#).

⁵⁷ *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at [para 106](#).

⁵⁸ *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at [paras 103-106](#).

⁵⁹ *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#) at [para 110](#).

Instrument No. ER1684144; and (iv) the Second ARRO registered as Instrument No. ER1688078.⁶⁰

51. As is customary with vesting orders of this nature, the proposed form of AVO specifically extinguishes *Personal Property Security Act* (Ontario) registrations, though the Receiver notes that there are no such registrations against the registered owner of the GVE II Property, GVE II.⁶¹

52. For the reasons set out above and in the Seventh Report, the Receiver believes it is appropriate for the Court to issue the proposed form of AVO.

C. The Sealing Order Should Be Granted

53. The Receiver also seeks a sealing order with respect to the Confidential Appendix.

54. The applicable legal test for granting a sealing order is that the party seeking such relief must establish that:

- (a) court openness poses a serious risk to an important public interest;
- (b) the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
- (c) as a matter of proportionality, the benefits of the order outweigh its negative effects.⁶²

55. This Court has granted sealing orders in respect of commercial information that could negatively impact any sales process in the event that the proposed transaction does not close and the property must undergo another marketing process.⁶³ This Court has also observed that disclosure of items such as realization estimates may have a negative impact on future realizations and be detrimental to efforts to maximize value for shareholders.⁶⁴ This Court has further held that, in such circumstances, there is no reasonable alternative to a sealing order; stakeholders will not

⁶⁰ Seventh Report at [para 54\(f\)](#) and [Appendices “12”](#) and [“13”](#).

⁶¹ Seventh Report at [para 54\(j\)](#) and [Appendix “14”](#).

⁶² *Sherman Estate v. Donovan*, [2021 SCC 25](#) at [para 38](#).

⁶³ *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, [2023 ONSC 5911](#) at [paras 104-107](#); *Equitable Bank v. Ashcroft Homes – Capital Hall Inc.*, [2025 ONSC 6047](#) at [para 21](#), citing *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2](#) at [para 39](#).

⁶⁴ *Ontario Securities Commission v. Bridging Finance Inc.*, [2022 ONSC 1857](#) at [paras 50-53](#).

be materially prejudiced; and any deleterious effects are outweighed by the benefits of granting such relief.⁶⁵

56. Disclosure of the contents of the Confidential Appendix could have a detrimental impact on any future sales process, should one be required if the Transaction is not approved or otherwise does not close. The Confidential Appendix contains an unredacted copy of the APS.⁶⁶ The only information redacted from the public version of the APS is the Purchase Price and Deposit, the latter of which could be used to infer the Purchase Price.⁶⁷ Disclosure of this information could impact any future realizations in a future sales process, should one be required.

57. There is no reasonable alternative to the sealing order here, and stakeholders will not be materially prejudiced by this sealing order. The benefits of maximizing value for stakeholders outweigh any deleterious effects of the relief sought. The proposed sealing is appropriately limited to the earlier of closing of the proposed Transaction or further order of the Court.⁶⁸

D. The Second CPO Should Be Granted

58. The general purpose of a claims process is to identify and determine the universe of claims against a debtor company and “*to streamline the resolution of the multitude of claims against an insolvent debtor in the most time sensitive and cost efficient manner.*”⁶⁹

59. Courts have routinely approved claims processes in the context of receiverships under the *Bankruptcy and Insolvency Act* (the “BIA”), the CJA, and the *Securities Act* (Ontario), and in the context of proceedings under the *Companies’ Creditors Arrangement Act* (the “CCAA”).⁷⁰

60. The BIA, CJA, *Securities Act* (Ontario) and CCAA are all silent with respect to the approval of claims processes. As such, the approval of a claims process is a matter within the

⁶⁵ *Ontario Securities Commission v. Bridging Finance Inc.*, [2022 ONSC 1857](#) at [paras 50-53](#).

⁶⁶ Seventh Report at [para 53](#).

⁶⁷ Seventh Report at [paras 53](#) and [56](#).

⁶⁸ *Equitable Bank v. Ashcroft Homes – Capital Hall Inc.*, [2025 ONSC 6047](#) at [para 28](#).

⁶⁹ *Canwest Global Communications Corp.*, [2011 ONSC 2215](#) at [para 40](#).

⁷⁰ See, for example, *Laurentian University of Sudbury*, [2021 ONSC 3885](#) at [paras 15-53](#); *Legacy Lifestyles Destin LP et al. v. Legacy Lifestyles Destin Property LLC et al.*, CV-22-00674717-00CL, [Claims Procedure Order](#) of Justice Steele dated June 26, 2024; and *Just Energy Group Inc. et al.*, CV-21-00658423-00CL, [Claims Procedure Order](#) of Justice Koehnen dated September 15, 2021.

discretion of the Court, grounded in the Court’s statutory and/or inherent jurisdiction to control its own process and make an order it sees fit in the circumstances.

61. Claims procedure orders should be both flexible and expeditious, in order to achieve the remedial objectives of the statutes under which the proceedings were commenced and to ensure that stakeholders are treated as fairly as the circumstances permit.⁷¹ The order must be drafted carefully to ensure that it is fair and reasonable to all stakeholders, including those who may be directly impacted by the acceptance of other claims.⁷² This Court has the authority to approve a “bespoke” claims process where the situation calls for it.⁷³

62. The proposed Second CPO satisfies all of these requirements. The Second CPO aligns with the First CPO already approved by this Court and addresses the complex nature of these receivership proceedings in a fair and efficient manner.

63. In particular, the Second CPO has been designed to make the process by which Interest Holders confirm and verify their Holdings Information as simple and efficient as possible. To that end, a significant feature of the Second CPO is the incorporation of a “reverse claim” methodology for the confirmation of such Holdings Information.

64. As described above, if an Interest Holder agrees with the Holdings Information set out in the Notice to Interest Holders delivered to them by the Receiver (and, where applicable, through Representative Counsel) and has not received any redemption payments in respect of the applicable investment, the Interest Holder does not need to take any further steps to prove or otherwise confirm the validity of their Holdings Information or any Interest Holder Claim they may have. This process will eliminate the requirement (and the associated administrative time and expense) for Interest Holders to file documentation with the Receiver to prove their Holdings Information unless they identify an error therein or have received redemption payments which they must report to the Receiver. It will also ensure that no Interest Holder Claim “falls through the cracks” due to the failure of a particular Interest Holder to confirm their Holdings Information with the Receiver. Similar “negative processes”, including with respect to investor claims, were

⁷¹ *Laurentian University of Sudbury*, [2021 ONSC 3885](#) at [paras 30-31](#).

⁷² *Laurentian University of Sudbury*, [2021 ONSC 3885](#) at [para 32](#).

⁷³ *Laurentian University of Sudbury*, [2021 ONSC 3885](#) at [para 41](#).

approved by this Court in the receiverships of *Legacy Lifestyles*,⁷⁴ *Bridging Finance*⁷⁵ and *Go-To Developments*,⁷⁶ as well as in the CCAA proceedings of *Just Energy*.⁷⁷

65. The Second Claims Process also provides for a fair and efficient process for Interest Holders to correct their Holdings Information (to the extent an error is identified) and for Claimants to take steps to prove their Claims through the traditional method of filing a Proof of Claim prior to the Claims Bar Date contemplated therein.

66. The proposed Second Claims Process appropriately balances fairness and efficiency and will ensure that all stakeholders are treated in accordance with the remedial objectives of section 101 of the CJA. Most importantly, it will allow the Receiver to continue to move forward to making a distribution to Interest Holders and other stakeholders in accordance with a methodology to be approved by the Court.

67. The Receiver therefore submits that the proposed Second CPO should be granted.

E. The Ancillary Order Should Be Granted

(i) The Reports and the Activities Therein Should Be Approved

68. The Receiver also seeks an Ancillary Order approving the Reports, along with the actions, conduct and activities of the Receiver and its counsel described therein.

69. The Court has inherent jurisdiction to review and approve the activities of a court-appointed receiver where the receiver has met the objective test that it has acted reasonably, prudently and not arbitrarily.⁷⁸ The principles espoused by Justice Morawetz in *Target Canada Co. (Re)*, a case involving proceedings under the CCAA, are applicable here. His Honour noted that requests to approve a court-appointed officer's reports are not unusual, and that there are good

⁷⁴ *Legacy Lifestyles Destin LP et al. v. Legacy Lifestyles Destin Property LLC et al.*, CV-22-00674717-00CL, [Claims Procedure Order](#) of Justice Steele dated June 26, 2024 [*“Legacy Lifestyles”*].

⁷⁵ *Ontario Securities Commission v. Bridging Finance Inc. et al.*, CV-21-00661458-00CL, [Claims and Unitholdings Identification Order](#) of Chief Justice Morawetz dated July 19, 2022 [*“Bridging Finance”*].

⁷⁶ *Ontario Securities Commission v. Go-To Developments Holdings Inc. et al.*, CV-21-00673521-00CL, [Claims Procedure Order](#) of Justice Conway dated April 7, 2022 [*“Go-To Developments”*].

⁷⁷ *Just Energy Group Inc. et al.*, CV-21-00658423-00CL, [Claims Procedure Order](#) of Justice Koehnen dated September 15, 2021 [*“Just Energy”*].

⁷⁸ *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, [2014 BCSC 1855](#) at [para 54](#).

policy and practical reasons for such approval to provide a level of protection.⁷⁹ In particular, Justice Morawetz also noted that Court approval:

- (a) allows the Monitor to move forward with the next steps in the CCAA proceedings;
- (b) brings the Monitor's activities before the Court;
- (c) allows an opportunity for the concerns of the stakeholders to be addressed, and any problems to be rectified;
- (d) enables the Court to satisfy itself that the Monitor's activities have been conducted in a prudent and diligent manner;
- (e) provides protection for the Monitor not otherwise provided by the CCAA; and
- (f) protects the creditors from the delay and distribution that would be caused by:
 - (i) re-litigation of steps taken to date, and
 - (ii) potential indemnity claims by the Monitor.⁸⁰

70. Subsequent case law has confirmed that these considerations apply equally to the reports and activities of a receiver,⁸¹ and such approval is commonly granted as part of orders in receivership proceedings.⁸²

71. The activities of the Receiver and its counsel have been reported to the Court and stakeholders in the Reports. These activities were all necessary and undertaken in good faith in accordance with the Initial Appointment Order, the ARRO and the Second ARRO, and in the best interests of the stakeholders generally.

⁷⁹ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at [paras 2](#) and [22](#).

⁸⁰ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at [para 23](#).

⁸¹ *Hanfeng Evergreen Inc., (Re)*, [2017 ONSC 7161](#) at [para 15](#).

⁸² See e.g., *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, [2023 ONSC 3400](#) at [para 65](#).

(ii) Approval of the Fees of the Receiver and Its Counsel

72. The Receiver also submits that the fees and disbursements of the Receiver and its counsel described in the Seventh Report should be approved.

73. The jurisdiction to pass the accounts of the Receiver and its counsel is confirmed in the Second ARRO, which directs that: (i) “*the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts*”;⁸³ and (ii) “*the Receiver and its legal counsel shall pass their accounts from time to time*”.⁸⁴

74. On a motion to pass accounts, the Court must consider the “*overriding principle of reasonableness*,” focusing on the overall value contributed by the court officer and its counsel. The Court does not engage in a docket-by-docket or line-by-line assessment of the accounts as minute details of each element of a professional services may not be instructive when looked at in isolation.⁸⁵ In *Bank of Nova Scotia v. Diemer*, the Court of Appeal for Ontario stated that “*the focus of the fair and reasonable assessment should be on what was accomplished, not how much time it took*.”⁸⁶

75. Should the proposed Transaction be approved, the Receiver will have realized on all known real properties still owned by the Respondents and subject to these proceedings. The nature of the interests, including with respect to property no longer owned by the Respondents, is complex. The Receiver has made substantial efforts to obtain information regarding the Respondents and their assets, and to pursue such assets for the benefit of stakeholders, including by taking steps to commence litigation against certain principals of the Respondents and/or their related parties.

76. The Receiver respectfully submits that its fees, and its counsel’s fees, are fair, reasonable and justified in the circumstances.⁸⁷ They accurately reflect the work done in the course of these proceedings. The activities of the Receiver were carried out in accordance with the Initial

⁸³ Second ARRO at [para 25](#), Appendix “3” to the Seventh Report.

⁸⁴ Second ARRO at [para 26](#), Appendix “3” to the Seventh Report.

⁸⁵ *Nortel Networks Inc.*, [2022 ONSC 6680](#) at [para 10](#).

⁸⁶ *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#) at [para 45](#).

⁸⁷ Seventh Report at [paras 121-124](#).

Appointment Order, the ARRO and the Second ARRO, and the Receiver has acted reasonably and in good faith throughout the receivership.

PART V - RELIEF SOUGHT

77. For the reasons set out above, the Receiver requests that this Court grant the proposed AVO, Second CPO and Ancillary Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 25th day of September, 2026.

Per: 

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Lawyers for the Receiver

SCHEDULE “A”

LIST OF AUTHORITIES

Cases

1. *Bank of Montreal v. Dedicated National Pharmacies Inc. et al.*, [2011 ONSC 4634](#)
2. *Bank of Nova Scotia v. Diemer*, [2014 ONCA 851](#)
3. *Canwest Global Communications Corp.*, [2011 ONSC 2215](#)
4. *Equitable Bank v. Ashcroft Homes – Capital Hall Inc.*, [2025 ONSC 6047](#)
5. *Hanfeng Evergreen Inc., (Re)*, [2017 ONSC 7161](#)
6. *Laurentian University of Sudbury*, [2021 ONSC 3885](#)
7. *Leslie & Irene Dube Foundation Inc. v. P218 Enterprises Ltd.*, [2014 BCSC 1855](#)
8. *Marchant Realty Partners Inc. v. 2407553 Ontario Inc.*, [2021 ONCA 375](#)
9. *Nortel Networks Inc.*, [2022 ONSC 6680](#)
10. *Ontario Securities Commission v. Bridging Finance Inc.*, [2022 ONSC 1857](#)
11. *Regal Constellation Hotel Ltd., Re.*, [2004 CanLII 206 \(ON CA\)](#)
12. *Romspen Investment Corporation v. Tung Kee Investment Canada Ltd. et al.*, [2023 ONSC 5911](#)
13. *Royal Bank of Canada v. Soundair Corp.*, [1991 CanLII 2727 \(ON CA\)](#)
14. *Sherman Estate v. Donovan*, [2021 SCC 25](#)
15. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
16. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, [2019 ONCA 508](#)
17. *Triple-I Capital Partners Limited v. 12411300 Canada Inc.*, [2023 ONSC 3400](#)
18. *Yukon (Government of) v. Yukon Zinc Corporation*, [2022 YKSC 2](#)

Orders and Endorsements

1. *Just Energy Group Inc. et al.*, CV-21-00658423-00CL, [Claims Procedure Order](#) of Justice Koehnen dated September 15, 2021
2. *Legacy Lifestyles Destin LP et al. v. Legacy Lifestyles Destin Property LLC et al.*, CV-22-00674717-00CL, [Claims Procedure Order](#) of Justice Steele dated June 26, 2024
3. *Ontario Securities Commission v. Bridging Finance Inc. et al.*, CV-21-00661458-00CL, [Claims and Unitholdings Identification Order](#) of Chief Justice Morawetz dated July 19, 2022

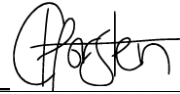
4. *Ontario Securities Commission v. Go-To Developments Holdings Inc. et al.*, CV-21-00673521-00CL, [Claims Procedure Order](#) of Justice Conway dated April 7, 2022

Certificate of Authenticity

I, Calvin Horsten, am satisfied as to the authenticity of every authority cited in this factum and that every quotation from an authority appearing in this factum accurately reproduces the text of the authority, in accordance with Rule 4.06.1(2.1) of the Rules of Civil Procedure, R.R.O, 1990, Reg. 194.

25-SEPT-2026

DATE



Calvin Horsten

SCHEDULE “B”
TEXT OF STATUTES, REGULATIONS & BY-LAWS

Courts of Justice Act, R.S.O. 1990, c. C.43

Vesting orders

100 A court may by order vest in any person an interest in real or personal property that the court has authority to order be disposed of, encumbered or conveyed. R.S.O. 1990, c. C.43, s. 100

Documents public

137 (1) On payment of the prescribed fee, a person is entitled to see any document filed in a civil proceeding in a court, unless an Act or an order of the court provides otherwise.

Sealing documents

(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.

Court lists public

(3) On payment of the prescribed fee, a person is entitled to see any list maintained by a court of civil proceedings commenced or judgments entered.

Copies

(4) On payment of the prescribed fee, a person is entitled to a copy of any document the person is entitled to see. R.S.O. 1990, c. C.43, s. 137.

MIZUE FUKIAGE et al.

- and -

CLEARVIEW GARDEN ESTATES INC. et al.

Applicants

Respondents

Court File No. CV-25-00736577-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced at Toronto

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