Court File No.: CL-26-00000276-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

UNITED OVERSEAS BANK LIMITED

Applicant

- and -

NOVA RIDGE (MANDERLEY) LIMITED PARTNERSHIP and

NOVA RIDGE (MANDERLEY) GP CORP.

Respondents

IN THE MATTER OF AN APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C-43, AS AMENDED

FACTUM OF THE RECEIVER
(Priority Claims Procedure, Distribution Approval and Commission Repayment)
(Returnable October 1, 2026)

September 29, 2026

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PART I. INTRODUCTION[1]

1. The Receiver brings this motion seeking relief to advance the receivership and maximize recoveries for the benefit of the Debtors' stakeholders.

2. The Receiver seeks three Orders, which, among other things:

   (a) establish a fair and efficient Priority Claims Procedure to identify, determine and resolve any Priority Claims against the Debtors, which are claims that rank ahead of the security of the Lenders;

   (b) authorize distributions to the Lenders, subject to the Receiver maintaining appropriate reserves for any Priority Claims and the costs of the receivership;

   (c) approve the Receiver's reports and activities, together with the reasonable fees and disbursements of the Receiver and its counsel; and

   (d) require the Brokers to repay $111,674.10 in unearned net commissions that are owing to the Debtors.

3. The requested relief is reasonable and necessary. It will facilitate Priority Claims being identified and resolved promptly, enable timely distributions while preserving necessary

[1] Capitalized terms used in this Introduction have the meanings given to them elsewhere in this factum. Capitalized terms used but not defined in this factum have the meanings given to them in the Receivership Order of Justice Myers dated June 23, 2026 (the "**Receivership Order**") or, if not defined therein, in the Second Report of the Receiver dated September 22, 2026 (the "**Second Report**"), Tab 2 of the Receiver's Motion Record dated September 22, 2026 ("**MR**").

reserves, and recover funds that the Brokers have no entitlement to retain. The Orders should therefore be granted.

PART II. THE FACTS

A. The Debtors and the Project

4. The Debtors are Nova Ridge LP and Nova Ridge GP. Nova Ridge LP is the registered title holder of the Real Property at 1478-1496 Kingston Road, Toronto. The Debtors have substantially completed the construction of a condominium known as "The Manderley", which comprises 194 residential condominium units and two ground-floor retail units.[2]

5. As at the date of the Receivership Order (defined below), 70 residential suites, 34 parking spots, 28 lockers and 23 combined parking spots and lockers remained unsold (collectively, the "**Unsold Units**").[3]

B. Appointment of Receiver

6. On June 23, 2026, this Court issued an order (the "**Receivership Order**") appointing AlixPartners Restructuring, Inc. ("**AlixPartners**") as Receiver, without security, of the assets, undertakings and properties of the Debtors acquired for, or used in relation to, the business carried on by the Debtors, including all proceeds thereof (the "**Property**").[4]

7. The principal purpose of these receivership proceedings is to provide the Debtors a stay of proceedings so that the Receiver has a stabilized environment to preserve and sell the

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[2] Second Report, s. 2.1.1, Tab 2, MR, E1060.
[3] Second Report, s. 2.1.2, Tab 2, MR, E1060.
[4] Second Report, s. 1.0.1, Tab 2, MR, E1057; Appendix "A" to the Second Report, Tab 2A, MR, E1073.

Property, address outstanding construction lien claims, and distribute the proceeds of sale in accordance with priorities.[5]

C. Senior Secured Lenders

8. United Overseas Bank Limited ("**UOB**"), as administrative agent, and UOB and Laurentian Bank of Canada, as lenders (collectively, the "**Construction Lenders**"), made available to the Debtors a non-revolving term construction facility of up to $79,916,000 and a non-revolving standby letter of credit / letter of guarantee facility of up to $2,500,000. UOB, as mezzanine lender (the "**Mezzanine Lender**" and, together with the Construction Lenders, the "**Lenders**"), also made available a non-revolving term mezzanine facility of up to $9,050,000 (collectively, the "**Facilities**").[6]

9. As of June 8, 2026, the Debtors owed the Lenders approximately $30.6 million, plus accruing fees, costs and interest (the "**Lender Indebtedness**"), consisting of approximately $21.1 million under the term construction facility, $0.6 million under the letter of credit facility and $8.9 million under the mezzanine facility.[7]

10. The Facilities are secured by, among other things, a demand debenture registered against the Real Property (the "**Debenture Charge**"), granting the Lenders a first-ranking fixed and specific mortgage and charge over the Real Property. It ranks ahead of all other registered charges, subject to potential Priority Claims, including construction liens up to any unpaid

[5] Second Report, s. 1.03, Tab 2, MR, E1058.
[6] Second Report, s. 2.2.1, Tab 2, MR, E1060.
[7] Second Report, s. 2.2.2, Tab 2, MR, E1060.

statutory holdback. The Priority Claims Procedure Order defines the secured claim as the "**Senior Secured Lenders' Claim**".[8]

11. The Receiver has obtained a security opinion confirming that, subject to standard qualifications and assumptions, the security of the Lenders comprising the Senior Secured Lenders' Claim is valid and enforceable under Ontario law.[9]

D. Construction Liens

12. The Project achieved substantial completion on April 28, 2026, and the certificate of substantial completion was published on May 5, 2026. Unpaid trades and suppliers had 60 days from the publication date to register liens against the Real Property.[10]

13. By that date – July 4, 2026 – construction liens and related security interests had been registered against the Real Property in the aggregate amount of approximately $11.3 million (the "**Liens**"), including a lien of the general contractor Wilkinson Manderley Inc. of approximately $8.4 million and liens of a number of other trades and suppliers.[11] There may be some overlap between the general contractor's claim and the claims of some Lien claimants.

14. The registration of the Liens, together with the Debtors' defaults under the Facilities, was among the circumstances that necessitated a court-supervised process to complete the sale of the Unsold Units while addressing the registered construction liens.[12]

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[8] Second Report, s. 2.2.3, Tab 2, MR, E1061.
[9] Second Report, s. 4.0.2, Tab 2, MR, E1066.
[10] *Construction Act*, RSO 1990, c C.30, s. 31(2)(a).
[11] Second Report, s. 2.3.1, Tab 2, MR, E1061.
[12] Second Report, s. 2.3.2, Tab 2, MR, E1061.

E. Sales Process

15. By order dated August 5, 2026 (the "**Sale Approval Order**"), Justice Black approved a process for individual and/or *en bloc* sales of the Unsold Units (the "**Sale Process**") and the retention of the Sales Agent.[13]

16. Since the Sale Approval Order, the Receiver and Sales Agent have marketed the Unsold Units by listing units, contacting prospective purchasers (including purchasers under terminated pre-receivership agreements), soliciting *en bloc* interest and holding open houses, including on September 26 and 27, 2026.[14]

17. As at September 22, 2026, four transactions had been signed, one had closed and several others were under negotiation. The Sale Approval Order permits the Receiver to obtain an approval and vesting order for an individual sale through the registrar without a further court attendance if the price meets the court-approved target and the agreement is substantially in the approved form.[15]

PART III. ISSUES AND THE LAW

18. The key issues to be determined on this motion and the position of the Receiver on each are:

Issue	Position
Should the Court approve the Priority Claims Procedure?	***Yes, the Priority Claims Procedure is reasonable and appropriate and in the interests of all stakeholders.***

[13] Second Report, s. 1.0.5, Tab 2, MR, E1058.
[14] Second Report, s. 2.4.2, Tab 2, MR, E1062.
[15] Second Report, s. 2.4.3, Tab 2, MR, E1062.

Issue	Position
Should the Court approve the proposed distributions?	***Yes, the proposed distributions are to the senior secured creditor of the Debtors and will be subject to necessary reserves being maintained.***
Should the Court approve the Receiver's fees, reports and activities?	***Yes, the fees incurred by the Receiver and Receiver's counsel are fair and reasonable. It is appropriate to approve the Receiver's reports and activities.***
Should the Court approve the Commission Repayment Order?	***Yes, the Commission Repayment Order is necessary and appropriate to allow the Receiver to recover the commission advances from the Brokers.***

A. The Court Should Approve the Priority Claims Procedure

(i) Priority Claims Procedure

19. The Priority Claims Procedure is designed to identify, determine and resolve claims that are secured against either or both of the Debtors and/or their assets and that rank in priority to the Senior Secured Lenders' Claim (each, a "**Priority Claim**"). Priority Claims include claims for statutory holdback in respect of valid and properly registered construction liens, to the extent they have priority under the *Construction Act* (Ontario), and claims for amounts held in trust.[16]

20. The Priority Claims Procedure will not determine (i) unsecured claims or other claims without a basis to rank ahead of the Senior Secured Lenders' Claim, (ii) claims arising after the

[16] Second Report, s. 3.1.1, Tab 2, MR, E1062; Second Report, s. 3.1.1, Footnote 2, Tab 2, MR, E1062.

date of the Receivership Order, or (iii) claims secured by the charges granted under the Receivership Order.[17]

21. The key dates under the proposed Priority Claims Procedure are as follows:[18]

Event	Date/Deadline
Order and Claims Package posted on Receiver's Website	October 6, 2026
Claims Package sent to all known potential Priority Creditors	October 6, 2026
Notice to potential Priority Creditors published in *The Globe and Mail (National Edition)* and Insolvency Insider	October 8, 2026
Claims Bar Date	November 5, 2026 at 5:00 p.m.

22. By October 6, 2026, the Receiver will post the Priority Claims Procedure Order on its website and send a claims package to each person the Debtors' books and records disclose as a potential Priority Claimant whose amounts remain unpaid. The Receiver will also deliver a claims package to anyone who requests one before the claims bar date.[19]

23. The list of known potential Priority Claimants is discrete and relatively small. Construction of the condominium is substantially complete and the deadline for registering construction liens passed two months ago. There are approximately 10 Liens registered against the Real Property and two registrations against the Debtors under the *Personal Property Security Act* (Ontario). All of these parties are on the Service List and already aware of these proceedings.[20]

[17] Second Report, s. 3.1.2, Tab 2, MR, E1063.
[18] Second Report, s. 3.1.3, Tab 2, MR, E1063.
[19] Second Report, s. 3.2.1-3.2.2, Tab 2, MR, E1063.
[20] Second Report, s. 3.3.1-3.3.3, Tab 2, MR, E1064.

24. The Receiver will also post a notice in *The Globe and Mail (National Edition)* and Insolvency Insider and post the Claims Package on its website to provide general notice of the Priority Claims Procedure to any other potential Priority Claimants.[21]

25. Priority Claimants must deliver a proof of priority claim with supporting documents by 5:00 p.m. (Toronto time) on November 5, 2026 (the "**Claims Bar Date**"), 35 days after the proposed Priority Claims Procedure Order. Claims not filed by then will be forever barred.

26. The Receiver may accept, revise or disallow each proof of priority claim, in whole or in part. A claimant has seven days after receiving a notice of revision or disallowance to dispute it, failing which the Receiver's determination is deemed accepted. Disputes may be resolved consensually or by the Court.[22]

(ii) Appropriate to Approve Priority Claims Procedure

27. Upon its appointment, one of the duties of a receiver is to ascertain what creditors have claims against the debtor company and evaluate the priority, quantum and quality of those claims in order to facilitate distributions being made accordingly.[23] This duty cannot be delegated to a non-judicial third party. The determinations of a receiver, as an officer of the court, with respect to claims are given a high degree of deference.[24]

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[21] Second Report, s. 3.2.1, Tab 2, MR, E1063.

[22] Second Report, s. 3.4.1-3.4.2, Tab 2, MR, E1064; Second Report, s. 3.5.1-3.5.2, Tab 2, MR, E1065.

[23] *bcIMC Construction Fund Corp. v. Chandler Homer Street Ventures Ltd.*, 2008 BCSC 897 at para. 49; *Royal Bank of Canada v. Casselman PHBC Ltd.*, 2017 ONSC 4107 at para. 35.

[24] *Coast Capital Savings Credit Union v. Symphony Development Corp.*, 2011 BCSC 333 at para. 27; *Faurschou v. Faurschou Farms Ltd.*, 2021 MBQB 106 at paras. 14-15; *Ontario Securities Commission v. Paramount Equity Financial Corporation*, 2018 ONSC 5327 at para. 35.

28. The Priority Claims Procedure will allow the Receiver to discharge this duty and identify and quantify any claims that may have priority to the Secured Lenders' Claim. This will consequently allow the Receiver to determine the size of an appropriate reserve to be held by the Receiver for the Priority Claims and facilitate distributions being made.

29. The proposed Priority Claims Procedure is consistent with the purposes of a claims process in an insolvency, which should be "efficient and flexible" so that the "claims of creditors can be established expeditiously with a view to distribution of available assets as soon as reasonably possible."[25]

30. In the Receiver's view, the Priority Claims Procedure is reasonable and appropriate.[26] Its notice provisions are designed to reach the potential Priority Claimants. The review, determination and dispute mechanics are consistent with procedures approved by this Court in comparable proceedings.[27]

31. The 35-day period between the date of the order and the Claims Bar Date is longer than periods approved in other cases:

Case	**Claims Period**
Li-Cycle Holdings Corp.[28]	15 days
LJM Developments (Hamilton) Inc.[29]	23 days

[25] *Re LJM Developments (Hamilton) Inc.*, 2026 ONSC 2114 (CanLII) at para. 44 citing *Computershare Trust Company of Canada v. Cookstown Holdings Ltd.,* 2014 ONSC 685 at para. 13.

[26] Second Report, s. 3.7.1, Tab 2, MR, E1065.

[27] See for example, Priority Claims Procedure Order of Dunphy J. dated January 20, 2026 in *915643 Ontario Inc. v. 177 Cross Argus Development Inc. and Double Diamond Capital Inc*., Court File No. CL-25-00753599-0000 (On Sup Ct J [Commercial List]).

[28] Priority Claims and Cure Amounts Procedure Order of Conway J. dated June 9, 2025 in *Re Li-Cycle Holdings Inc.*, Court File No. CV-25-00743053-00CL. Note that this claims process involved a negative notice.

[29] Lien Claims Process Order of Steele J. dated April 8, 2026 in *Re LJM Developments (Hamilton) Inc.*, Court File No. CL-26-00000053-0000 (On Sup Ct J [Commercial List]).

Case	Claims Period
Vandyk-Backyard Kings Mills Limited[30]	30 days
33 Yorkville Residences Inc.[31]	32 days

32. The Priority Claims Procedure is in the interest of all stakeholders so that distributions can be made as soon as possible in these proceedings, subject to such reserves that the Receiver believes are necessary to account for Priority Claims and the costs of these proceedings.[32]

B. The Court Should Approve the Proposed Distributions

33. Orders approving interim distributions have been granted by courts in receiverships, including distributions to retire mortgage debts from anticipated sale proceeds from the completion of sale transactions.[33] A distribution order will be appropriate where the court is satisfied that no creditors will be prejudiced and that sufficient holdbacks or reserves are maintained.[34]

34. The Lenders hold first-priority security against the Property, subject only to any Priority Claims and the charges created by the Receivership Order to fund the administration of the receivership.[35]

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[30] Priority Claims Procedure Order of Penny J. dated October 16, 2024, *MCAP Financial Corporation v. Vandyk-Backyard King's Mills Limited*, Court File No. CV-23-00710267-00CL (On Sup Ct J [Commercial List]).

[31] Priority Claims Procedure Order of McEwen J. dated March 11, 2021, *BCIMC Constructing Fund Corporation and Otera Capital Inc. v. 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership*, Court File No. CV-20-00637297-CL (On Sup Ct J [Commercial List]).

[32] Second Report , s. 3.7.1, Tab 2, MR, E1065.

[33] See e.g. Interim Distribution Order of McEwen J. dated March 11, 2021, *BCIMC Constructing Fund Corporation and Otera Capital Inc. v. 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership*, Court File No. CV-20-00637297-CL (On Sup Ct J [Commercial List]).

[34] *Nuance Pharma Ltd. v. Antibe Therapetics Inc.*, 2025 ONSC 706 at para. 23.

[35] Second Report, s. 4.0.4-s. 4.0.5, Tab 2, MR, E1066-E1067.

35. Once the Claims Bar Date has passed, the Receiver will know the universe of potential Priority Claims and will be able to determine an appropriate reserve for them. As those claims are allowed or disallowed under the Priority Claims Procedure, the Receiver will adjust the reserve accordingly.[36]

36. Once the appropriate reserves are established for Priority Claims and receivership costs, to the extent there are additional funds available, it will be appropriate for the Receiver to make one or more distributions to the Lenders from such available funds.[37] Accordingly, the Court should approve the Receiver to make these distributions.

C. The Court Should Approve the Receiver's Reports and Activities

37. The Receiver seeks approval of the First Report of the Receiver dated July 8, 2026, the Supplement to the First Report of the Receiver dated July 24, 2026, the Second Supplement to the First Report of the Receiver dated August 4, 2026, the Third Supplement to the First Report of the Receiver dated August 28, 2026 and the Second Report of the Receiver dated September 22, 2026 (the "**Reports**"), and the conduct and activities set out therein.

38. There are good policy and practical reasons to approve reports and activities of a receiver. In *Target Canada*, this Court identified reasons for monitors in *Companies' Creditors Arrangement Act* (Canada) ("**CCAA**") proceedings to seek court approval of their reports and activities, and for courts to grant such approvals. These include: (a) allowing the monitor to bring its activities before the Court; (b) allowing an opportunity for stakeholder's concerns to be addressed; (c) enabling the Court to satisfy itself that the monitor's activities have been

[36] Second Report, s. 4.0.3, Tab 2, MR, E1066.
[37] Second Report, s. 4.0.4, Tab 2, MR, E1066.

conducted in a prudent and diligent manner; (d) providing protection for the monitor not otherwise provided by the CCAA; and (e) protecting creditors from delay that may be caused by re-litigation of steps or potential indemnity claims by the monitor.[38]

39. The Court has determined that these policy and practical reasons apply equally to receivership proceedings and motions seeking approval of a receiver's reports and activities.[39]

40. As set out in the Reports, since the Receivership Order, the Receiver has, among other things, taken possession of the Debtors' assets, obtained the Sale Approval Order and advanced the Sale Process, negotiated four sale transactions, obtained an independent review of the Lenders' security, communicated with lien claimants and other stakeholders, and developed the Priority Claims Procedure.[40]

41. The Receiver's activities, as set out in the Reports, were reasonable, necessary, and undertaken in good faith and in accordance with the Receiver's powers and duties as set out in the Receivership Order.[41] The Reports, and the activities of the Receiver described therein, should be approved. The Receiver is not aware of any opposition to the approval of its reports and activities.

D. The Court Should Approve the Receiver's Fees and Receiver's Counsel Fees

42. AlixPartners is seeking approval of its professional fees and disbursements incurred by it as Receiver as well as those of its legal counsel, McCarthy Tétrault LLP ("**McCarthys**").

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[38] *Target Canada Co. (Re)*, 2015 ONSC 7574 (CanLII) at paras. 2, 22-23.
[39] *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161 (CanLII) at para. 15.
[40] Second Report, s. 5.0.2, Tab 2, MR, E1067.
[41] Second Report, s. 5.0.1-s. 5.0.2, Tab 2, MR, E1067.

43. The Receivership Order provides that AlixPartners and its counsel 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.[42]

44. The fees and disbursements of AlixPartners for the period from June 1, 2026 to August 31, 2026 total $384,145.25 and $446.07, respectively, excluding sales tax.[43] The fees and disbursements of McCarthy for the period from June 8, 2026 to September 21, 2026 total $251,619 and $1,197.44 respectively, excluding sales tax.[44]

45. The fees and disbursements incurred by the Receiver and its counsel are fair and reasonable in the circumstances, noting in particular the value provided by the ongoing efforts to complete transactions for the Unsold Units and resolve ancillary issues such as recovery of the commission advances.[45] The fees and disbursements have been validly incurred in accordance with the provisions of the Receivership Order issued in respect of these receivership proceedings.

46. Accordingly, the fees and disbursements incurred by the Receiver and its counsel should be approved.

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[42] Receivership Order at para. 17, Appendix "A" to the Second Report, Tab 2A, MR, E1083.

[43] Second Report, s. 6.0.2, Tab 2, MR, E1068; Affidavit of Robert Kofman sworn September 22, 2026, Appendix "B" to the Second Report, Tab 2B, MR, E1091.

[44] Second Report, s. 6.0.3, Tab 2, MR, E1068; Affidavit of Trevor Courtis sworn September 22, 2026, Appendix "C" to the Second Report, Tab 2C, MR, E1110.

[45] *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 (CanLII) at para. 33 and 45.

E. The Court Should Grant the Commission Repayment Order

(i) Unearned Commissions

47. Before the receivership, the Debtors paid brokers advances on commissions to certain brokers that they would be entitled to upon the sale closing. The commissions were not earned and the brokers were not entitled to retain the commissions unless and until the sale of the applicable unit closed. If the sale did not close, the brokers were required to repay the commission advances to the Debtors in full within five days.[46]

48. The Receiver has identified outstanding unearned commissions totaling $111,674.10 payable by three brokerages, acting through four co-operating agents (collectively, the "**Brokers**"), in respect of seven condominium units whose sales failed to close (the "**Unearned Commissions**") as follows:[47]

Broker	**Unit(s)**	**Amount**
Bay Street Group Inc.	724	$25,169.10
Royal LePage Supreme Realty	906, 914	$37,165.60
Homelife Landmark Realty Inc. (Victor Li)	908, LPH09	$12,979.80
Homelife Landmark Realty Inc. (Helen He)	LPH08, LPH10	$36,359.60
Total		$111,674.10

[46] Second Report, s. 7.1.1-s. 7.1.4, Tab 2, MR, E1068-E1069; Appendices "D-1" to "D-7" to the Second Report, Tab 2D-1-2D-7, MR, E1142-E1158.

[47] Second Report, s. 7.1.2, Tab 2, MR, E1069.

49. The Unearned Commissions are calculated on a net basis. Where a Broker is owed commissions by the Debtors on other units that closed before the Receivership Order, the Receiver has permitted that Broker to set off those amounts, and only Brokers that owe money on a net basis are included. Set-off has been applied only where both obligations arose before the Receivership Order.[48]

50. The Receiver sent demand letters to each of the Brokers in the week of August 17, 2026, follow-up emails to Royal LePage Supreme Realty and Homelife Landmark Realty Inc. on September 4, 2026, and final notices between September 11 and 14, 2026.[49]

51. None of the Brokers have repaid the Unearned Commissions.

(ii) Bay Street's Various Untenable Arguments

52. Bay Street Group Inc. ("**Bay Street**") disputed the amount and raised several arguments in correspondence with the Receiver.[50] The following is a summary of Bay Street's arguments and the Receiver's response to them:

Bay Street Argument	**Response**
There is no contractual basis requiring Bay Street to repay the Unearned Commissions.[51]	The Broker Cooperating Agreement expressly requires Bay Street to repay the Unearned Commission if the transaction fails to close for any reason whatsoever, within five days of being notified that the transaction has not closed.[52]

[48] Second Report, s. 7.2.1-7.2.2, Tab 2, MR, E1069-E1070.

[49] Second Report, s. 7.3.1, Tab 2, MR, E1070; Appendices "E", "F" and "G" to the Second Report, Tab 2E-1-2G-3, MR, E1161, E1174, E1188.

[50] Appendix "H" to the Second Report, Tab 2H, MR, E1190.

[51] Appendix "H" to the Second Report, Tab 2H, MR, E1194.

[52] Broker Cooperating Agreement between Nova Ridge (Manderley) GP Corp. and Bay Street Group Inc. dated October 5, 2022, Appendix "D-1" to the Second Report, MR, Tab 2D-1, E1142.

Bay Street Argument	**Response**
The Receiver is prohibited from obtaining repayment by the doctrines of waiver and estoppel by representation because there was a five-month delay in the Debtors issuing a default notice.[53]	At no time did the Debtors represent that – contrary to the terms of the Broker Cooperating Agreement – the Unearned Commission would not have to repaid if the transaction failed to close. The Debtors were not required to send a default notice within any particular time period. There is no evidence of detrimental reliance by Bay Street or anyone else.
The repayment of the Unearned Commission would be contrary to the principles of equitable set-off and unjust enrichment because the Debtors also retained the deposit paid by the purchaser.[54]	There is nothing inequitable about the deposit being retained and the Unearned Commissions being repaid. The retention of the deposit was to compensate the Debtors for losses incurred due to the transaction failing to close. The repayment of the Unearned Commission is to return money that was paid to Bay Street that it is not entitled to keep.
The purchaser may enter into a new purchase agreement for the unit.[55]	The Broker Cooperating Agreement provides that Bay Street is only entitled to commission on the closing of the transaction contemplated in the particular agreement specified. That agreement was terminated and the Broker Cooperating Agreement is clear that, in those circumstances, the commission advances must be repaid. Any negotiations that may now be occurring on a different agreement are irrelevant.

53. Royal LePage Supreme Realty sent an e-mail to Receiver's counsel asserting that it would be inequitable and unfair to require it to repay the Unearned Commissions because it was not responsible for the transaction failing to close. This argument is not tenable. The repayment of the Unearned Commission is not inequitable or unfair. It is required by the contract that the Broker entered into, which expressly required the Unearned Commissions to be repaid regardless of the reason that the transaction failed to close.

[53] Appendix "H" to the Second Report, Tab 2H, MR, E1194.

[54] Appendix "H" to the Second Report, Tab 2H, MR, E1195.

[55] Appendix "H" to the Second Report, Tab 2H, MR, E1190.

54. Homelife Landmark Realty Inc. has not contacted the Receiver directly but has contacted the Sales Agent to request that it ask the Receiver to not seek the repayment of the Unearned Commissions.

55. The Receiver has considered all of the arguments raised by the Brokers and remains of the view that the Unearned Commissions are required to be repaid.

56. None of the Brokers have filed any materials in response to this motion to date.

(iii) Court Should Grant the Commission Repayment Order

57. Pursuant to section 243 of the *Bankruptcy and Insolvency Act*, the Court can appoint a Receiver to take any action the Court considers advisable.[56] Section 243 is interpreted broadly and purposively and extends to relief incidental to a receiver's express powers.[57] The Receivership Order already authorizes the Receiver to collect all monies owing to the Debtors and to exercise the Debtors' remedies in doing so.[58]

58. Earlier this month, the Ontario Court of Appeal confirmed the established law that commissions are ***not payable*** to brokers where the transaction has not been completed unless there is clear contractual language to the contrary.[59] This approach promotes commercial certainty. Parties are free to agree that a brokerage will earn its commission despite a failure to close.[60]

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[56] S. 243(1), *Bankruptcy and Insolvency Act*, RSC 1985, c B-3.
[57] *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 (CanLII) at para. 77.
[58] Receivership Order at para. 3, Appendix "A" to the Second Report, Tab 2A, MR, E1075.
[59] *Ayuba v. Erhunmwun*, 2026 ONCA 635 at para. 51 [***Ayuba***].
[60] *Ayuba* at paras. 49-51; Second Report, s. 7.1.3, Tab 2, MR.

59. That did not occur in this case. The relevant contracts clearly provide that the Unearned Commissions are repayable within five days if the sale has not closed for any reason whatsoever.[61]

60. The transactions have each been terminated and the Receiver has sent numerous demands to each of the Brokers asking them to comply with their contractual obligations. The amount the Receiver has demanded from each Broker has already been reduced, where applicable, to reflect a set-off of any pre-receivership commissions owing to the Broker on other transactions.

61. However, each of the Brokers has failed or refused to repay the Unearned Commissions. The proposed Commission Repayment Order gives the Brokers a further 15 days, which is three times what they are entitled to under the relevant contract, to repay the Unearned Commissions.

62. Each of the Brokers was given notice of this motion, including the relief sought in the Commission Repayment Order, on September 22, 2026. None has filed any materials in response to date.

63. It is appropriate to order the Brokers to repay to the Unearned Commissions to the Receiver for the benefit of the Debtors' stakeholders. The relief is consistent with case law governing brokerage commissions and the Receiver's mandate to realize on the Property and maximize recoveries.[62]

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[61] Broker Cooperating Agreement between Nova Ridge (Manderley) GP Corp. and Bay Street Group Inc. dated October 5, 2022, Appendix "D-1" to the Second Report, MR, Tab 2D-1, E1142.

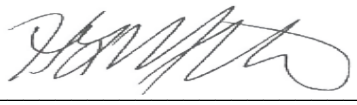
[62] *Ayuba* at paras. 49-51; Second Report, s. 1.0.3, Tab 2, MR, E1058; Second Report, s. 7.1.2, Tab 2, MR, E1069.

64. The alternative solution, being separate actions to recover sums of this size, would be impractical and incur unnecessary costs in the receivership. The proposed Commission Repayment Order is just and appropriate and should be granted.

PART IV. ORDER REQUESTED

65. For the reasons set out above, the Receiver requests that this Court grant (i) the proposed Priority Claims Procedure Order, (ii) the proposed Distribution Approval Order, and (iii) the proposed Commission Repayment Order.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 29th day of September, 2026.



Heather Meredith/ Trevor Courtis/ Meena Alnajar
McCarthy Tétrault LLP

Lawyers for the Receiver

SCHEDULE "A"
LIST OF AUTHORITIES

1. *Ayuba v. Erhunmwun*, 2026 ONCA 635 (CanLII)
2. *Bank of Nova Scotia v. Diemer*, 2014 ONCA 851 (CanLII)
3. *bcIMC Construction Fund Corp. v. Chandler Homer Street Ventures Ltd.*, 2008 BCSC 897
4. *Coast Capital Savings Credit Union v. Symphony Development Corp.*, 2011 BCSC 333
5. *Computershare Trust Company of Canada v. Cookstown Holdings Ltd.,* 2014 ONSC 685
6. *Faurschou v. Faurschou Farms Ltd.*, 2021 MBQB 106
7. *Hanfeng Evergreen Inc., (Re)*, 2017 ONSC 7161 (CanLII)
8. Interim Distribution Order of McEwen J. dated March 11, 2021, *BCIMC Constructing Fund Corporation and Otera Capital Inc. v. 33 Yorkville Residences Inc. and 33 Yorkville Residences Limited Partnership*, Court File No. CV-20-00637297-CL (On Sup Ct J [Commercial List])
9. Lien Claims Process Order of Steele J. dated April 8, 2026 in *Re LJM Developments (Hamilton) Inc.*, Court File No. CL-26-00000053-0000 (On Sup Ct J [Commercial List])
10. *Nuance Pharma Ltd. v. Antibe Therapetics Inc.*, 2025 ONSC 706
11. *Ontario Securities Commission v. Paramount Equity Financial Corporation*, 2018 ONSC 5327
12. Priority Claims Procedure Order of Dunphy J. dated January 20, 2026 in *915643 Ontario Inc. v. 177 Cross Argus Development Inc. and Double Diamond Capital Inc.*, Court File No. CL-25-00753599-0000 (On Sup Ct J [Commercial List])
13. Priority Claims and Cure Amounts Procedure Order of Conway J. dated June 9, 2025 in *Re Li-Cycle Holdings Inc.*, Court File No. CV-25-00743053-00CL (On Sup Ct J [Commercial List])
14. Priority Claims Procedure Order of Penny J. dated October 16, 2024, *MCAP Financial Corporation v. Vandyk-Backyard King's Mills Limited*, Court File No. CV-23-00710267-00CL (On Sup Ct J [Commercial List])
15. Priority Claims Procedure Order of McEwen J. dated March 11, 2021, *BCIMC Constructing Fund Corporation and Otera Capital Inc. v. 33 Yorkville Residences Inc.*

and 33 Yorkville Residences Limited Partnership, Court File No. CV-20-00637297-CL (On Sup Ct J [Commercial List])

16. *Re LJM Developments (Hamilton) Inc.*, 2026 ONSC 2114 (CanLII)

17. *Royal Bank of Canada v. Casselman PHBC Ltd.*, 2017 ONSC 4107

18. *Target Canada Co. (Re)*, 2015 ONSC 7574

19. *Third Eye Capital Corporation v. Ressources Dianor Inc./Dianor Resources Inc.*, 2019 ONCA 508 (CanLII)

I certify that I am satisfied as to the authenticity of every authority, and I am satisfied that every quotation from an authority that appears in the factum accurately reproduces the text of the authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

Date September 29, 2026

Meena Alnajar

SCHEDULE "B"
RELEVANT STATUTES

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

Court may appoint receiver

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

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

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

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

***Construction Act*, RSO 1990, c C.30**

Expiry of liens

31 (1) Unless preserved under section 34, the liens arising from the supply of services or materials to an improvement expire as provided in this section. R.S.O. 1990, c. C.30, s. 31 (1); 2017, c. 24, s. 67.

Contractor's liens

(2) Subject to subsection (4), the lien of a contractor,

(a) for services or materials supplied to an improvement on or before the date certified or declared to be the date of the substantial performance of the contract, expires at the conclusion of the 60-day period next following the occurrence of the earlier of,

(i) the date on which a copy of the certificate or declaration of the substantial performance of the contract is published as provided in section 32, and

(ii) the date the contract is completed, abandoned or terminated; and

(b) for services or materials supplied to the improvement where there is no certification or declaration of the substantial performance of the contract, or for services or materials supplied to the improvement after the date certified or declared to be the date of substantial performance, expires at the conclusion of the 60-day period next following the occurrence of the earlier of,

(i) the date the contract is completed, and

(ii) the date the contract is abandoned or terminated. R.S.O. 1990, c. C.30, s. 31 (2); 2017, c. 24, s. 26 (1-5), 66.

***Courts of Justice Act*, RSO 1990, c C.43**

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

UNITED OVERSEAS BANK LIMITED, VANCOUVER BRANCH v. NOVA RIDGE (MANDERLEY) LIMITED PARTNERSHIP and NOVA RIDGE (MANDERLEY) GP CORP.	Court File No.: CL-26-00000276-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding Commenced at Toronto

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