



FORCE FILED

No. S-244083  
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

3000 HENRY STREET LIMITED PARTNERSHIP

and

0790857 B.C. LTD.

RESPONDENTS

**NOTICE OF APPLICATION**

**NAME OF APPLICANT:** KSV Restructuring Inc., in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") of the assets, undertakings, and property of 3000 Henry Street Limited Partnership and 0790857 B.C. Ltd.

**TO:** Service List, attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the Receiver to the Honourable Justice Stephens at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on Monday, December 9, 2024, at 9:30 a.m. for the orders set out in Part 1 below.

The applicant estimates that the Application will take 1 hour.

This matter is not within the jurisdiction of an Associate Judge.

**Part 1: ORDER(S) SOUGHT**

1. An approval and reverse vesting order (the "**RVO**"), substantially in the form attached hereto as **Schedule "B"**, among other things:
  - (a) approving the transaction (the "**Transaction**") contemplated in the agreement of purchase and sale dated October 3, 2024 (the "**APS**") between the Receiver and 1496619 B.C. Ltd. (the "**Purchaser**");
  - (b) authorizing the Receiver to incorporate a new entity ("**ResidualCo**");

- (c) approving the transfer to ResidualCo of all right, title, and interest of 0790857 B.C. Ltd. ("**079 BC**" or the "**Nominee**") in and to the Nominee's Transferred Assets and Transferred Liabilities;
  - (d) expunging against the Purchaser, the Nominee and the Retained Assets, all Claims, Encumbrances and Nominee's Transferred Liabilities in respect of the Nominee, the Shares, and the Nominee's Retained Assets;
  - (e) approving the transfer of all of the right, title and interest of 3000 Henry Street Limited Partnership ("**Henry Street**") in and to the: (i) Shares, (ii) the Property, (iii) the Accounts Receivable, (iv) the Books and Records, and (v) the Intellectual Property, to the Purchaser free and clear of all Claims and Encumbrances;
  - (f) substituting ResidualCo as a Respondent in place of the Nominee in these proceedings; and
  - (g) releasing the Releasees from the Released Claims.
2. An order, substantially in the form attached hereto as **Schedule "C"**, authorizing and empowering the Receiver to make:
    - (a) one or more distributions to KingSett Mortgage Corporation ("**KingSett**"), the first-ranking secured lender, in an amount(s) the Receiver may deem advisable (the "**KingSett Distribution**"); and
    - (b) distributions for the Prior-Ranking Amounts (the "**Prior-Ranking Distribution**" and, together with the KingSett Distribution, the "**Distributions**").
  3. Such further and other relief as this Court may deem just.

## **Part 2: FACTUAL BASIS**

### **General**

1. Capitalized terms used but not otherwise defined in this Notice of Application have the meanings given to them in the Second Report of the Receiver dated December 2, 2024 (the "**Second Report**").

### **Background to these Proceedings**

2. On July 29, 2024, the Supreme Court of British Columbia (the "**Court**") pronounced an Order (the "**Receivership Order**"), appointing KSV Restructuring Inc. as receiver and manager (in such capacity, the "**Receiver**") of the assets, undertakings, and property of Henry Street and 079 BC (together, the "**Debtors**"), including all proceeds (collectively, the "**Property**") pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") and section 39 of the *Law and Equity Act* (British Columbia).
3. The primary asset of the Debtors is a parcel of vacant land at 3000 Henry Street, Port Moody, British Columbia, intended for future multi-residential development (the "**Real Property**").

4. The Receivership Order granted a charge in favour of the Receiver and its legal counsel (the "**Receiver's Charge**"), as security for the payment of their fees and disbursements, against the Property. The Receiver's Charge has "priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to Sections 14.06(7), 81.4(4), and 81.6(2) of the *BIA*."

Receivership Order at para 20

5. On October 25, 2024, the Court granted an Order (the "**Sale Procedure Order**") approving:
  - (a) a sale procedure for the Property (the "**Sale Procedure**"), and the retention of Colliers Macaulay Nicolls Inc. ("**Colliers**") as listing agent pursuant to a listing agreement dated October 23, 2024 entered into between Colliers and the Receiver (the "**Listing Agreement**"); and
  - (b) the APS to act as a stalking horse bid in the Sale Procedure.
6. Pursuant to the Listing Agreement, in the event no Qualified Bid is received, the listing agent is entitled to a minimum work fee of \$60,000 (the "**Work Fee**"). The Work Fee forms a priority as a post-filing obligation ahead of the KingSett Indebtedness.

Second Report at 4.1.2

### The Sale Procedure

7. The Receiver, with assistance from Colliers, carried out the Sale Procedure for the Property in accordance with the Sale Procedure Order. A summary of the marketing efforts under the Sale Procedure is below:
  - (a) Colliers launched the Sale Procedure on October 28, 2024 by distributing an interest solicitation letter detailing the acquisition opportunity (the "**Teaser**") to 2,698 potential purchasers, developers and investors;
  - (b) attached to the Teaser was a bid process letter and a form of non-disclosure agreement ("**NDA**") that interested parties were required to sign in order to obtain access to a virtual data room ("**VDR**");
  - (c) the VDR contained information about the Property, including financial information, contracts, permits, designs, drawings and other diligence information; and
  - (d) the opportunity was also advertised on various websites and social media platforms, each receiving a significant number of views from potentially interested parties.

Second Report at 3.1.1

8. The Sale Procedure contemplated a phased bid deadline, with a 30-day deadline to submit a letter of intent, which, among other things, reflected a reasonable prospect of culminating in a Qualified Bid (an "**LOI**"). This allowed interested parties the flexibility of an additional 15 days to prepare a Qualified Bid thereafter. The Court-approved bid deadline to submit an LOI under the Sale Procedure was November 25, 2024 (the "**LOI Deadline**").

Second Report at 3.1.3

9. Pursuant to the Sale Procedure, if no LOI had been received by the LOI Deadline, no interested party would have met the participation requirements under the Sale Procedure and, as a result, could not submit a Qualified Bid. In the event no party could submit a Qualified Bid, or no Qualified Bid was received, the stalking horse bid contemplated by the APS would be deemed the successful bid.

Second Report at 3.1.4

10. Pursuant to the Sale Procedure, eight parties executed the NDA and were provided access to the VDR. No parties submitted an LOI prior to the LOI Deadline. As a result, the APS was deemed to be the successful bid pursuant to the Sale Procedure.

Second Report at 3.2

### **The Transaction**

11. The key terms and conditions of the APS are summarized below:
  - (a) **Purchased Assets:** all right, title and interest of the Debtors, if any, in certain assets including the below:
    - (i) the Real Property;
    - (ii) all issued and outstanding shares in 079 BC;
    - (iii) all amounts and monetary obligations owing to the Debtors as of the Closing Date;
    - (iv) the Books and Records related to the Purchased Assets; and
    - (v) the Intellectual Property.
  - (b) **Purchase Price:**
    - (i) all amounts payable in priority to KingSett, including amounts secured by the Receiver's Charge, the Receiver's Borrowing Charge, and other amounts payable in priority to the KingSett Indebtedness (the "**Prior-Ranking Amounts**"); and
    - (ii) the KingSett Indebtedness, which includes without limitation, all outstanding principal, accrued interest, fees and other costs, and is exclusive of any applicable Transfer Taxes.
  - (c) **Payment of Purchase Price:**
    - (i) Deposit of \$500,000 payable upon execution of the APS (received on October 8, 2024); and



- (ii) the balance of the Estimated Purchase Price, being the balance after application of the Deposit, payable in cash on the Closing Date, as well as any and all applicable Transfer Taxes.
- (d) **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e. on an “as is, where is” basis, with limited representations and warranties on the part of the Receiver.
- (e) **Material Conditions:** include, among other things:
  - (i) the APS will have been determined in accordance with the Sale Procedure to be the Successful Bid;
  - (ii) the Sale Procedure Order and the RVO shall have been granted by the Court and such Orders will be Final Orders (i.e. any applicable appeal period will have expired and any appeal or application for leave to appeal will have been finally determined) (the “**Court Approval Condition**”); and
  - (iii) no Applicable Law or Order will be in effect that restrains or prohibits consummation of the Transaction or Closing.
- (f) **Closing Date:** 10 Business Days following satisfaction of the Court Approval Condition, subject to extension once each by the Receiver and the Purchaser for up to 10 Business Days.
- (g) **Outside Date:** March 28, 2025.
- (h) **Termination:** the APS can be terminated in the following circumstances, among others:
  - (i) by mutual written consent of the Receiver and the Purchaser;
  - (ii) automatically and immediately upon the selection by the Receiver of a Successful Bid, if the APS is neither the Successful Bid nor the Back-Up Bid; and
  - (iii) if Closing has not taken place by the Outside Date.

Second Report at 3.3(2)

## **Distributions**

### *KingSett Distribution*

12. KingSett is the principal secured creditor of the Debtors. The Debtors’ obligations owing to KingSett are secured by a first-ranking collateral mortgage over the Real Property and a general security agreement granted by the Debtors.

Second Report at 2.3.1.1
13. KingSett has advised the Receiver that as at September 19, 2024, the KingSett Indebtedness is \$14,031,523.60, with interest and costs continuing to accrue.

Second Report at 2.3.1.2

14. The purchase price under the Transaction has been structured to cover the full amount of the KingSett Indebtedness, along with other priority payables outlined in the APS.

Second Report at 4.0.2

15. The Receiver's legal counsel has provided the Receiver with an opinion that, subject to standard assumptions and qualifications, the security granted by the Debtors to KingSett, and attaching to the Property, is valid and enforceable.

*Prior-Ranking Distribution*

16. As of the date of this Second Report: (i) the professional fees outstanding under the Receiver's Charge total approximately \$225,000 (the "**Priority Amounts**"), and (ii) no funds have been borrowed under the Receiver's Borrowing Charge.
17. The Purchase Price contemplates payment of the "Prior-Ranking Amounts". The Prior-Ranking Amounts consist solely of: (i) the Priority Amounts; (ii) the Work Fee payable to Colliers pursuant to the Listing Agreement, and (iii) any future borrowing under the Receiver's Borrowing Charge following the Second Report.

**Part 3: LEGAL BASIS**

**The RVO**

18. A reverse vesting order (an "**RVO**") is incidental or ancillary to a receiver's power to sell. As a result, this Court has a clear jurisdiction to authorize a reverse vesting order pursuant to section 243 of the BIA.

*British Columbia v. Peakhill Capital Inc.*, 2024 BCCA 246  
[Peakhill CA] at para 24

19. In addition, section 183 of the BIA is sufficient to ground this Court's jurisdiction to grant a reverse vesting order:

*Peakhill Capital Inc. v. Southview Gardens Limited Partnership*,  
2023 BCSC 1476 [Peakhill SC], at paras 20-25

*PaySlate Inc. (Re)*, 2023 BCSC 608 at paras 84-86

20. RVO's are not regarded as routine, the norm, but rather as "exceptional" or "extraordinary". Reverse vesting orders should be granted only if they further the remedial objects of the legislation under which authorization was sought.

*Peakhill CA* at para 30

21. Structuring a transaction to avoid the transfer of title and payment of property transfer tax ("**PTT**") pursuant to the *Property Transfer Tax Act* (British Columbia) is a legitimate commercial practice both within and outside of the insolvency context. The goal of maximizing recovery for creditors is a *bona fide* purpose intended to further the objectives of the BIA. Avoiding PTT is simply the means by which this benefit is conferred. An RVO

is a transaction that may reasonably be considered to have been arranged primarily for a *bona fide* purpose other than for the purpose of obtaining the tax benefit.

*Peakhill CA* at paras 30-31

22. In deciding whether to grant the RVO, this Court should consider the following factors:
- (a) **why is the RVO necessary in this case?** The reason for the RVO is for the Purchaser to structure the transaction in a way that does not trigger the obligation to pay PTT to the Government of British Columbia. The Purchaser is not prepared to acquire the Property under an alternative structure that requires payment of PTT.
  - (b) **does the RVO structure produce an economic result at least as favourable as any other viable alternative?** The APS provides for the highest and best consideration as confirmed by the outcome of the Sale Procedure. The granting of an RVO is a material condition of the APS and is integral to completing the Transaction. The Receiver is of the view that further marketing of the Property will not result in a superior transaction and would be prejudicial to the stakeholders of the Debtors, including KingSett. The Receiver is of the view that there are no apparent viable alternatives to an RVO.
  - (c) **is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative?** Pursuant to the terms of the APS, there is no obligation to pay PTT to the Government of British Columbia given that legal title to the Real Property would not be transferred. The Receiver has served the Province of British Columbia with the Second Report and the application materials.
  - (d) **does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the RVO structure?** The increased value that accrues by virtue of not triggering an obligation to pay PTT flows to the Debtors' creditors, including KingSett.

*Peakhill SC* at para 76, upheld by *Peakhill CA* at para 32

*Harte Gold Corp (Re)*, 2022 ONSC 653 [*Harte Gold*] at para 38

Second Report at 3.5

### Releases

23. The Receiver seeks a release of:
- (a) the current and former directors, officers, shareholders, employees, legal counsel and advisors of the Receiver;
  - (b) the Purchaser;
  - (c) the Nominee; and

- (d) the Nominee's Retained Assets (the persons listed in (a), (b) and (c) and the Nominee's Retained Assets being collectively the "**Releasees**"),

from any rights, remedies, claims or benefits arising from or in respect of:

- (a) the Nominee's Transferred Assets;
  - (b) all Claims and Encumbrances and the Transferred Liabilities relating to the Nominee or the Retained Assets existing prior to the delivery of the Receiver's Certificate (the "**Effective Time**");
  - (c) the insolvency of the Nominee prior to the Effective Time;
  - (d) the commencement or existence of these proceedings; or
  - (e) the completion of the Transaction.
24. In addition, the Receiver seeks a release of the current and former directors, officers, employees, legal counsel and advisors of ResidualCo from any claims arising after the Effective Time out of: (i) the Debtors or their business, operations, assets, property and affairs; or (ii) the Transaction.
25. This Court has granted similar releases in receivership proceedings and in the context of the approval of reverse vesting orders.

*Bank of Montreal v. Haro-Thurlow Street Project Limited Partnership,*  
2024 BCSC 1722 [*Haro-Thurlow*] at paras 37-41

*MCAP Financial Corporation v. QRD (Willoughby) Holdings Inc.,*  
2024 BCSC 1654 at paras 32-35

26. In granting these releases, this Court has considered the following factors:
- (a) the releases sought are rationally connected to the purpose of the restructuring;
  - (b) the releases contribute to the restructuring;
  - (c) that the releases are fair, reasonable, and not overly broad;
  - (d) whether the restructuring could succeed without the releases;
  - (e) the releases benefit the Debtors as well as the creditors generally; and
  - (f) the creditors' knowledge of the nature and effect of the releases.

*Haro-Thurlow* at paras 37-41

*Harte Gold* at paras 78-86

27. The granting of the RVO, including the releases, is a condition to the closing and implementation of the Transaction. Given this, the releases in the RVO are rationally connected to the restructuring and essential to its success.

28. The releases sought by the Receiver benefit the Debtors and the creditors generally. In addition, the releases are consistent with the releases granted in recent reverse vesting transactions approved in other proceedings. The releases are fair, reasonable, and not overly broad.

**The Soundair Principles Are Satisfied**

29. The Transaction is fair and reasonable in the circumstances and satisfies the principles set out in *Royal Bank v Soundair Corp*:

- (a) **whether the Receiver has made sufficient efforts to obtain the best price and did not act improvidently.** The Receiver conducted the Sale Procedure as approved by this Court and made significant efforts to obtain the best price for the Property, including by engaging Colliers and assembling due diligence information and promotional materials, marketing the Property widely, and negotiating the terms of the APS with the Purchaser. The Receiver's view is that it is unlikely that exposing the Property to the market for additional time will result in a superior transaction. In addition, the Receiver has acted in good faith and has been open and transparent in conducting the Sale Procedure. The Receiver did not act improvidently;
- (b) **the interests of all parties, with the primary interest being the Debtors' creditors and ensuring that the best possible price is obtained and a secondary but still important consideration being the integrity of the process.** The Receiver made significant efforts to canvass the market and to generate offers. The Transaction represents the highest recovery available for the benefit of the Debtor's stakeholders in the circumstances. The Receiver conducted the Sale Procedure, which was previously approved by this Court in the Sale Procedure Approval Order, in good faith, openly, and transparently. KingSett is supportive of the Transaction;
- (c) **the efficacy and integrity of the process by which offers were obtained.** The Transaction is the result of the Sale Procedure, a efficacious process previously approved by this Court as fair. The Receiver implemented the Sale Procedure with good faith, due diligence and with integrity; and
- (d) **whether there has been unfairness in the working out of the process.** In implementing the Sale Procedure, the Receiver conducted itself fairly and reasonably. There has been no unfairness in the Sale Procedure.

*Royal Bank v Soundair Corp* (1991), 83 DLR (4<sup>th</sup>)  
76, 1991 CarswellOnt 205 (CA) at paras 16, 39 – 46

*Bank of Montreal v Renuka Properties Inc*,  
2015 BCSC 2058 at para 31

Second Report at 3.4

**Distributions**

30. Paragraph 12 of the Receivership Order provides that the Receiver shall hold all "funds, monies, cheques, instruments, and other forms of payments received or collected by the



Receiver [...] from any source whatsoever including, without limitation, the sale of all or any of the Property". It further provides that disbursements of such funds shall "be paid in accordance with the terms of [the Receivership Order] or any further order of this Court".

31. Orders approving distributions are routinely granted by courts in insolvency proceedings and receiverships.

*Windsor Machine & Stamping Ltd (Re)*, 2009  
CanLII 39772 (ONSC) at paras 8, 13

*AbitibiBowater Inc (Arrangement relatif à)*, 2009  
QCCS 6461 at paras 70 – 75 [*AbitibiBowater*]

Order dated August 4, 2023 granted by this Court  
in *Peakhill Capital Inc. v. Southview Gardens et al.*,  
No. VLC-S-S-231065

32. In *AbitibiBowater*, Justice Gascon considered a number of factors in deciding whether to approve a distribution under the *Companies' Creditors Arrangement Act* (Canada) that are equally applicable to a receivership proceeding, all of which support the approval of the Distributions:

- (a) **whether the payee's security is valid and enforceable.** The Receiver's counsel, Cassels Brock & Blackwell LLP ("**Cassels**"), has reviewed the security granted by the Debtors in favour of KingSett. Subject to standard assumptions and qualifications, Cassels has opined that this security creates valid and perfected security interests in the Property;
- (b) **whether the distribution would result in significant interest savings to the estate.** The purchase price under the Transaction has been structured to cover the full amount of the KingSett Indebtedness, along with other priority payables outlined in the APS. The KingSett Distribution will pay down all of the indebtedness owing to KingSett. This will limit the accrual of additional interest in respect thereof and result in significant interest savings; and
- (c) **whether the distribution will leave the estate with sufficient liquidity.** The purchase price under the Transaction has been structured to cover priority payables outlined in the APS, including the Priority Amounts.

*AbitibiBowater* at paras 75, 76

Second Report at 4.0.2

**Part 4: MATERIAL TO BE RELIED ON**

1. First Report of the Receiver dated October 11, 2024;
2. Second Report of the Receiver dated December 2, 2024; and
3. Such further and other materials as counsel may advise and this Court may permit.

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).

Date: December 2, 2024



\_\_\_\_\_  
Signature of lawyer for the applicant  
Cassels Brock & Blackwell LLP  
(Vicki Tickle)

THIS NOTICE OF APPLICATION was prepared by Vicki Tickle, of the firm of Cassels Brock & Blackwell LLP, whose place of business and address for delivery is 2200 - 885 West Georgia Street, Vancouver BC V6E 3C8, Telephone: 604.691.6100; Fax: 604.691.6120.

**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  Associate Judge

## APPENDIX

### THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts
- other

**Schedule "A" to Notice of Application  
Service List**

<p><b>Cassels Brock &amp; Blackwell LLP</b> Suite 2200, 885 West Georgia Street Vancouver, BC V6E 3E8</p> <p>Attention: Vicki Tickle Mihai Tomos</p> <p>Email: <a href="mailto:vtickle@cassels.com">vtickle@cassels.com</a> <a href="mailto:mtomos@cassels.com">mtomos@cassels.com</a></p> <p><i>Counsel to the Receiver, KSV Restructuring Inc.</i></p>	<p><b>KSV Restructuring Inc.</b> 220 Bay Street, 13th Floor, PO Box 20, Toronto, Ontario, M5J 2W4</p> <p>Attention: Noah Goldstein Ross Graham</p> <p>Email: <a href="mailto:ngoldstein@ksvadvisory.com">ngoldstein@ksvadvisory.com</a> <a href="mailto:rgraham@ksvadvisory.com">rgraham@ksvadvisory.com</a></p> <p><i>Receiver</i></p>
<p><b>Osler, Hoskin &amp; Harcourt LLP</b> Bentall Four, 1055 Dunsmuir St Suite 3000, Vancouver, BC V7X 1K8</p> <p>Attention: Mary Buttery Emma Newbery</p> <p>Email: <a href="mailto:mbuttery@osler.com">mbuttery@osler.com</a> <a href="mailto:enewbery@osler.com">enewbery@osler.com</a></p> <p><i>Counsel to KingSett Mortgage Corporation</i></p>	<p><b>KingSett Mortgage Corporation</b> Arthur Erickson Place 1075 West Georgia Street, Suite 2030, Vancouver, BC V6E 3C9.</p> <p>Attention: Daniel Pollack Justin Walton</p> <p>Email: <a href="mailto:dpollack@kingsettcapital.com">dpollack@kingsettcapital.com</a> <a href="mailto:jwalton@kingsettcapital.com">jwalton@kingsettcapital.com</a></p> <p><i>Secured Creditor</i></p>
<p><b>Lawson Lundell LLP</b> 1600 - 925 West Georgia Street Vancouver, BC V6C 3L2</p> <p>Attention: Jack Yong William Roberts Tim Law</p> <p>Email: <a href="mailto:jyong@lawsonlundell.com">jyong@lawsonlundell.com</a> <a href="mailto:wroberts@lawsonlundell.com">wroberts@lawsonlundell.com</a> <a href="mailto:tlaw@lawsonlundell.com">tlaw@lawsonlundell.com</a></p> <p><i>Counsel to the Stalking Horse Bidder, 1496619 B.C. LTD.</i></p>	<p><b>Aultrust Financial</b> #1510 – 475 Howe Street Vancouver, BC, V6C 2B3 Phone: 604.757.2774</p> <p>Attention: Amin Eskooch</p> <p>Email: <a href="mailto:Amin@aultrust.com">Amin@aultrust.com</a></p>



<p><b>Owen Bird Law Corporation</b> P.O. Box 1 Vancouver Centre II 2900-733 Seymour Street Vancouver, BC V6B 086</p> <p>Attention: Scott H. Stephens Heather A Frydenlund</p> <p>Email: <a href="mailto:sstephens@owenbird.com">sstephens@owenbird.com</a> <a href="mailto:hfrydenitund@owenbird.com">hfrydenitund@owenbird.com</a> <a href="mailto:lgrillandini@owenbird.com">lgrillandini@owenbird.com</a></p> <p><i>Counsel to 1144001 B.C. Ltd., AP &amp; Sons Residential Holdings Ltd., BST Trading Ltd., 1138768 B.C. Ltd., Concerto Development Corporation 1061833 B.C. Ltd., and Veramax Holding Ltd.</i></p>	<p><b>BC Ministry of Attorney General</b> Legal Service Branch 2<sup>nd</sup> floor - 1001 Douglas Street Victoria, BC V8W 2C5</p> <p>Attention: Aaron Welch</p> <p>Email: <a href="mailto:aaron.welch@gov.bc.ca">aaron.welch@gov.bc.ca</a></p>
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**E-SERVICE LIST**

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**Schedule "B" to Notice of Application  
Form of Approval and Reverse Vesting Order**

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND

3000 HENRY STREET LIMITED PARTNERSHIP

and

0790857 B.C. LTD.

RESPONDENTS

**IN THE SUPREME COURT OF BRITISH COLUMBIA  
IN BANKRUPTCY AND INSOLVENCY**

**IN THE MATTER OF RECEIVERSHIP OF  
3000 HENRY STREET LIMITED PARTNERSHIP  
AND 0790857 B.C. LTD.**

**ORDER MADE AFTER APPLICATION**

**APPROVAL AND REVERSE VESTING ORDER**

BEFORE THE HONOURABLE  
JUSTICE STEPHENS

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)  
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December 9, 2024

THE APPLICATION of KSV Restructuring Inc., in its capacity as Court-appointed Receiver and Manager (the "Receiver") of the assets, undertakings and property of 3000 Henry Street Limited Partnership (the "LP") and 0790857 B.C. Ltd. (the "Nominee" and together with the LP, the "Debtors") coming on for hearing at Vancouver, British Columbia on the 9<sup>th</sup> day of December, 2024; AND ON HEARING from Vicki Tickle, counsel for the Receiver, and those other counsel listed on **Schedule "A"** hereto, and no one else appearing; AND UPON READING the material

filed, including the Receiver's Second Report to the Court, dated December 2, 2024 (the "**Report**");

THIS COURT ORDERS AND DECLARES THAT:

## DEFINITIONS

1. Capitalized terms used but not otherwise defined in this Order have the meaning given to them in the Agreement of Purchase and Sale dated September 20, 2024 (the "**Sale Agreement**") between the Receiver and 1496619 B.C. Ltd. (the "**Purchaser**"), a copy of which is attached hereto as **Schedule "B"** hereto.
2. In this Order, the following terms shall bear the meaning given to them below:
  - (a) "**Claims**" means any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing, all Encumbrances;
  - (b) "**Encumbrances**" means (i) any encumbrances or charges created by the Receivership Order; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* of British Columbia or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto, but excluding the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"** hereto;
  - (c) "**Liability**" means any debts, claim, liability, duty, responsibility, obligations, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, or due or to become due and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed;
  - (d) "**Receivership Order**" means, collectively, the Receivership Order of the Honourable Justice Stephens granted in the within proceedings on July 29, 2024;
  - (e) "**Nominee's Retained Assets**" means all right, title and interest of the Nominee, if any, in and to the Property, the Accounts Receivable, the Books and Records, and the Intellectual Property, and any other assets, property or obligations, which, pursuant to the terms and conditions of the Sale Agreement, remain the property of the Nominee after completion of the Transaction;
  - (f) "**Nominee's Transferred Assets**" means the Nominee's entitlement, if any, to the Purchase Price and the Excluded Assets (if any); and
  - (g) "**Nominee's Transferred Liabilities**" means (i) all Liability of the Nominee arising prior to the Closing Date, including, but not limited to, Liability owed to lenders, service contractors, or third parties of any kind, including Liability under contracts, permits, or leases relating to the Lands; (ii) any Liability relating to or arising out of

the Nominee's Transferred Assets; (iii) any Liability of the Nominee for taxes resulting from the Transaction (for the avoidance of doubt this shall not include any GST or other taxes payable by the Purchaser in respect of the Transaction pursuant to the Sale Agreement); (iv) all employees, employment agreements, executive personnel agreements, officer or director agreements, employee wages, employee benefit plans or payments, pension obligations, employee tax withholding obligations, employee health or dental plan obligations, all employee complaints or claims, labour relations board actions or other employee proceedings and similar obligations of the Nominee (if any); (v) all Liability for payment of fees for operation of the Lands up to the Closing Date (if any); (vi) any proceedings, claims or actions commenced in any court initiated or threatened against the Nominee; (vii) the costs and expenses and Liability of the Nominee under the within proceedings; (viii) any Liability for a breach of or non-compliance with any applicable law by the Nominee; and (ix) the Liability of the Nominee under the Sale Agreement.

### **APPROVAL OF THE TRANSACTION**

3. The sale transaction (the "**Transaction**") contemplated by the Sale Agreement is hereby approved, and the Sale Agreement is commercially reasonable. The execution of the Sale Agreement by the Receiver is hereby authorized and approved, and the Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction.

### **VESTING OF ASSETS AND LIABILITIES**

4. Upon delivery by the Receiver to the Purchaser of a certificate substantially in the form attached as **Schedule "E"** hereto (the "**Receiver's Certificate**"), the following shall occur and be deemed to have occurred commencing at the time of delivery of the Receiver's Certificate (the "**Effective Time**") in the following sequence:
  - (a) The Receiver shall incorporate a new subsidiary ("**Residual Co**") of the LP, which Residual Co shall be added as a Respondent in the within proceedings pursuant to paragraph 14 of this Order;
  - (b) All of the Nominee's right, title and interest in and to the Nominee's Transferred Assets shall be transferred to, and shall vest absolutely and exclusively, without recourse, in Residual Co;
  - (c) All Claims, Encumbrances, and Nominee's Transferred Liabilities in respect of the Nominee and the Nominee's right, title and interest in the Nominee's Retained Assets shall be transferred to and assumed by and shall vest absolutely and exclusively without recourse in Residual Co, and (i) such Claims and Encumbrances shall continue to attach to the Nominee's Transferred Assets with the same nature and priority as they had immediately prior to the Effective Time, as if the Nominee's Transferred Assets had not been conveyed and had remained in the possession or control of the person having possession or control immediately prior to the transfer; (ii) such Claims and Encumbrances equal to the fair market value of the Nominee's Transferred Assets shall be transferred to and assumed by Residual Co in consideration for the transfer of the Nominee's Transferred Assets; and (iii) the remaining Claims and Encumbrances, and all



Nominee's Transferred Liabilities shall be transferred to and assumed by Residual Co for no consideration as part of, and to facilitate, the implementation of the Transaction;

- (d) All Claims, Encumbrances and Nominee's Transferred Liabilities in respect of the Nominee, the Shares, and the Nominee's Retained Assets shall be irrevocably and forever expunged, released and discharged as against the Purchaser, the Nominee and the Nominee's Retained Assets;
- (e) Without limiting subparagraph 4(d), any and all security registrations against the Nominee, the Shares, and the Nominee's Retained Assets shall be and are hereby forever released and discharged as against the Nominee, and all such security registrations shall attach to the Nominee's Transferred Assets vested in Residual Co and maintain the same attributes, rights, nature, perfection and priority as they had immediately prior to the Effective Time, as if the Nominee's Transferred Assets had not been conveyed and remained in the possession or control of the person having that possession or control immediately prior to the transfer, and no financing change statements in any applicable personal property or other registry system are required to reflect the transfer of and assumption by Residual Co of such security registrations;
- (f) The Nominee shall cease to be a Respondent in the within proceedings and shall be deemed released from the purview of all Orders of this Court granted in respect of the within proceedings, save and except for this Order; and
- (g) All of the LP's legal and/or beneficial right, title and interest in and to:
  - (i) the Shares;
  - (ii) the Property;
  - (iii) the Accounts Receivable;
  - (iv) the Books and Records; and
  - (v) the Intellectual Property,

shall vest absolutely in the Purchaser, free and clear of all Claims and Encumbrances.

5. Upon presentation for registration in the Land Title Office for the Land Title District of New Westminster of a certified copy of this Order, together with a letter from Cassels Brock & Blackwell LLP, solicitors for the Receiver, authorizing registration of this Order, the British Columbia Registrar of Land Titles is hereby directed to discharge, release, delete and expunge from title to the Lands all of the registered Encumbrances, except for those listed in Schedule "C". For additional clarity, the British Columbia Registrar of Land Titles is hereby directed to discharge all of the registered Encumbrances listed in Schedule "B".
6. The Receiver and Residual Co are hereby permitted to execute and file articles of incorporation, bylaws, and such other documents or instruments as may be required to

permit or enable and effect the incorporation of Residual Co and the Transaction, and such articles, documents or other instruments shall be deemed to be duly authorized, valid and effective notwithstanding any requirement under federal or provincial law to obtain director or shareholder approval with respect to such actions or to deliver any statutory declarations that may otherwise be required under corporate law to effect the incorporation of Residual Co.

7. This Order shall constitute the only authorization required by the Receiver, or Residual Co to proceed with the Transaction, including, without limitation, the incorporation of Residual Co and, except as specifically provided in the Sale Agreement, no director or shareholder approval shall be required and no authorization, approval or other action by or notice to or filing with any Governmental Authority exercising jurisdiction in respect of the Nominee is required for the due execution, delivery and performance by the Receiver, the Nominee, and by Residual Co of the Sale Agreement and the completion of the Transaction.
8. As of the Effective Time:
  - (a) the Nominee shall continue to hold all legal right, title and interest in and to the Nominee's Retained Assets, free and clear of all Claims and Encumbrances and the Nominee's Transferred Liabilities;
  - (b) the Nominee shall be deemed to have disposed of the Nominee's Transferred Assets and shall have no right, title or interest in or to the Nominee's Transferred Assets.
9. For greater certainty, any person that, prior to the Effective Time, had a Claim or Encumbrance against the Nominee or its assets, properties or undertakings shall, as of the Effective Time, no longer have any such Claim or Encumbrance against or in respect of the Nominee or the Nominee's Retained Assets, but shall have an equivalent Claim or Encumbrance, as applicable, against the Nominee's Transferred Assets to be administered by the Receiver in Residual Co from and after the Effective Time, with the same attributes, rights, security, nature and priority as such Claim or Encumbrance had immediately prior to its transfer to Residual Co, and nothing in this Order limits, lessens, modifies (other than by change in Debtor) or extinguishes the Claim or Encumbrance of any Person as against the Nominee's Transferred Assets to be administered by the Receiver in Residual Co.
10. From and after the Effective Time, the Purchaser and/or the Nominee shall be authorized to take all steps as may be necessary to effect the discharge and release as against the Nominee and the Nominee's Retained Assets of the Claims, Encumbrances and Nominee's Transferred Liabilities that are transferred to and vested in Residual Co pursuant to this Order.
11. Upon the delivery of the Receiver's Certificate, and upon filing of a certified copy of this Order together with any applicable registration fees, all Governmental Authorities exercising jurisdiction with respect to the Nominee, the Nominee's Retained Assets, or the Nominee's Transferred Assets are hereby authorized, requested and directed to accept delivery of such Receiver's Certificate and certified copy of this Order as though they were originals and to register such transfers, interest authorizations, discharges and conveyances as may be required to give effect to the terms of this Order and the

completion of the Transaction and to discharge and release all Claims and Encumbrances and Nominee's Transferred Liabilities against or in respect of the Nominee and the Nominee's Retained Assets, and presentation of this Order and the Receiver's Certificate shall be the sole and sufficient authority for the Governmental Authorities to do so.

## RELEASES

12. From and after the Effective Time, all Persons shall be absolutely and forever barred, estopped, foreclosed and permanently enjoined from pursuing, asserting, exercising, enforcing, issuing or continuing any steps or proceedings, or relying on any rights, remedies, claims or benefits in respect of or against the Receiver, its directors, officers, employees, counsel, advisors and representatives, the Purchaser, the Nominee, or the Nominee's Retained Assets, in any way relating to, arising from or in respect of:
  - (a) the Nominee's Transferred Assets;
  - (b) any and all Claims or Encumbrances and the Nominee's Transferred Liabilities against or relating to the Nominee, the Nominee's Transferred Assets or the Nominee's Retained Assets existing immediately prior to the Effective Time;
  - (c) the insolvency of the Nominee prior to the Effective Time;
  - (d) the commencement or existence of these receivership proceedings; or
  - (e) the completion of the Transaction.
  
13. From and after the Effective Time, the current and former directors, officers, employees, legal counsel and advisors of Residual Co shall be deemed to be forever irrevocably released and discharged from all present and future claims, liabilities, indebtedness, demands, actions or obligations of any kind, based in whole or in part on any act or omission, transaction, dealing or other occurrence existing or taking place on or prior to the Effective Time or undertaken or completed in connection with or pursuant to the terms of this Order in respect of, relating to, or arising out of (i) the Debtors or their business, operations, assets, property and affairs, or (ii) the Transaction.

## RESIDUAL CO

14. At the Effective Time, Residual Co shall be substituted as a Respondent in these proceedings in place of the Nominee and the style of cause for these proceedings shall be changed by deleting the Nominee as a Respondent and replacing it with Residual Co as Respondent.
  
15. The administration of Residual Co shall remain subject to the Court's oversight and these proceedings, and the Receiver is hereby authorized and empowered, but not obligated, to assign Residual Co into bankruptcy.
  
16. In addition to and without limiting the rights and protections afforded to the Receiver pursuant to the Receivership Order, the Receiver and its employees and representatives shall not incur any liability as a result of acting in accordance with this Order or administering Residual Co, save and except for any gross negligence or wilful misconduct on the part of any such parties. All protections afforded to the Receiver pursuant to the

Receivership Order, any further order granted in these proceedings or the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "BIA") shall continue to apply.

#### MISCELLANEOUS

17. The Receiver is directed to file with the Court a copy of the Receiver's Certificate forthwith after delivery thereof to the Purchaser.

18. Notwithstanding:

(a) these proceedings;

(b) any application for a bankruptcy order or a receivership order in respect of the LP, the Nominee or Residual Co now or hereafter made pursuant to the BIA or otherwise and any bankruptcy or receivership order issued pursuant to any such application; or

(c) any assignment in bankruptcy made by the LP, the Nominee or Residual Co,

the execution of the Sale Agreement and the implementation of the Transaction shall be binding on any trustee or other administrator in respect of Residual Co and any trustee in bankruptcy or receiver that may be appointed in respect of the Nominee or the LP, and shall not be void or voidable by creditors of Residual Co, the Nominee or the LP, nor shall it constitute nor be deemed to be a transfer at undervalue, settlement, fraudulent preference, assignment, fraudulent conveyance or other reviewable transaction under the BIA or any other applicable federal or provincial legislation or at common law, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

19. The Receiver and the Purchaser shall be at liberty to apply for further advice, assistance and direction as may be necessary or desirable in order to give full force and effect to the terms of this Order and to assist and aid the parties in completing the Transaction.

20. This Court shall retain exclusive jurisdiction to, among other things, interpret, implement and enforce the terms and provisions of this Order, the Sale Agreement and all amendments thereto, in connection with any dispute involving the Nominee, the LP or Residual Co, and to adjudicate, if necessary, any disputes concerning the Nominee, the LP or Residual Co related in any way to the Transaction.

21. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body, wherever located, to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

22. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of Vicki Tickle  
Lawyer for the Receiver, KSV Restructuring Inc.

BY THE COURT

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REGISTRAR



**Schedule "A"**

**List of Counsel**

<b>Counsel name/litigant</b>	<b>Party represented</b>

**Schedule "B"**

**Sale Agreement**

(see attached)

**Schedule "C"**

**Claims to be Deleted/Expunged from Title to the Lands**

<b>Nature of Charge</b>	<b>Registration No.</b>
Mortgage Kingsett Mortgage Corporation	CA9486292
Assignment of Rents Kingsett Mortgage Corporation	CA9486293
Priority Agreement	CB7702, CB920182
Claim of Builders Lien Glotman Simpson Consulting Engineers	WX2192259

**Schedule "D"**  
**Permitted Encumbrances, Easements and Restrictive Covenants related to the Lands**

1. The reservations, limitations, provisos and conditions expressed in the original grant thereof from the Crown of any of the Lands and the statutory exceptions to title currently applicable to the Lands;
2. A claim of right, title or jurisdiction which may be made or established by any aboriginal peoples by virtue of their status as aboriginal peoples on or over any Lands;
3. Liens for taxes, assessments, rates, duties, charges or levies not at the time due, which related to obligations or liabilities assumed by the Purchaser;
4. The following legal notations:
  - (a) NOTICE OF INTEREST, BUILDERS LIEN ACT (S.3(2)), SEE CA6679918 FILED 2018-03-15
  - (b) HOUSING AGREEMENT NOTICE, LOCAL GOVERNMENT ACT, S. 483 SEE CB7700
  - (c) THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 14 OF THE LOCAL GOVERNMENT ACT, SEE CB846188 AMENDED BY CB882876
  - (d) THIS TITLE MAY BE AFFECTED BY A PERMIT UNDER PART 14 OF THE LOCAL GOVERNMENT ACT, SEE CB920176
5. And the following:

Nature of Charge	Registration No.
Covenant City of Port Moody	CB7701
Covenant City of Port Moody	CB920181

**Schedule "E"**

**Form of Receiver's Certificate**

No. S-244083  
Vancouver Registry

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

**BETWEEN**

**KINGSETT MORTGAGE CORPORATION**

**PETITIONER**

**AND**

**3000 HENRY STREET LIMITED PARTNERSHIP  
and  
0790857 B.C. LTD.**

**RESPONDENTS**

**RECEIVER'S CERTIFICATE**

**RECITALS**

A. Pursuant to an Order of the Supreme Court of British Columbia (the "**Court**") dated July 29, 2024 (the "**Receivership Order**"), KSV Restructuring Inc. was appointed as receiver (in such capacity, the "**Receiver**") without security, of all the assets, undertakings and property (the "**Property**") of 3000 Henry Street Limited Partnership and 0790857 B.C. Ltd. (together, the "**Debtors**").

B. Pursuant to an Order of the Court dated December 9, 2024 the Court approved the Agreement of Purchase and Sale dated October 3, 2024 (the "**Sale Agreement**") between the Receiver and 1496619 B.C. Ltd. (the "**Purchaser**"), and the transactions contemplated thereby, and providing for the occurrence of certain events in the specified sequence upon delivery by the Receiver to the Purchaser of a certificate confirming (i) payment by the Purchaser of the Estimated Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and/or the Purchaser (as applicable); and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. Unless otherwise indicated herein, capitalized terms have the meanings set out in the Approval and Reverse Vesting Order or the Sale Agreement, as applicable.

**THE RECEIVER CERTIFIES** the following:

1. The Purchaser has paid and the Receiver has received the Estimated Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;



2. The conditions to Closing set out in Article 5 of the Sale Agreement have been satisfied or waived by the Receiver and/or the Purchaser (as applicable); and
3. The Transaction has been completed to the satisfaction of the Receiver.

This Certificate was delivered by the Receiver at Vancouver, B.C. this \_\_\_\_ day of \_\_\_\_\_, 2025.

KSV Restructuring Inc.  
in its capacity as Receiver of the  
assets, undertakings and property of the Debtors  
and not in its personal or corporate capacity

Per: \_\_\_\_\_

**Schedule "C" to Notice of Application**

**Form of Distribution Order**

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

3000 HENRY STREET LIMITED PARTNERSHIP

and

0790857 B.C. LTD.

RESPONDENTS

**ORDER MADE AFTER APPLICATION**

**DISTRIBUTION ORDER**

BEFORE THE HONOURABLE  
JUSTICE STEPHENS

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December 9, 2024

ON THE APPLICATION of KSV Restructuring Inc., in its capacity as the Court-appointed receiver (in such capacity, the "**Receiver**") of the assets, undertakings, and property of 3000 Henry Street Limited Partnership and 0790857 B.C. Ltd. (together, the "**Debtors**"), coming on for hearing at Vancouver, British Columbia on December 9, 2024; AND ON HEARING Vicki Tickle, counsel for the Receiver, and those other counsel listed in **Schedule "A"** hereto, and no one else appearing although duly served; AND UPON READING the material filed herein, including the Second Report of the Receiver dated December 2, 2024 (the "**Second Report**");

THIS COURT ORDERS AND DECLARES THAT:

1. Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Second Report.

2. The Receiver is hereby authorized to make one or more distributions from the Purchase Price in such amount or amounts as the Receiver determines advisable to KingSett Mortgage Corporation ("**KingSett**") by way of repayment of the indebtedness owing to KingSett by the Debtors.
3. The Receiver is hereby authorized to make distributions from the Purchase Price for the Priority Amounts, including a distribution to Colliers Macaulay Nicolls Inc. for the Work Fee.
4. Endorsement of this Order by counsel appearing on this application, other than counsel for the Receiver, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

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Signature of Vicki Tickle  
Lawyer for the Receiver

BY THE COURT

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REGISTRAR

**SCHEDULE "A"**  
**LIST OF COUNSEL**

<b>NAME</b>	<b>PARTY REPRESENTED</b>