



No. 250121
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND

LUMINA ECLIPSE LIMITED PARTNERSHIP

and

BETA VIEW HOMES LTD.

RESPONDENTS

PETITION TO THE COURT

ON NOTICE TO: THE RESPONDENTS,
THE SUPERINTENDENT OF REAL ESTATE PURSUANT TO
REDMA, AND
TO COAST CAPITAL SAVINGS FEDERAL CREDIT UNION.

The address of the registry is: 800 Smithe Street, Vancouver, B.C. V6Z 2E1.

The petitioner estimates that the hearing of the Petition will take 2.5 hours.

This matter is not an application for judicial review.

This proceeding is brought for the relief set out in Part 1 below by the petitioner.

If you intend to respond to this petition, you or your lawyer must:

- (a) File a response to petition in Form 67 in the above-named registry of this court within the time for response to petition described below, and
- (b) Serve on the petitioner

- (i) 2 copies of the filed response to petition, and
- (ii) 2 copies of each filed affidavit on which you intend to rely at the hearing.

Orders, including orders granting relief claimed, may be made against you, without any further notice to you, if you fail to file the response to petition within the time for response.

Time for response to petition

A response to petition must be filed and served on the petitioner,

- (a) If you were served with the petition anywhere in Canada, within 21 days after that service,
- (b) If you were served with the petition anywhere in the United States of America, within 35 days after that service,
- (c) If you were served with the petition anywhere else, within 49 days after that service, or
- (d) If the time for response has been set by order of the court, within that time.

The ADDRESS FOR SERVICE of the petitioner is:	Mary Buttery, K.C. / Emma Newbery Osler, Hoskin & Harcourt LLP 1055 Dunsmuir Street Suite 3000, Bentall Four Vancouver, BC V7X 1K8
Fax number for service (if any) of the petitioner:	N/A
Email address for service (if any) of the petitioner:	mattery@osler.com enewbery@olser.com
The name and office address of the petitioner's lawyer is:	Mary Buttery, K.C. / Emma Newbery Osler, Hoskin & Harcourt LLP 1055 Dunsmuir Street Suite 3000, Bentall Four Vancouver, BC V7X 1K8

CLAIM OF THE PETITIONER

Part 1: ORDERS SOUGHT

1. The petitioner, KingSett Mortgage Corporation (the "**Petitioner**" or "**KingSett**") seeks an order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C.

1985, c. C-36 (the “**CCAA**”) substantially in the form attached hereto as **Schedule “A”**, which, among other things:

- (a) Declares that Beta View Homes Ltd. (the “**Nominee**”) is a company to which the CCAA applies, and that Lumina Eclipse Limited Partnership (the “**Limited Partnership**”, together with the Nominee, the “**Respondents**”) shall be bound by the Initial Order and enjoy the protections, authorizations and benefits thereof;
- (b) Grants a stay of proceedings in respect of the Respondents;
- (c) Abridges time for service of this Petition and supporting materials so that the application is returnable January 8, 2025;
- (d) Appoints KSV Restructuring Inc. (“**KSV**” or the “**Proposed Monitor**”) as monitor of the Respondents (if appointed in such capacity, the “**Monitor**”) with certain enhanced powers to exercise control over the business and property of the Respondents in accordance with the terms of the Initial Order;
- (e) Approves interim financing (the “**Interim Financing**”) to be provided to the Respondents by the Petitioner (in such capacity, the “**Interim Lender**”) for a total facility in the amount of \$18,000,000, with \$700,000 being advanced prior to the next application in this matter (the “**Comeback Hearing**”) on the terms and conditions set out in the interim financing term sheet dated as of January 6, 2025 (the “**Interim Financing Term Sheet**”), which Interim Financing Term Sheet may be executed by the Monitor for and on behalf of the Respondents in accordance with the terms of the Initial Order;
- (f) Authorizes, but does not require, the Respondents to pay, with the prior written consent of the Interim Lender, amounts owing for goods and services actually supplied to the Respondents (or either of them) prior to the date of the Initial Order up to a maximum aggregate amount of \$250,000, if, in the opinion of the Monitor:
 - (i) the applicable supplier or service provider is essential to the Respondents’ business and the payment is required to ensure ongoing supply;

- (ii) making such payment will preserve, protect or enhance the value of the Respondents' property or business; or
 - (iii) making such payment is required to address environmental, safety or regulatory concerns;
- (g) Grants certain charges over the Respondents' property securing:
- (i) Amounts owing to professionals required to advance these proceedings (the "**Administration Charge**"); and
 - (ii) Amounts owing to the Interim Lender under the Interim Financing Term Sheet (the "**Interim Financing Charge**");
- (h) Declares that the Respondents shall not be required to file a new disclosure statement under subsection 16(2) of the *Real Estate Development Marketing Act*, S.B.C. 1004, c. 41 ("**REDMA**") nor take any steps that would otherwise trigger a purchaser's right of rescission under REDMA and that any rights and remedies of purchasers to rescind presale contracts with the Respondents are stayed and suspended.
- (i) The Petitioner may also seek further relief as counsel may advise and this Court may permit.

Part 2: FACTUAL BASIS

A. Introduction

2. The Petitioner is a corporation incorporated under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 with an address for service of Bentall Four, 1055 Dunsmuir Street, Suite 3000 Vancouver, BC V7X 1K8.
3. The Respondents are debtors of KingSett. The Respondents' address for service is #700 – 4211 Kingsway Vancouver, B.C., V5H 1Z6 with a copy to the Respondents' solicitor: Richards Buell Sutton LLP, 401 West Georgia Street, Suite 700, Vancouver, B.C. V6B 5A1. The Registered Records Office is also located at 401 West Georgia Street, Suite 700, Vancouver, B.C. V6B 5A1.

4. The Nominee is a British Columbia corporation, and the Limited Partnership is a British Columbia limited partnership.
5. The Nominee and the Limited Partnership share common ownership and management.
6. The Respondents are facing significant liquidity constraints necessitating KingSett's application for the Initial Order for the purposes of staying the Respondents' creditors, preserving the Respondents' property and facilitating the Interim Financing required to continue construction and the Respondents' business operations, and maximizing value for all stakeholders. In KingSett's view and experience in its capacity as a significant secured lender of the Respondents, the Respondents are unable to meet their obligations as they come due. Currently, the Respondents do not have an ability to advance their development projects and require these CCAA proceedings to obtain funding to advance their projects and protect their assets for the benefit of all stakeholders. Absent these CCAA proceedings, KingSett has lost faith in the Respondents' ability to complete their current construction projects and deliver upon the presale agreements to the presale purchasers, to the detriment of all stakeholders.
7. KingSett has lost all faith in the Respondents' ability to manage their business, affairs, and assets. As detailed below, the Respondents are in breach of their obligations to KingSett, have allowed critical insurance and building permits to be suspended in connection with ongoing projects, and Canada Revenue Agency ("CRA") has obtained a judgement in the amount of \$11,996,763.09 judgement against the Respondents which has been registered against certain real property. KingSett is of the view that, absent these CCAA proceedings, the Respondents' development projects will not be completed and their assets will deteriorate to the detriment of all stakeholders.

B. The Respondents' Business and Property

8. The Nominee is the legal owner of fourteen (14) parcels of land (collectively, the “**Real Property**”) in British Columbia, described as follows:

	Municipal Address	PID	Legal Description	Defined Term
1.	3702-2311 BETA AVE BURNABY V5C 0M1	031-256-449	STRATA LOT 281, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	“Strata Lot 281”
2.	3703-2311 BETA AVE BURNABY V5C 0M1	031-256-457	STRATA LOT 282, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	“Strata Lot 282”
3.	3803-2311 BETA AVE BURNABY V5C 0M1	031-256-503	STRATA LOT 287, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	“Strata Lot 287”
4.	TH101-2351 BETA AVE BURNABY V5C 0M2	031-256-538	STRATA LOT 290, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	“Strata Lot 290”

	Municipal Address	PID	Legal Description	Defined Term
5.	TH102-2351 BETA AVE BURNABY V5C 0M2	031-256-546	STRATA LOT 291, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	"Strata Lot 291"
6.	TH104-2351 BETA AVE BURNABY V5C 0M2	031-256-562	STRATA LOT 293, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	"Strata Lot 293"
7.	TH106-2351 BETA AVE BURNABY V5C 0M2	031-256-597	STRATA LOT 296, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	"Strata Lot 296"
8.	2601-2351 BETA AVE BURNABY V5C 0M2	031-258-662	STRATA LOT 503, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	"Strata Lot 503"
9.	2603-2351 BETA AVE BURNABY V5C 0M2	031-258-689	STRATA LOT 505, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	"Strata Lot 505"

	Municipal Address	PID	Legal Description	Defined Term
10.	2604-2351 BETA AVE BURNABY V5C 0M2	031-258-697	STRATA LOT 506, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	"Strata Lot 506"
11.	2702-2351 BETA AVE BURNABY V5C 0M2	031-258-719	STRATA LOT 508, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	"Strata Lot 508"
12.	2703-2351 BETA AVE BURNABY V5C 0M2	031-258-727	STRATA LOT 509, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	"Strata Lot 509"
13.	2704-2351 BETA AVE BURNABY V5C 0M2	031-258-735	STRATA LOT 510, PLAN EPS6882, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT, TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM V	"Strata Lot 510", together with items 1-12, the "Strata Lots"
14.	2381 BETA AVE BURNABY	030-169-747	LOT 2, PLAN EPP67029, DISTRICT LOT 124, GROUP 1, NEW WESTMINSTER LAND DISTRICT	"Brentwood Tower C"

9. The Nominee and Limited Partnership are single use entities, meaning their purpose is solely to hold and develop the Real Property.
10. The Real Property can be separated into two projects: Brentwood Tower C and the Strata Lots.

11. Brentwood Tower C is a development property upon which the Respondents intended to construct a 34-story tower consisting of 335 units. Although unoccupied, construction of Brentwood Tower C is now approximately 95% complete, with approximately 224 of the units therein being subject to presale agreements. The Limited Partnership is the beneficial owner of Brentwood Tower C.
12. The Strata Lots are completed units currently being marketed for sale.

C. The Respondents' Creditors

KingSett's Security

13. KingSett is a major and the senior secured creditor of the Respondents in respect of Brentwood Tower C. As at December 27, 2024, KingSett was owed approximately \$189,196,038.21, which indebtedness is comprised as follows:

- (a) First Mortgage Loan: \$126,932,331.66;
- (b) Second Mortgage Loan, facility 1: \$53,031,004.54; and
- (c) Second Mortgage Loan, facility 2: \$9,232,702.01,

plus interest and costs that continue to accrue (collectively, the "**KingSett Indebtedness**"). Interest is accruing at a rate of \$28,349.08 per day with respect to the First Mortgage Loan, \$20,608.05 per day with respect to the Second Mortgage Loan, facility 1, and \$4,905.76 per day with respect to the Second Mortgage Loan, facility 2, for a total of \$53,862.90 per day for all of the KingSett Indebtedness.

14. KingSett made demand for payment on December 27, 2024.
15. The KingSett Indebtedness is owing to KingSett by the Respondents pursuant to:
 - (a) A commitment letter dated April 28, 2021, as amended by a first amending agreement dated June 22, 2021, second amending agreement dated July 5, 2022, third amending agreement dated May 23, 2023, fourth amending agreement dated June 22, 2023, and fifth amending agreement dated March 5, 2024 (as may be further amended, restated, or supplemented from time to time, the "**First Mortgage**

Commitment Letter”), pursuant to which KingSett provided to the Respondents a first mortgage loan in the amount of \$124,000,000 (the “**First KingSett Loan**”); and

- (b) A commitment letter dated April 28, 2021, as amended by a first amending agreement dated June 22, 2021, second amending agreement dated July 5, 2022, third amending agreement dated May 23, 2023, fourth amending agreement dated June 22, 2023, fifth amending agreement dated March 5, 2024, and sixth amending agreement dated July 5, 2024 (as may be further amended, restated, or supplemented from time to time, the “**Second Mortgage Commitment Letter**”, together with the First Mortgage Commitment Letter, the “**KingSett Commitment Letters**”), pursuant to which KingSett provided to the Respondents a second mortgage loan in the amount of \$50,000,000 (facility 1) and \$15,400,000 (facility 2) (the “**Second KingSett Loan**”).

16. The First KingSett Loan is secured by the following, among other things:

- (a) A site-specific general security agreement dated June 30, 2021, granted by the Nominee in favour of KingSett over the Nominee’s personal property in connection with Brentwood Tower C (the “**First GSA**”), in respect of which a financing statement was filed in the British Columbia Personal Property Registry (the “**PPR**”) against the Nominee under base registration number 065925N on June 24, 2021;
- (b) A mortgage and assignment of rents dated June 23, 2021, in the principal amount of \$95,000,000 granted by the Nominee in favour of KingSett (the “**First Mortgage**”), which is registered in the New Westminster Land Title Office (the “**LTO**”) under registration numbers CA9151198 and CA9151199 against Brentwood Tower C; and
- (c) A beneficial owner’s direction, acknowledgement, and security agreement dated June 30, 2021, granted by the Respondents in favour of KingSett.

17. The Second KingSett Loan is secured by the following, among other things:
- (a) A general security agreement dated June 30, 2021, granted by the Nominee in favour of KingSett over the Nominee's personal property in connection with Brentwood Tower C (the "Second GSA"), in respect of which a financing statement was filed in the PPR against the Nominee under base registration number 065937N on June 24, 2021;
 - (b) A mortgage dated June 23, 2021, in the principal amount of \$62,500,000 granted by the Nominee in favour of KingSett (the "Second Mortgage"), which is registered in the LTO under registration number CA9151200 against Brentwood Tower C; and
 - (c) A beneficial owner's direction, acknowledgement, and security agreement dated June 30, 2021, granted by the Respondents in favour of KingSett.
18. KingSett holds six additional mortgage charges against Brentwood Tower C, which are summarized as follows (collectively, the "KingSett Brentwood Tower C Charges"):

Secured Party	Charge and Charge Numbers	Principal Amount	Details of Charge
KingSett	Mortgage and Assignment of Rents CA9469147 / CA946148	\$61,000,000	Collateral mortgage granted by Nominee regarding a guarantee of the obligations of Minoru Square Development Limited Partnership
KingSett	Mortgage CA9774693	\$80,000,000	Collateral mortgage granted by Nominee regarding a guarantee of the obligations of Minoru Square Development Limited Partnership
KingSett	Mortgage CB685881	\$110,000,000	Collateral mortgage granted by Nominee regarding a guarantee of the obligations of Lumina Eclipse Limited Partnership

Secured Party	Charge and Charge Numbers	Principal Amount	Details of Charge
KingSett	Mortgage and Assignment of Rents CB1229020 / CB1229021	\$176,500,000	Collateral mortgage granted by Nominee regarding a guarantee of the obligations of 6511 Sussex Heights Development Ltd.
KingSett	Mortgage CB1229026	\$124,000,000	Collateral mortgage granted by Nominee regarding a guarantee of the obligations of Lumina Eclipse Limited Partnership
KingSett	Mortgage CB1524901	\$70,000,000	Collateral mortgage granted by Nominee regarding a guarantee of the obligations of Lumina Eclipse Limited Partnership

19. In addition, KingSett holds a mortgage dated March 14, 2024 registered against the Strata Lots in the principal amount of \$176,500,000 granted by the Nominee (the “**KingSett Strata Mortgage**”). The KingSett Strata Mortgage was granted by the Nominee as collateral security in connection the Nominee’s guarantee of the obligations of 6511 Sussex Heights Development Ltd. (“**6511 Sussex Heights**”) due and owing to KingSett.
20. 6511 Sussex Heights is an entity controlled by related parties, which was placed in receivership along with Minoru View Homes Ltd. (“**Minoru Homes**”) and Minoru Square Development Limited Partnership (“**Minoru LP**”), on the application of KingSett pursuant to an order granted by this Court on December 13, 2024. In addition, District Northwest Limited Partnership and 105 University View Homes Ltd., two other entities controlled by related parties, have been placed into receivership on the application of KingSett pursuant to an order granted by this Court on November 8, 2024.

Canada Revenue Agency

21. On or about December 16, 2024, KingSett was made aware that CRA registered a judgement in the amount of \$11,996,763.09 against the Real Property (the “**CRA Judgement**”). The CRA Judgement was obtained on June 30, 2023.
22. The CRA Judgement was obtained over a year and a half prior to the CRA Judgement being registered on title to the Real Property. At no point prior to the CRA Judgement’s

registration did the Respondents make KingSett aware of the CRA Judgement, notwithstanding the fact that the Respondents had a duty to provide such reporting to KingSett. KingSett continued to lend money and engage in business with the Respondents in the period following the CRA Judgement, which KingSett would not have had it known of the CRA Judgement.

23. In KingSett's view, the CRA Judgement demonstrates that the Respondents have significant cash flow concerns that have been ongoing for over a year and a half.
24. The CRA judgement puts KingSett's collateral at significant risk and is a clear breach of the Respondents' obligations under the Commitment Letters.

Other Secured Creditors

25. With respect to Brentwood Tower C, in addition to the First Mortgage, Second Mortgage, and the additional KingSett Brentwood Tower C Charges, the following other entities hold secured charges:

Secured Party	Charge and Charge Numbers	Principal Amount	Details of Charge
Westmount West Services Inc. ("Westmount")	Mortgage and Assignment of Rents CB9317 / CB9318	\$50,000	Mortgage on land.
Coast Capital Savings Federal Credit Union ("Coast")	Mortgage and Assignment of Rents CB1652776 / CB1652777	All debts of the Nominee due and owing to Coast	Mortgage on land.
Shezmin Kurshid Alam Khan	Claim of Builders Lien HB9235	\$69,000	Indebtedness related to recruitment services in connection with the construction project.
Clearbrook Iron Works Ltd.	Claim of Builders Lien CB1690183	\$91,043.54	Indebtedness related to miscellaneous metal work for construction project.
Mega Cranes Ltd.	Claim of Builders Lien BB1552360	\$6,451.65	Indebtedness related to crane services for construction project.
Super Save Fence Rentals Inc	Claim of Builders Lien CB1730476	\$2,872.20	Indebtedness related to temporary fencing services for construction project.

26. With respect to the Strata Lots, in addition to the KingSett Strata Mortgage, the following other entities hold secured charges:

Secured Party	Charge and Charge Numbers	Principal Amount	Details of Charge
Coast	Mortgage and Assignment of Rents CA8924790 / CA8924791	All debts of the Nominee due and owing to Coast	Mortgage on land.
The Owners of Strata Plan EPS6882 (the "Strata Corporation")	<i>Strata Property Act</i> lien CB1598449 (Strata Lot 281)	\$2,590.24	Amounts owing pursuant to <i>Strata Property Act</i> .
Strata Corporation	<i>Strata Property Act</i> lien CB1598442 (Strata Lot 282)	\$3,900.59	Amounts owing pursuant to <i>Strata Property Act</i> .
Strata Corporation	<i>Strata Property Act</i> lien CB1674335 (Strata Lot 287)	\$12,162.64	Amounts owing pursuant to <i>Strata Property Act</i> .
Strata Corporation	<i>Strata Property Act</i> lien CB1598391 (Strata Lot 290)	\$3,626.35	Amounts owing pursuant to <i>Strata Property Act</i> .
Strata Corporation	<i>Strata Property Act</i> lien CB1598383 (Strata Lot 291)	\$3,687.29	Amounts owing pursuant to <i>Strata Property Act</i> .
Strata Corporation	<i>Strata Property Act</i> lien CB1598380 (Strata Lot 293)	\$3,687.29	Amounts owing pursuant to <i>Strata Property Act</i> .
Strata Corporation	<i>Strata Property Act</i> lien CB1598363 (Strata Lot 296)	\$3,687.28	Amounts owing pursuant to <i>Strata Property Act</i> .
Strata Corporation	<i>Strata Property Act</i> lien CB1598329 (Strata Lot 503)	\$3,717.74	Amounts owing pursuant to <i>Strata Property Act</i> .
Strata Corporation	<i>Strata Property Act</i> lien CB1598044 (Strata Lot 505)	\$3,534.93	Amounts owing pursuant to <i>Strata Property Act</i> .
Strata Corporation	<i>Strata Property Act</i> lien \$4,113.91 CB1598204 (Strata Lot 506)	\$3,626.35	Amounts owing pursuant to <i>Strata Property Act</i> .
Strata Corporation	<i>Strata Property Act</i> lien CB1598207 (Strata Lot 508)	\$4,631.96	Amounts owing pursuant to <i>Strata Property Act</i> .
Strata Corporation	<i>Strata Property Act</i> lien CB1598206 (Strata Lot 509)	\$3,534.93	Amounts owing pursuant to <i>Strata Property Act</i> .
Strata Corporation	<i>Strata Property Act</i> lien CB1598452 (Strata Lot 510)	\$4,113.91	Amounts owing pursuant to <i>Strata Property Act</i> .

27. Coast is the senior secured creditor with respect to the Strata Lots.
28. Coast and KingSett have entered into a priority and standstill agreement dated March 26, 2024, with respect to the Strata Lots (the “**Coast Priority Agreement**”). Under the Coast Priority Agreement, KingSett agreed to subordinate its security to Coast’s security with respect to the Strata Lots and to standstill on any enforcement measures unless and until Coast had taken its own action, been paid out, or Coast consented to KingSett’s enforcement.
29. At this time, KingSett has not obtained Coast’s consent to enforcement, the Coast debt to KingSett’s knowledge has not been paid out, and KingSett is not aware of any enforcement measures taken by Coast.
30. Importantly, at the time of the Initial Order, KingSett is not seeking to prime Coast’s security with any super priority charges, but is seeking to enforce its rights against the Respondents in respect of the KingSett Indebtedness by petitioning the Respondents into these CCAA proceedings, which will necessarily capture the Strata Lots.
31. KingSett intends to seek to prime Coast’s security at the Comeback Hearing, once Coast has been properly notified of these proceedings; however, KingSett will use the 10-day stay period to engage with Coast to consider the best path moving forward for the restructuring of the Respondents.
32. In addition to the First GSA and the Second GSA granted in favour of KingSett, in the PPR the following entities hold secured charges against the personal property of the Nominee:
 - (a) KingSett, related to (i) certain monies on deposit; (ii) all rights of the Nominee, among others, to the investment property of Lumina Eclipse GP Ltd. and Lumina Eclipse Limited Partnership; (iii) a guarantee by the Nominee, among others, of the indebtedness of Minoru Homes, Minoru Square Development GP Ltd., and Minoru LP to KingSett; and (iv) all personal property related to the Strata Lots in

connection with the Nominee's guarantee of the obligations of 6511 Sussex Heights to KingSett.

- (b) Bank Of Montreal/Banque de Montreal, related to certain pledges of instruments and assignment of certain proceeds in certain Guaranteed Investment Certificates (GIC).
 - (c) Coast, related to (i) personal property related to the Strata Lots; and (ii) all indebtedness due and owing to the Nominee, among others, from Lumina Condo Holdings Limited Partnership.
 - (d) Westmount, related to all personal property related to Brentwood Tower C.
33. In addition to the First GSA and the Second GSA granted in favour of KingSett, in the PPR the following entities hold secured charges against the personal property of the Limited Partnership:
- (a) KingSett, related to (i) a guarantee by the Limited Partnership, among others, of the indebtedness of Minoru Homes, Minoru Square Development GP Ltd., and Minoru LP to KingSett; and (ii) all personal property related to the Strata Lots in connection with the Limited Partnership's guarantee of 6511 Sussex Heights' indebtedness to KingSett.
 - (b) Coast, related to all indebtedness due and owing to the Limited Partnership, among others, from Lumina Condo Holdings Limited Partnership.
 - (c) Westmount, related to all personal property related to Brentwood Tower C.

Home Warranty Insurance Creditor

34. KingSett is aware that the home warranty insurer with respect to Brentwood Tower C, WBI Home Warranty Ltd. ("WBI"), is owed certain arrears in connection with the home warranty insurance obtained by the Respondents.
35. KingSett understands that, due to the material adverse change in the financial status of the Respondents, WBI can no longer insure the building of Brentwood Tower C, which has

caused construction to effectively stop as the Respondents' building permits have been suspended. Brentwood Tower C is approximately 95% completed.

36. KingSett understands that WBI will only insure the Respondents if fees are paid to WBI and an indemnity is provided. KingSett understands the Respondents are not in a position to meet these requests at this time.
37. If the Interim Financing is approved, KingSett, in its capacity as the Interim Lender, plans to assist the Monitor in engaging with WBI to have the home warranty policy reinstated to allow for the completion of Brentwood Tower C. The completion of Brentwood Tower C will, in turn, allow almost 300 purchasers to have their units completed and delivered to them as they expected.
38. KingSett has not been provided a workable solution from the Respondents with respect to the home warranty insurance being reinstated absent these CCAA proceedings. Without this insurance in place, the Respondents' assets are in jeopardy, to the detriment of all stakeholders, as construction cannot resume.

D. REDMA Considerations

39. As referenced above, Brentwood Tower C is approximately 95% complete and 224 of the 329 units therein are subject to presale agreements. At this time, KingSett is not aware of any fact that would necessitate the filing of a new disclosure statement under REDMA or any basis on which parties to such presale agreements would be entitled to rescind them.

E. Need for CCAA Protection

40. KingSett understands that the building permits have been suspended by the City of Burnaby in connection with Brentwood Tower C. This has halted construction on the project and has put the collateral at risk.
41. Further, since the registration of the CRA Judgement against all of the Real Property, the Respondents are unable to obtain additional financing to complete the construction of Brentwood Tower C.
42. KingSett is prepared to finance the completion of Brentwood Tower C and to monitor the business associated with the Strata Lots, for the benefit of all stakeholders, but is unable to

provide financing from Brentwood Tower C in the face of the CRA Judgement outside of an insolvency proceeding. KingSett proposes to finance Brentwood Tower C and the monitoring of the Strata Lots by way of the Interim Financing in these CCAA proceedings.

43. As noted above, KingSett has previously petitioned five entities related to the Respondents into receivership wherein KSV was appointed by this Court as receiver. KingSett has lost faith in the Respondents' management to effectively manage their affairs, particularly in light of the CRA Judgement and the suspension of the home warranty insurance.
44. In addition, in connection with Brentwood Tower C, the Respondents obtained cash in lieu of certain LC commitments from the City of Burnaby in and around September 2024. These funds released from the City of Burnaby should have been used to paydown the indebtedness owed to KingSett in connection with Brentwood Tower C. However, these funds were used by the Respondents to fund additional costs that were not disclosed to or approved by KingSett in connection with Brentwood Tower C, increasing KingSett's exposure.
45. The misappropriation of the LC funds, plus the non-disclosure of the CRA Judgement, and the suspension of the home warranty insurance and related building permits, has reinforced KingSett's mistrust in the Respondents' management. KingSett has lost all confidence in the Respondents' ability to manage their business and affairs.
46. Proceeding under the CCAA, rather than by way of a receivership, will provide the flexibility and stability necessary to explore the options available to the Respondents, ensure the preservation, maintenance and completion of Brentwood Tower C, and allow all the presales sold in connection with Brentwood Tower C to continue, which may not be possible in a receivership.
47. KingSett submits that KSV is well placed to assume the role of super-Monitor in these CCAA proceedings to oversee the Brentwood Tower C project and the Strata Lots. If appointed as super-Monitor, KSV will be able to, among other things, engage with the Strata Corporation, builders' lien claimants, CRA, insurers contractors and the City of Burnaby to address their respective concerns and interests, have all necessary permits

reinstated or issued, as the case may be, and complete construction of Brentwood Tower C.

F. The Initial Order

Stay of Proceedings

48. The Respondents require the stay of proceedings to maintain the *status quo*, particularly in light of their financial circumstances. Without the stay of proceedings, KingSett is concerned there will be immediate and significant erosion of value to the detriment of the Respondents' stakeholders.

Appointment of the Monitor and Enhanced Powers

49. KingSett seeks the appointment of KSV as Monitor with enhanced powers pursuant to the Initial Order. KSV has consented to such appointment, including the enhanced powers, on the terms of the proposed Initial Order. The enhanced powers are a condition to KingSett providing the Interim Financing and are intended to ensure that the value of the Respondents' collateral is not only preserved but maximized for the benefit of the Respondents' stakeholders.

Authorization for Certain Payments

50. KingSett is seeking an order which allows the Respondents to pay, with the prior written consent of the Interim Lender, for goods and service supplied to the Respondents prior to the date of the Initial Order up to the maximum aggregate amount of \$250,000, if in the opinion of the Monitor these payments are essential to continue ongoing supply to the Respondents, the payments will preserve, protect or enhance the value of the Respondents' assets, or these payments are necessary to address environmental or safety concerns.
51. Such payments will only be made if necessary to ensure the continued operation of the Respondents' business and to preserve and protect the property and will only be made at the direction the Monitor and with the consent of the Interim Lender.
52. KingSett is of the view that such authorizations are appropriate in these circumstances, given the current state of the Respondents' business and assets.

Interim Financing

53. The Respondents will require funding to complete construction of Brentwood Tower C and the monitoring of the Strata Lots and to continue to operate their business over the 13-weeks ending the week of April 6, 2025, including expenses related to construction, insurance, and administrative costs. Without the Interim Financing, the Respondents will not have sufficient cash on hand to continue operations and the Respondents' assets will be at risk, adversely affecting the Respondents and their stakeholders.
54. Accordingly, the Interim Lender has prepared the Interim Financing Term Sheet pursuant to which it will advance the Interim Financing required to meet these shortfalls, subject to this Court authorizing such Interim Financing and the Monitor's execution of the Interim Financing Term Sheet for and on behalf of the Respondents.
55. The critical terms of the Interim Financing Term Sheet include:
 - (a) Interim Financing Facility: A non-revolving loan up to the maximum principal amount of \$18,000,000, including an initial advance in an amount of \$700,000;
 - (b) Interest Rate: Prime plus 6.55%, calculated on the daily outstanding balance, compounded and payable monthly;
 - (c) Mandatory Prepayments: All proceeds arising from any disposition or other transaction involving the collateral subject to the Interim Lender's Charge;
 - (d) Maturity Date: June 9, 2025 or the date on which the CCAA proceedings are terminated for any reason;
 - (e) Interim Lender's Fee: \$180,000 representing 1% of the total loan amount, \$7,000 to be paid upon the granting of the Initial Order, and \$173,000 to be paid following the Comeback Hearing;
 - (f) Security: super-priority Court-ordered charge on all present and after-acquired personal and real, tangible or intangible property of the Respondents;

- (g) Conditions Precedent to the initial advance: granting of the Initial Order, including approval of the Interim Financing Term Sheet, the Interim Lender's Charge, and the REDMA relief and the appointment of Proposed Monitor with enhanced powers.

Charges

- 56. KingSett seeks charges ranking in priority as follows:
 - (a) The Administration Charge of \$250,000 at the time of the Initial Order, with an increase to \$500,000 at the time of the Comeback Hearing, in each case, to secure the amounts that may become owing to, the Monitor and the Monitor's counsel; and
 - (a) The Interim Financing Charge of up to the maximum amount of \$700,000 at the time of the Initial Order, with an increase to \$18,000,000 at the time of the Comeback Hearing, in each case, plus interest, fees and expenses, to secure amounts owing on the Interim Financing, with limited advances prior to the Comeback Hearing.
- 57. KingSett believes each of these charges is necessary to facilitate these proceedings.

REDMA

- 58. Having regard to the number of presale agreements, the status of Brentwood Tower C, the availability of the Interim Financing and the Monitor's proposed enhanced powers, KingSett seeks a declaration that:
 - (a) the Respondents shall not be required to file a new disclosure statement under subsection 16(2) of REDMA nor take any steps that would otherwise trigger a purchaser's right of rescission under REDMA; and
 - (b) all of the rights and remedies of purchasers to rescind presale contracts with the Respondents are stayed.

59. The foregoing declaration will preserve stability, maximize the value of the Real Property and ensure certainty for the Respondents, the Interim Lender, the Monitor and the counterparties to the presale agreements.

Part 3: LEGAL BASIS

1. The Petitioner relies on:
- (a) the CCAA;
 - (b) the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (“BIA”);
 - (c) the Supreme Court Civil Rules, B.C. Reg. 168/2009, as amended;
 - (d) the inherent and equitable jurisdiction of this Court; and
 - (e) such further and other legal basis as counsel may advise and this Court may allow.

A. The Respondents are Entities to Which the CCAA Should Apply

2. The CCAA is remedial legislation that gives Courts broad and flexible authority to achieve the legislation’s objectives, being to facilitate an orderly restructuring of a debtor company in order to avoid the social and economic losses resulting from the liquidation of an insolvent company. Accordingly, the CCAA includes empowering courts to make any order considered appropriate in the circumstances (including without notice), unless prohibited by the CCAA.

Century Services Inc. v Canada (Attorney General), 2010 SCC 60 at paras. 59 and 70 (“*Century Services*”).

CCAA, s. 11.

3. While the historic focus of the CCAA was to facilitate a going-concern reorganization of the debtor company, CCAA proceedings may also facilitate a sale of the business or a debtor’s assets, while still achieving the remedial purpose of the legislation.

9354-9186 Quebec inc. Callidus Capital Corp., 2020 SCC 10 at para. 41- 42 and 45 (“*Callidus Capital*”).

4. The CCAA applies in respect of a “debtor company” or an “affiliated debtor company” where the total amount of claims against the debtor or its affiliates exceeds five million dollars.

CCAA, s. 2(1).

5. The term “debtor company” is defined in section 2 of the CCAA to include any company that is bankrupt or insolvent. Although insolvency is not defined in the CCAA, the BIA defines an “insolvent person” as:

a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due; (personne insolvable)

BIA, s. 2.

CCAA, ss. 2(1) and 3(1).

6. Courts have routinely applied the BIA definition of “insolvent person” to CCAA proceedings. Further in the context of the CCAA, this test has been interpreted expansively to include a financially troubled corporation that is “reasonably expected to run out of liquidity within reasonable proximity of time as compared with the time reasonable required to implement a restructuring”.

Quest University Canada (Re), 2020 BCSC 318 at para. 26.

Stelco Inc (Re), 2004 CanLii 24933 (Ont. S.C.J.) at para. 26 (“*Stelco*”).

7. The Nominee is a “company” incorporated under the *Business Corporations Act* (British Columbia) subject to claims in excess of \$5,000,000.

8. The Limited Partnership is a necessary party to these proceedings. The Limited Partnership is intertwined in the business of the Nominee and the beneficial owner of Brentwood Tower C.
9. “It is well established that the court has the jurisdiction [under section 11 of the CCAA] to extend the a stay of proceedings to a partnership in order to ensure the purpose of the CCAA can be achieved”.

Target Canada Co. (Re), 2015 ONSC 303 at para. 42 (“*Target*”).

CCAA, s. 11.

10. There are claims against the Limited Partnership in excess of \$5,000,000 and the Limited Partnership is intertwined with the business of the Nominee. KingSett therefore submits that the CCAA should apply to both the Limited Partnership and the Nominee, as both are unable to meet their obligations as they come due and will run out of liquidity before they are able to implement a restructuring. The ability of the Respondents to meet their operating expenses is contingent on the proposed Interim Financing.
11. The documentation required by subsection 10(2) of the CCAA will be delivered in connection with this hearing, specifically a statement indicating, on a weekly basis, the projected cash flow of the debtor company and a report containing the prescribed representations regarding the preparation of the cash-flow statement.

CCAA, s. 10(2).

12. The financial statements of the Respondents that may be delivered pursuant to subsection 10(2) of the CCAA are not available to the Petitioner. However, as this Court set out in *Re: Bron Media Corp*, “Section 10(2) [of the CCAA] permits the court to make an initial order in the absence of financial statements, if none are available, and the information provided is sufficient to enable a proper exercise of the court's discretion”.

Bron Media Corp. (Re), 2023 BCSC 2109 at para. 52.

B. The Petitioner Has Standing to Bring this Application

13. Nothing in the CCAA prevents a creditor, rather than a debtor, from bringing an application for an initial order and there are several examples of orders being made on such applications.

Miniso International Hong Kong Limited v. Migu Investments Inc., 2019 BCSC 1234
 (“*Miniso*”).

14. The commencement of CCAA proceedings is a proper exercise of creditors’ rights where the CCAA will preserve the going concern value of the business or otherwise would avoid losses that would be suffered in an enforcement/liquidation scenario, particularly where the debtor’s assets or business is not conducive to a receivership. In this case, given the presale agreements with respect to Brentwood Tower C, KingSett submits that the Respondents’ business is not conducive to a receivership and that a receivership would not maximize the value of the Respondents’ business or assets.

Miniso, at paras. 47-51.

15. Further, this Court may exercise its discretion to grant the Initial Order sought notwithstanding the Coast Priority Agreement.
16. In *Dynamic Technologies Group Inc, (Re)* (“*Dynamic*”), the Alberta Court of King’s Bench considered if an initial order under the CCAA could be granted which would “also extinguish the right of action of another secured creditor to sue the interim lender for breach of an intercreditor agreement”.

Dynamic Technologies Group Inc (Re), 2023 ABKB 172 at para. 1 (“*Dynamic*”).

17. In *Dynamic*, the Court found that the Order should be granted “in order to promote efficacy in the insolvency marketplace and thereby advance the rehabilitative objectives of the CCAA”.

Dynamic, at para. 2.

18. *Dynamic* specifically considered whether a charge in favour of an interim lender in the CCAA proceedings, which violated an existing inter-creditor agreement, could be

approved. In this case, KingSett is not yet seeking to prime Coast's security with the Administration Charge or the Interim Lender's Charge, but is seeking to enforce its security in respect of the KingSett Indebtedness against the Respondents and, more importantly, intends to prime Coast with the Charges at the Comeback Hearing, so the principles in *Dynamic* are relevant.

19. In *Dynamic*, the Court found that the Court order could violate the inter-creditor agreement, and the parties to the inter-creditor agreement could not sue on the breach, as the creditor in *Dynamic* was "only lender in the marketplace prepared to step forward. Without its doing so, the restructuring plan would have been dead in its tracks from the start".

Dynamic, at para. 8.

20. "Moreover, the CCAA at ss 11.2(1) & (2) specifically provides that the Court may override the interests of any secured creditor in approving the interim financing".

Dynamic, at para. 16.

21. In this case, KingSett is prepared to advance an additional \$18,000,000 to fund the Respondents' restructuring efforts, including the Respondents' efforts to monetize the Strata Lots for the benefit of Coast, KingSett and other stakeholders. Without the Interim Financing, the Respondents assets would deteriorate significantly.

22. Notably, the CRA Judgement is registered not just against Brentwood Tower C, but also the Strata Lots. Coast will be unable to sell any of the Strata Lots without first vacating the CRA Judgement. It is therefore clear that due to the Respondents' liquidity crisis, Coast's security is also at risk.

23. The Court in *Dynamic* noted that if creditors were at risk of having to pay damages for a breach of an inter-creditor agreement due to obtaining priority charges for interim financing, the super-priority of those interim financing charges would be illusory.

Dynamic, at para. 22.

24. The Court in *Dynamic* recognized that preserving creditor's rights to preserve a potential right of action exposes creditors "to a risk that another interim lender would not have and acts as a disincentive to [the interim lender] (and similarly situated secured creditors in other CCAA proceedings) from acting as interim lender in the first place".

Dynamic, at para. 23.

25. The Court in *Dynamic* considered it a matter of public policy that the Court be able to grant priming charges which were offside an established inter-creditor agreement, finding:

Thus, for public policy reasons, namely avoidance of the economic and social cost of large business failure, the interim lender under CCAA restructuring proceedings is afforded special treatment. That special treatment consists of the super-priority or priming charge as well as, in this case, insulation from third party contractual liability, as reflected in the template language.

Dynamic, at para. 30.

26. Similarly, KingSett submits that this Court should grant the Initial Order sought herein and allow KingSett to enforce its security and fund these proceedings, as it is the best way to preserve the value of the Respondents' assets for the benefit of all stakeholders and is the only path forward currently presented for the Respondents to restructure.

C. The Stay of Proceedings is Necessary

27. Subsection 11.02(1) of the CCAA vests the Court with the jurisdiction to order a stay of proceedings that temporarily prevents creditors from initiating or advancing claims against the debtor company for a period of not more than 10 days.

CCAA, s. 11.02.

28. The purpose of the stay of proceedings is to "maintain the *status quo* for a period while the debtor company consults with its creditors and stakeholders with a view to continuing the company's operations for the benefit of the company and its creditors".

JTI-Macdonald Corp. (Re), 2019 ONSC 1625 at para. 12.

29. A stay of enforcement also provides the debtor company with the necessary time, flexibility and "breathing room" to carry out a court-supervised restructuring or organized sale process.

Lehndorf General Partners Ltd. (Re), 1993 CarswellOnt 183 at paras. 5-7.

30. KingSett submits that the stay is necessary and appropriate to preserve the value of the Respondents' property and business for the benefit of all stakeholders. The commencement of any proceeding or the exercise of rights or remedies against the Respondents would be detrimental to the completion of Brentwood Tower C and the value of the Real Property and would undermine a process that would otherwise benefit the Respondents' stakeholders as a whole.

D. The Proposed Monitor Should be Appointed as Monitor with Enhanced Powers

31. Pursuant to section 11.7 of the CCAA, the Court is required to appoint a person to monitor the business and financial affairs of a debtor company upon the granting of an initial order under the CCAA. The monitor must be a trustee within the meaning of subsection 2(1) of the BIA.

CCAA, s. 11.17.

32. KSV is a trustee within the meaning of subsection 2(1) of the BIA, is not subject to any restrictions pursuant to section 11.7(2), and has executed a Consent to Act as Monitor in these CCAA proceedings.

CCAA, s. 11.7(2).

33. Subsection 23(1) of the CCAA sets out the monitor's duties and functions. Under subsection 23(1)(k) of the CCAA, the Court may direct that the monitor carry out any other function in relation to the debtor company. These additional functions are known as "enhanced" powers of the monitor. This provision gives the Court broad authority to tailor the monitor's role to the particular circumstances to further the purposes of the CCAA.

CCAA, s. 23(1)(k).

Arrangement relative a Bloom Lake General, 2021 QCCS 2946 at para. 1.

34. KingSett seeks relief enhancing the Proposed Monitor's powers so that it can exercise such powers and functions as the Monitor considers necessary for the operation of the Respondents' business, including, dealing with other creditors, resolving certain permitting

issues, and engaging with contractors for the purposes of preserving and safeguarding the Real Property, and completing Brentwood Tower C. These enhanced powers are necessary to facilitate the efficient conduct of these proceedings and ensure access to the Interim Financing and have been limited to what is required for the first 10-days of these proceedings.

E. Approval of the Interim Financing Term Sheet and Interim Financing Charge is appropriate

35. KingSett seeks approval of the Interim Financing, pursuant to the Interim Financing Term Sheet, and the granting of the Interim Financing Charge in the maximum amount of \$700,000, plus interest, fees, and expenses. The Interim Financing Charge is proposed to rank in priority to all other encumbrances on the assets, undertakings, and properties of the Respondents, other than the Administration Charge following the Comeback Hearing.

36. The Court has the jurisdiction to approve the Interim Financing under section 11.2 of the CCAA.

CCAA, s. 11.2

U.S. Steel Canada Inc. (Re), 2014 ONSC 6145 at para. 11

37. The purpose of the Interim Financing, among other things, is to enhance the prospects of a viable compromise or arrangement and ensure stability during the CCAA process to the benefit of all stakeholders.

Canwest Publishing at paras. 43-44.

38. Section 11.2 of the CCAA also vests the Court with the jurisdiction to grant an interim financing charge over the assets of a debtor company in priority to the claims of any secured creditor of the debtor company, on notice to the secured creditors who are likely to be affected by such security or charge.

CCAA, s. 11.2

39. In deciding whether to make an Order, the Court is to consider, among other things:

- (a) The period during which the debtor company is expected to be subject to proceedings under the CCAA;
- (b) How the debtor company's business and financial affairs are to be managed during the proceedings;
- (c) Whether the debtor company's management has the confidence of its major creditors;
- (d) Whether the loan would enhance the prospects of a viable compromise or arrangement being made in respect of the debtor company;
- (e) The nature and value of the debtor company's property;
- (f) Whether a creditor would be materially prejudiced as a result of the security or charge; and
- (g) The monitor's report, if any.

CCAA, s. 11.2(4)

40. These factors support the granting of the Interim Financing Charge in these proceedings. Without access to the Interim Financing, the Respondents will not be able to carry on their business or preserve the value of their assets, to the detriment of their stakeholders. The Respondents' business is effectively to be managed by the Monitor during these proceedings, as KingSett has lost confidence in the Respondents' management. Without the Interim Financing there is no prospect that Brentwood Tower C can be completed or the remainder of the Real Property preserved, and the value of the Respondents' assets will deteriorate.
41. At this time, KingSett is not seeking to prime any of the secured creditors that have not received notice of the Interim Financing Charge, but will seek to elevate the Interim Financing Charge over the secured creditors at the Comeback Hearing, once those creditors have been given notice of the charge.
42. The Interim Financing Term Sheet has been finalized in consultation with the Proposed Monitor and KingSett submits it contains commercially reasonable terms.

F. Approval of the Administration Charge is Appropriate

43. KingSett seeks an Administration Charge in the amount of \$250,000 to secure the collective fees of the Monitor and the Monitor's counsel.

44. Section 11.52 of the CCAA expressly provides the Court with the power to grant a charge over a debtor company's assets to secure professional fees on notice to affected secured creditors.

CCAA, s. 11.52.

45. Courts have recognized that, unless professional advisors are protected with the benefit of a charge over the assets of a debtor company, the objectives of the CCAA could be frustrated because professionals would be unlikely to risk offering their services without any assurance of ultimately being paid. Specifically, any failure to provide protection for professionals fees will "result in the overwhelming likelihood that the CCAA proceedings would come to an abrupt halt, followed, in all likelihood, by bankruptcy proceedings".

Timminco Ltd. (Re), 2012 ONSC 506 at para. 66.

46. The non-exhaustive factors to be considered in determining whether to approve an administration charge are as follows:

- (a) The size and complexity of the business being restructured;
- (b) The proposed role for the beneficiaries of the charge;
- (c) Whether there is unwarranted duplication of roles;
- (d) Whether the quantum of the proposed charge appears to be fair and reasonable;
- (e) The position of the secured creditors likely to be affected by the charge; and
- (f) The position of the monitor.

Canwest Publishing Inc., 2010 ONSC 222 at para. 54 ("*CanWest*").

Walter Energy Canada Holdings, Inc., (Re), 2016 BCSC 107 at para. 42.

47. The Respondents require specialized expertise, knowledge, and the continued participation of the proposed beneficiaries of the Administration Charge to advance these proceedings. The Administration Charge is necessary to ensure their continued assistance and participation.
48. At this time, KingSett is not seeking to prime any of the secured creditors that have not received notice of the Administration Charge, but will seek to elevate the Administration Charge over the secured creditors at the Comeback Hearing, once those creditors have been given notice of the charge.
49. The amount of the proposed Administration Charge was determined in consultation with the Proposed Monitor. KingSett submits it is appropriately limited to that which is necessary during the initial stay period and is fair and reasonable in light of the number of beneficiaries, the size and complexity of the business and these proceedings.
50. KingSett supports the Administration Charge and does not expect that there will be any duplication of the roles of the beneficiaries of the Administration Charge. Each of the professionals will have a unique and distinct focus in these proceedings and their joint efforts will produce a better overall result.

G. Authorization for Payments

51. KingSett is seeking an Order to authorize the Respondents to make certain pre-filing payments, with the consent of the Interim Lender, at the direction of the Monitor.
52. “There is ample authority supporting the Court's general jurisdiction to permit payment of pre-filing obligations to persons whose services are critical to the ongoing operations of the debtor companies” pursuant to section 11 of the *CCAA*. In this case, such payment will only be made if necessary and beneficial to these restructuring efforts and be overseen by both the Monitor and the Interim Lender.

Performance Sports Group Ltd., Re, 2016 ONSC 6800 at para. 24.

H. REDMA Order

53. KingSett seeks a declaration that:

- (a) the Respondents shall not be required to file a new disclosure statement under subsection 16(2) of the REDMA nor take any steps that would otherwise trigger a purchaser's right of rescission under REDMA; and
- (b) all of the rights and remedies of purchasers to rescind presale contracts with the Respondents are stayed.

54. This Court has found that section 11 of the *CCAA* provides the necessary jurisdiction for the REDMA relief sought.

Re: Jameson House Properties, 2009 BCSC 964 at paras. 27, 33-34 [*"Jameson House"*].

55. In *Re: Jameson House Properties Ltd.*, this Court held:

It is clear that the relief from REDMA that is sought is directed squarely towards the successful restructuring of this enterprise. This is a fundamental purpose of the CCAA. Without the relief the arrangement proposed by the Petitioners and voted in favour of by close to 100% of the Creditors, in number and value, will fail. All of the unsecured Creditors and all but one of the secured Creditors will recover nothing. Set against that is, if this plan is approved, the purchasers will receive precisely what they bargained for. The Petitioners will continue to be bound by all of the terms of the sales agreements and the purchasers will retain all of their remedies in the event of any future breaches on the part of the Petitioners. [...]

The next question is whether the CCAA enables the Court to grant the REDMA relief. That relief, if it is to be found, is contained in s. 11 of the statute. [...]

In this case I conclude that if REDMA relief is required, the Court should exercise its discretion and grant it. [...].

Jameson House at paras. 24, 27, 33.

56. Section 11 of the *CCAA* vests the Courts with the jurisdiction to make orders that conflict with and override the provincial legislation, if necessary.

Re Collins & Aikman Automotive Canada Inc., [2007] OJ No. 4186 at para 87

Re Nortel Networks Corp., 2009 ONCA 833 at para 47

57. In this case, like in *Jameson House*, KingSett's participation as Interim Financer is dependent upon the REDMA relief sought being granted today.

58. KingSett submits that the REDMA relief is required in this case and is fair and reasonable in the circumstances, as was the case in *Jameson House*, due to “the financial strength and construction expertise of Bosa [the developer and financier in the *Jameson House* case] ... Bosa's involvement in this project will, if anything, increase the prospect that this development will be completed in accordance with the terms of the presale contracts.”
59. Like in *Jameson House*, KingSett submits that KingSett’s involvement in the Respondents’ business is the best path forward for all stakeholders to see the Respondent’s projects completed in these CCAA proceedings and necessitates the requested relief from REDMA.
60. As referenced above, KingSett is not currently aware of any fact that would necessitate the filing of a new disclosure statement under REDMA or basis on which parties to the Respondents’ presale agreements would be entitled to rescind them, especially where subsections 16(2)(a)-(b) of REDMA are inapplicable.

I. Conclusions

61. Based on the foregoing, KingSett submits the Initial Order should be granted by this Court and is necessary and appropriate in the circumstances.

Part 4: MATERIAL TO BE RELIED ON

1. First Affidavit of Daniel Pollack made on January 6, 2025.
2. Prefiling report of the proposed Monitor to be filed.
3. Such further and other material as counsel may advise and this Court may allow.

Dated:

Jan 7, 2025


Signature of lawyer for Petitioner

Mary Buttery, K.C. / Emma Newbery

To be completed by the court only:

Order made

<input type="checkbox"/> in the terms requested in paragraphs of Part 1 of this petition <input type="checkbox"/> with the following variations and additional terms:	
Date:[dd/mmm/yyyy]..... Signature of <input type="checkbox"/> Judge <input type="checkbox"/> Master

SCHEDULE "A"

Form of Order Sought

IN THE SUPREME COURT OF BRITISH COLUMBIA

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36**

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND

LUMINA ECLIPSE LIMITED PARTNERSHIP

and

BETA VIEW HOMES LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

INITIAL ORDER

BEFORE THE HONOURABLE JUSTICE)
MASUHARA) 2025/01/08
)

THE APPLICATION of the Petitioner coming on for hearing at Vancouver, British Columbia, on January 8, 2025 (the “**Order Date**”); AND ON HEARING Mary Buttery, counsel for the Petitioner and those other counsel listed on Schedule “A” hereto; AND UPON READING the material filed, including the First Affidavit of Daniel Pollack sworn January 5, 2025 (the “**First Pollack Affidavit**”), the Pre-Filing Report of the proposed monitor, KSV Restructuring Inc. (“**KSV**”), and the consent of KSV to act as monitor (in such capacity, the “**Monitor**”) of Beta View Homes Ltd. and Lumina Eclipse Limited Partnership (together, the “**Respondents**” and each, a “**Respondent**”); AND UPON BEING ADVISED that the secured creditors and others who are likely to be affected by the charges created herein were given notice; AND pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the “**CCAA**”), the

British Columbia Supreme Court Civil Rules, BC Reg 168/2009 and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Petition and materials filed in support of the application for this Order (collectively, the “**Application**”) is hereby abridged such that service of the Application is deemed to be timely and sufficient and the Application is properly returnable today.

JURISDICTION

2. Beta View Homes Ltd. is a company to which the CCAA applies. Lumina Eclipse Limited Partnership shall enjoy the benefits of the protections and authorizations provided by this Order.

SUBSEQUENT HEARING DATE

3. The hearing of the Petitioner’s application for an extension of the Stay Period (as defined in paragraph 11 of this Order) and for any ancillary relief shall be held at the Courthouse at 800 Smithe Street, Vancouver, British Columbia at _____ .m. on _____, 2025 or such other date as this Court may order.

POSSESSION OF PROPERTY AND OPERATIONS

4. Subject to this Order and any further Order of this Court, the Respondents shall remain in possession and control of their current and future assets, licenses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”), and continue to carry on their business (the “**Business**”) in the ordinary course and in a manner consistent with the preservation of the Business and the Property. The Respondents shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel, construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, appraisers, real estate brokers, auditors, managers and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as the Respondents deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

5. Subject to the Definitive Documents (as hereinafter defined), the Respondents shall be entitled, but not required, to pay the following expenses which may have been incurred prior to, on or after the Order Date:

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short-term disability payments), vacation pay and expenses (but excluding severance pay) payable before, on or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively, “Wages”);
- (b) with the prior consent of the Interim Lender (as hereinafter defined), amounts owing for goods and services actually supplied to the Respondents (or either of them) prior to the Order Date up to a maximum aggregate amount of \$250,000, if, in the opinion of the Monitor (i) the applicable supplier or service provider is essential to the Business and the payment is required to ensure ongoing supply, (ii) making such payment will preserve, protect or enhance the value of the Property or the Business, or (iii) making such payment is required to address environmental, safety or regulatory concerns; and
- (c) the fees and disbursements of any Assistants retained or employed by the Respondents (or either of them) which are related to the Respondents’ restructuring, at their standard rates and charges.

6. Except as otherwise provided herein and subject to the Definitive Documents, the Respondents shall be entitled to pay all expenses reasonably incurred by the Respondents in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services;
- (b) all obligations incurred by the Respondents (or either of them) after the Order Date, including without limitation, with respect to goods and services actually supplied

to the Respondents (or either of them) following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Respondents' (or either of their) obligations incurred prior to the Order Date); and

- (c) fees and disbursements of the kind referred to in paragraph 6(b) which may be incurred after the Order Date.

7. The Respondents are authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, and (iii) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, "**Sales Taxes**") required to be remitted by the Respondents (or either of them) in connection with the sale of goods and services by the Respondents (or either of them), but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

8. Except as specifically permitted herein and in the Definitive Documents, the Respondents are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Respondents (or either of them) to any of their creditors as of the Order Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trust, mortgages, liens, charges or encumbrances upon or in respect of any of their Property, nor become a guarantor or surety, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to their customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Respondents (or either of them) to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

RESTRUCTURING

9. Subject to such requirements as are imposed by the CCAA, and such covenants as may be contained in the Definitive Documents, the Respondents shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets; and
- (b) terminate the employment of such of their employees or temporarily lay off such of their employees as they deem appropriate,

all of the foregoing to permit the Respondents to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

10. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronics Documents Act*, S.C. 2000, c. 5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c. 63, and any regulations promulgated under authority of either Act, as applicable (the “**Relevant Enactment**”), the Respondents (or either of them), in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in their possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, “**Third Parties**”), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Respondents binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Monitor or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Respondents.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

11. Until and including January 18, 2025, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of the Respondents (or either of them) or the Monitor, or their respective employees, advisors, counsel and other representatives acting in such capacities, or affecting the Business or the Property, shall be commenced or continued except with the prior written consent of the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Respondents (or either of them) or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Monitor.

12. During the Stay Period, the Superintendent of Real Estate shall not require the Respondents (or either of them) to file a new disclosure statement under subsection 16(2) of the *Real Estate Development Marketing Act*, S.B.C. 1004, c. 41 (“**REDMA**”) nor take any steps that would otherwise trigger a purchaser’s right of rescission under REDMA, and any rights and remedies of purchasers to rescind pre-sale contracts with the Respondents (or either of them) are stayed and suspended.

13. During the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Respondents (or either of them) or the Monitor, or their respective employees, advisors, counsel and other representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Monitor or leave of this Court.

14. Nothing in this Order, including paragraphs 11 and 13, shall: (i) empower the Respondents (or either of them) to carry on any business which the Respondents (or either of them) are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Respondents (or either of them).

NO INTERFERENCE WITH RIGHTS

15. During the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate, rescind or cease to perform any right, renewal right, contract, agreement, licence, authorization or permit in favour of or held by the Respondents (or either of them), except with the prior written consent of the Monitor or leave of this Court.

CONTINUATION OF SERVICES

16. During the Stay Period, all Persons having oral or written agreements or arrangements with the Respondents (or either of them), including, without limitation, all supply arrangements pursuant to purchase orders and historical supply practices, or mandates under an enactment for the supply or license of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll and benefit services, security services, insurance, transportation services, maintenance services, construction and construction management services, utility or other services to the Business or the Respondents (or either of them), are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply or license of such goods or services as may be required by any of the Respondents or exercising any other remedy provided under the agreements or arrangements, and that each of the Respondents shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by such Respondent in accordance with normal payment practices of such Respondent or such other practices as may be agreed upon by the supplier or service provider and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

17. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Respondents (or either of them) on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

18. During the Stay Period, and except as permitted by Section 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Respondents (or either of them) with respect to any claim against the directors or officers that arose before the

date hereof and that relates to any obligations of the Respondents (or either of them) whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Respondents, if one is filed, is sanctioned by this Court or is refused by the creditors of the Respondents or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Respondents (or either of them) that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

APPOINTMENT OF MONITOR AND MONITOR'S POWERS

19. KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the Business and financial affairs of the Respondents with the powers and obligations set out in the CCAA or set forth herein, and that the Respondents and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Respondents (or either of them) pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

20. The Monitor, in addition to its prescribed rights and obligations under the CCAA and applicable law, is hereby directed and empowered to:

- (a) monitor the Respondents' receipts and disbursements, the Business and dealings with the Property, and implement such measures and controls as the Monitor deems reasonably necessary to monitor the Respondents' receipts and disbursements, the Business and dealings with the Property;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to these proceedings;
- (c) assist in the dissemination to the Interim Lender and its counsel of financial and other information as agreed to between the Monitor and the Interim Lender, which

may be used in these proceedings including reporting on a basis to be agreed with the Interim Lender;

- (d) prepare the Respondents' cash flow statements, including such reporting as may be required by the Interim Lender, which information shall be delivered to the Interim Lender and its counsel on a periodic basis, or as otherwise agreed to by the Interim Lender;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Respondents (collectively, the "**Books and Records**"), to the extent that is necessary to adequately assess the Respondents' Business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order or by this Court from time to time.

21. In addition to the powers and duties of the Monitor set out in paragraph 20 of this Order, the CCAA and applicable law, the Monitor, for and on behalf of and in the name of the Respondents, is hereby authorized and empowered, but not required, to exercise any powers which may be properly exercised by a board of directors or any officers of the Respondents (or either of them), as the Monitor deems appropriate, including without limitation to:

- (a) perform any and all actions or take any steps, and execute, assign, issue and endorse all agreements, instructions, documents and writings, for and on behalf of, and in the name of, the Respondents (or either of them), in order to facilitate the performance of any or all of the Respondents' powers or obligations under this Order, any other Order of this Court or otherwise, and to carry out the Monitor's duties under this Order or any other Order of this Court in these proceedings;

- (b) execute administrative filings as may be required for and on behalf of each of the Respondents;
- (c) take control of the Respondents' existing accounts and the funds credited thereto or deposited therein in such manner as the Monitor, in its sole discretion, deems necessary or appropriate, including, without limitation, transferring any funds received into such accounts to accounts held in the name of the Monitor, effecting any disbursement from the accounts permitted by this Order or any other Order of this Court in these proceedings, and adding or removing any Persons having signing authority with respect to any account or directing the closing of any account, provided that nothing in this Order shall create any obligation or liability on the part of the Monitor in respect of any amounts owing by the Respondents in connection with any of the accounts;
- (d) engage, retain, or terminate or cause the Respondents (or either of them) to engage, retain or terminate the services of any officer, employee, consultant, agent, representative, advisor, construction manager, project manager, contractor, subcontractor, trade, engineer, quantity surveyor, appraiser, real estate broker, expert, auditor, accountant, manager or other Persons or entities from time to time on whatever basis, including, without limitation, on a temporary basis, as the Monitor deems necessary or appropriate to assist with the exercise of its powers and duties or those of the Respondents (or either of them) or to facilitate or assist in the Restructuring, the continuation of the Business, bringing the Property or any part thereof into compliance with applicable laws and building codes, and/or the preservation, protection or maintenance of the Property and the Business or any part thereof. For greater certainty, any such officer, employee, consultant, agent, representative, advisor, construction manager, project manager, contractor, subcontractor, trade, engineer, quantity surveyor, appraiser, real estate broker, expert, auditor, accountant, manager or other Persons or entities engaged or retained pursuant to this paragraph 21(d) shall thereafter be deemed to be Assistants under this Order;

- (e) conduct, supervise and direct the continuation or commencement of any process or effort to collect, preserve or recover any Property or other assets of the Respondents (or either of them), including, without limitation, any accounts receivable or cash;
- (f) meet and consult with the current or former management of the Respondents (or either of them) and/or their affiliates, or any of their respective advisors, with respect to carrying out its powers and obligations under this Order or any other Order of this Court in these proceedings;
- (g) perform or cause the Respondents (or either of them) to perform such other functions or duties, and enter into or cause the Respondents (or either of them) to enter into any agreements or incur any obligations, as the Monitor considers necessary or desirable in order to facilitate or assist in the Restructuring or the continuation of the Business, including, without limitation, the construction, maintenance, or completion of any strata lots, development projects or properties owned by the Respondents, or any other related activities;
- (h) exercise any rights or powers of the Respondents (or either of them), including, without limitation, any contractual, shareholder, partnership, or joint venture rights or powers of the Respondents (or either of them) and/or any right or power of the Respondents set out in this Order;
- (i) apply for permits, licenses, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Monitor, in the name of the Respondents (or either of them);
- (j) deal with any taxing or regulatory authority, including to execute any appointment or authorization form on behalf of the Respondents that any taxing or regulatory authority may require, in order to confirm the appointment of an authorized representative of the Respondents (or either of them), which may be a representative of the Monitor, for such purposes;

- (k) claim any and all insurance proceeds or refunds or tax refunds to which the Respondents (or either of them) are entitled for and on behalf of the Respondents (or either of them);
- (l) file, or take such actions necessary for the preparation and filing of, for and on behalf of and in the name of the Respondents (or either of them), (i) any tax returns, and (ii) the Respondents' (or either of their) employee-related remittances, T4 statements and records of employment for the Respondents' (or either of their) former employees, in either case, based solely upon the information in the Books and Records and on the basis that the Monitor shall incur no liability or obligation to any person with respect to such returns, remittances, statements, records or other documents;
- (m) cause the Respondents (or either of them) to perform such functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Respondents (or either of them) in dealing with the Property and the Business or any part thereof, the Restructuring, or preserving and protecting the Property and the Business or any part thereof; and
- (n) take any steps reasonably incidental to the exercise by the Monitor of the powers listed above or the performance of any statutory obligations,

(collectively, the "**Monitor's Powers**").

22. Notwithstanding anything contained in this Order, where the Monitor exercises any of the Monitor's Powers, it shall be the sole Person authorized to exercise such powers, to the exclusion of all other Persons, and no director or officer of the Respondents (or either of them) shall incur any liability for any decisions or actions of the Monitor acting under such authority.

23. Notwithstanding anything contained in this Order, the Monitor is not and shall not be deemed to be a director, officer or employee of the Respondents (or either of them).

24. Notwithstanding anything contained in this Order, the Monitor shall not take possession of the Property or Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession of the Business or Property, or any part thereof.

25. Subject to the employees' right to terminate their employment, all employees of the Respondents (or either of them) shall remain the employees of the applicable Respondent until such time as the Monitor, on the applicable Respondent's behalf, may terminate the employment of such employees. The Monitor shall not be liable for any employee-related liabilities of the Respondents (or either of them), including, without limitation, any successor employer liabilities as provided for in Section 11.8(1) of the CCAA or Section 14.06(1.2) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the "**BIA**"). Nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever, and the Monitor shall not be liable for any employee-related liabilities including, without limitation, wages, severance pay, termination pay, vacation pay, pension or benefits amounts relating to any employees that the Monitor may hire in accordance with the terms and conditions of such employment by the Monitor.

26. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder and any other provincial or federal equivalent thereof (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. The Monitor shall provide any creditor of the Respondents (or either of them) with information provided by the Respondents in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor deems to be confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor may agree.

28. In addition to the rights and protections afforded the Monitor under the CCAA, as an officer of this Court or otherwise at law, neither the Monitor nor its employees, advisors or other representatives acting in such capacities shall incur any liability or obligation as a result of the Monitor's appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Without limiting the generality of the foregoing, in exercising any powers granted to it hereunder: (i) neither the Monitor nor its employees, advisors or other representatives acting in such capacities shall incur any liability or obligation under or in connection with the Definitive Documents, any construction management contracts or other agreements, including, without limitation, the performance, actions omissions or negligence by or of any Assistants, and all other persons acting on their behalf, save and except for any gross negligence or wilful misconduct on its part; and (ii) the Monitor shall be entitled to rely on the Books and Records of the Respondents without independent investigation. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA, as an officer of this Court or any applicable legislation.

29. Nothing in this Order shall constitute or be deemed to constitute the Monitor as a receiver, assignee, liquidator, administrator, receiver-manager, agent of the creditors, or legal representative of the Respondents (or either of them) or the Property within the meaning of applicable legislation.

ADMINISTRATION CHARGE

30. The Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on or subsequent to the Order Date, by the Respondents as part of the cost of these proceedings. The

Respondents are hereby authorized and directed to pay the accounts of the Monitor and counsel to the Monitor on a periodic basis.

31. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

32. The Monitor and counsel to the Monitor shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$250,000, unless permitted by further Order of this Court, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Respondents’ restructuring. The Administration Charge shall have the priority set out in paragraphs 39 and 41 hereof.

INTERIM FINANCING

33. The Respondents are hereby authorized and empowered to obtain and borrow under an interim credit facility from the Petitioner (in such capacity, the “**Interim Lender**”) in order to finance the Respondents’ working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such interim credit facility shall not exceed \$700,000 under this Order, plus interest, fees and expenses, unless permitted by further Order of this Court.

34. Such interim credit facility shall be on the terms and subject to the conditions set forth in the interim financing credit agreement between the Respondents and the Interim Lender attached as Exhibit “U” to the First Pollack Affidavit (the “**Interim Financing Term Sheet**”), to be executed by the Monitor for and on behalf of the Respondents in accordance with the terms of this Order.

35. The Monitor, for and on behalf of the Respondents, is hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security

documents, guarantees and other definitive documents (collectively with the Interim Financing Term Sheet, the “**Definitive Documents**”), as are contemplated by the Interim Financing Term Sheet or as may be reasonably required by the Interim Lender pursuant to the terms thereof, and the Monitor, for and on behalf of the Respondents, is hereby authorized and directed to pay and perform all of the Respondents’ indebtedness, interest, fees, liabilities and obligations to the Interim Lender under and pursuant to any of the Definitive Documents (collectively, the “**Interim Financing Obligations**”) as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

36. The Interim Lender shall be entitled to the benefit of and is hereby granted a charge (the “**Interim Lender’s Charge**”) on the Property as security for the Interim Financing Obligations, which Interim Lender’s Charge shall not exceed the aggregate amount of \$700,000, plus interest, fees, and expenses, unless permitted by further Order of this Court. The Interim Lender’s Charge shall not secure an obligation that exists before this Order is made. The Interim Lender’s Charge shall have the priority set out in paragraphs 39 and 4147 hereof.

37. Notwithstanding any other provision of this Order:

- (a) the Interim Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the Interim Lender’s Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lender’s Charge, the Interim Lender, upon five (5) business days’ notice to the Monitor, may exercise any and all of its rights and remedies against the Respondents or the Property under or pursuant to any of the Definitive Documents and the Interim Lender’s Charge, including without limitation, to cease making advances to the Respondents and set off and/or consolidate any amounts owing by the Interim Lender to the Respondents (or either of them) against the obligations of the Respondents to the Interim Lender under any of the Definitive Documents or the Interim Lender’s Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver,

receiver and manager or interim receiver, or for a bankruptcy order against the Respondents (or either of them) and for the appointment of a trustee in bankruptcy of the Respondents (or either of them); and

- (c) the foregoing rights and remedies of the Interim Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Respondents or the Property.

38. Unless agreed to by the Interim Lender, the Interim Lender, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Monitor, for and on behalf of the Respondents, under the CCAA, or any proposal filed by the Monitor, for and on behalf of the Respondents, under the BIA, with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF THE CHARGES CREATED BY THIS ORDER

39. The priorities of the Administration Charge and the Interim Lender's Charge (together, the "Charges"), as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$250,000); and

Second – Interim Lender's Charge (to the maximum amount of \$700,000, plus interest, fees and expenses).

40. Any security documentation evidencing, or the filing, registration or perfection of, the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

41. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "Encumbrances"), in favour of any Person, save and except:

- (a) those claims contemplated by Section 11.8(8) of the CCAA;
- (b) any Person with a properly perfected charge under the *Personal Property Security Act* (British Columbia) or such other applicable legislation that has not been served with the Application materials; and
- (c) any Person with a properly perfected charge under the *Land Title Act* (British Columbia) or such other applicable legislation that has not been served with the Application materials.

42. Except as otherwise expressly provided herein, or as may be approved by this Court, the Respondents shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with any of the Charges, unless the Respondents obtain the prior written consent of the Monitor and the beneficiaries of the Charges.

43. The Charges, and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) and/or the Interim Lender shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Respondents (or either of them); and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of any of the Definitive Documents shall create or be deemed to constitute a breach by the Respondents (or either of them) of any Agreement to which the Respondents (or either of them) are a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Monitor, for and on behalf of the Respondents, entering into the Interim Financing Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Respondents (or either of them) pursuant to this Order or the Definitive Documents and the granting of the Charges do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

44. Any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Respondents' interest in such real property leases.

SERVICE AND NOTICE

45. The Monitor shall (i) without delay, publish in the *Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Respondents of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder, provided that the Monitor shall not make the claims, names and addresses of the individuals who are creditors publicly available.

46. The Respondents and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission to the (including by email) to the Respondents' creditors or other interested parties at their respective addresses as last shown on the records of the Respondents and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after

mailing. For greater certainty, any such service or distribution shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of Section 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

47. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the “**Service List**”) to be maintained by the Monitor. The Monitor shall post and maintain an up-to-date form of the Service List on its website at: <https://www.ksvadvisory.com/experience/case/beta-view-homes> (the “**Monitor’s Website**”).

48. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels’ email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Monitor’s Website.

49. Notwithstanding paragraphs 46 and 48 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia, Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

50. Notwithstanding paragraph 57 of this Order, each of the Monitor or the Petitioner, including in its capacity as the Interim Lender, may from time to time apply to this Court for directions in the discharge of their powers and duties hereunder.

51. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Respondents (or either of them), the Business or the Property.

52. THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any

federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Respondents and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Respondents and the Monitor and their respective agents in carrying out the terms of this Order.

53. The Monitor, for and on behalf of each of the Respondents, be at liberty and is hereby authorized to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of each of the Respondents to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C., §§ 101 – 1532, as amended.

54. The Monitor, for and on behalf of the Respondents (or either of them) may (subject to the provisions of the CCAA and the BIA), at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if and when the Monitor, for and on behalf of the Respondents (or either of them), determines that such a filing is appropriate.

55. The Monitor, for and on behalf of the Respondents, is hereby at liberty to apply for such further interim or interlocutory relief as it deems advisable within the time limited for Persons to file and serve Responses to the Petition.

56. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

57. Any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in herein with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

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

59. This Order and all of its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

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:

Signature of
 Party Lawyer for the Petitioner

Mary Buttery, K.C.

Signature of
 Party Lawyer for <name of party(ies)>

Name

BY THE COURT

REGISTRAR

