

No. S240195

Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS*  
*ARRANGEMENT ACT*, RSC 1985, c C-36, as amended

and

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,  
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC.

PETITIONERS

ANCILLARY ORDER

BEFORE THE HONOURABLE  
JUSTICE STEPHENS

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APRIL 26, 2024

ON THE APPLICATION of KSV Restructuring Inc., in its capacity as the Court-appointed Monitor (in such capacity the “**Monitor**”), coming on for hearing at Vancouver, British Columbia, on the 26<sup>th</sup> day of April, 2024; AND ON HEARING from counsel of the Monitor, Michael Shakra and Andrew Froh and those other counsel listed on **Schedule “A”** hereto, and no one else appearing although duly served; AND UPON READING, the material filed, including the Second Report of the Monitor dated April 19, 2024 (the “**Report**”); 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*, and the inherent jurisdiction of this Court;

**THIS COURT ORDERS AND DECLARES THAT:**

1. Capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them in the (i) Initial Order of Justice Stephens made on January 11,

2024 as amended by the Order of Justice Stephens dated January 22, 2024 (the “**Amended and Restated Initial Order**”) or (ii) the Report as the case may be.

2. The time for service of this Notice of Application and supporting materials is hereby abridged such that the Notice of Application is properly returnable today.

#### **STAY EXTENSION**

3. The Stay Period granted in paragraph 16 of the Amended and Restated Initial Order is hereby extended up to and including June 30, 2024.

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#### **DISTRIBUTION**

4. Upon Closing of the Transaction, the Monitor or the Petitioners are authorized to distribute the e consideration received by the Vendors from the Transaction (“**Sale Proceeds**”) to the Senior Secured Lenders or such other person(s) as the Senior Secured Lenders may direct (the “**Distribution**”).
5. The Monitor and/or any of the Petitioners or the Additional Petitioners (as that term is defined in the Approval and Vesting Order to be granted on the date of this Order) are hereby authorized to take all necessary steps and actions to effect the Distribution in accordance with the provisions of this Order, and shall not incur any liability as a result of making the Distribution.
6. Notwithstanding:
  - (a) the pendency of these CCAA proceedings;
  - (b) any application for a bankruptcy or receivership order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”) or other applicable legislation in respect of the Petitioners or the Additional Petitioners and any bankruptcy or receivership order issued pursuant to any such applications; and
  - (c) any assignment in bankruptcy made in respect of the Petitioners or the Additional Petitioners;
  - (d) and any provisions of any federal or provincial legislation,

the Distribution shall be made free and clear of all Encumbrances (including the Charges) and shall be binding on any trustee in bankruptcy or receiver that may be appointed in respect of the Petitioners or the Additional Petitioners and shall not be void or voidable nor deemed to be a preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. The Monitor and/or any of the Petitioners or the Additional Petitioners shall be entitled to deduct and withhold from any Distribution such amounts as may be required to be deducted or withheld with respect to such Distribution under any applicable tax legislation and to remit such amounts to the appropriate governmental authority or other person entitled thereto. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order to such person as the remainder of the Distribution in respect of which such withholding or deduction was made.
8. Any payments, distributions and disbursements made under this Order shall not constitute a “distribution” by any person and the Monitor shall not constitute a “legal representative” or “representative” for the purposes of section 159 of the *Income Tax Act* (Canada), section 270 of the *Excise Tax Act* (Canada), section 23 of the *Canada Pension Plan Act* (Canada), section 86 of the *Employment Insurance Act* (Canada), and section 97.39 of the *Customs Act* (Canada), or any other similar federal, provincial or territorial tax legislation (collectively, the “**Tax Statutes**”), and the Monitor, in making any such distributions, disbursements or payments, as applicable, is merely a disbursing agent under this Order, and is not exercising any discretion in making such distributions, disbursements or payments under this Order and no person is “distributing”, nor shall be considered to “distribute” nor have “distributed”, such funds for the purpose of the Tax Statutes. Further, the Monitor shall not incur any liability under the Tax Statutes in respect of its making any payments, distributions or disbursements ordered or permitted under this Order, and are hereby forever released and discharged from any claims against it, him or her under or pursuant to the Tax Statutes or otherwise at law, arising in respect of any such payments, distributions or disbursements made under this Order and any claims of this nature are hereby forever barred.

## **GENERAL**

9. The activities of the Monitor, as set out in the Report are hereby approved.
10. Endorsement of this Order by counsel appearing, other than counsel for the Monitor, is hereby dispensed with.
11. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in the United States of America, including the United States Bankruptcy Court overseeing the Petitioners’ proceedings under Chapter 15 of the Bankruptcy Code in Case No. 24-10026-JKS, or in any other foreign jurisdiction, to give effect to this Order and to assist the Petitioners or the Additional Petitioners, the Monitor, and their respective agents in carrying out the terms of this Order. All courts, tribunals and regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners, the Additional Petitioners and the Monitor, as an officer of this Court, as may be necessary

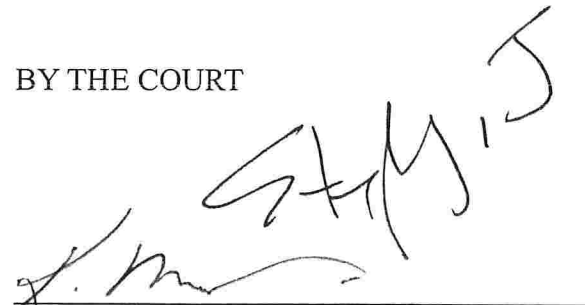
or desirable to give effect to this Order or to assist the Petitioners, the Additional Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

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 KSV  
Restructuring Inc.

Bennett Jones LLP  
(Michael Shakra)

BY THE COURT

  
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REGISTRAR

CHECKED  
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**Schedule "A"**

**List of Counsel**

<b>NAME</b>	<b>PARTY</b>
Michael Shakra and Andrew Froh	The Monitor, KSV Restructuring Inc.
Kyle Plunkett and Matilda Lici (MS Teams)	Powerscourt Investments XXV, LP, Powerscourt Investments XXV Trust, Trinity Capital Inc., Horizon Technology Finance Corporation, Horizon Credit II LLC, Horizon Funding I LLC and Horizon Funding Trust 2022-1
Alexis Teasdale	Counsel to the Purchasers, 15925347 Canada Inc., 1474480 B.C. Ltd., 1474737 B.C. Ltd., 1474741 B.C. Ltd., 1464115 B.C. Ltd., 1474484 B.C. Ltd.