

COURT FILE NUMBER 1903-08169

COURT COURT OF QUEEN'S BENCH OF ALBERTA

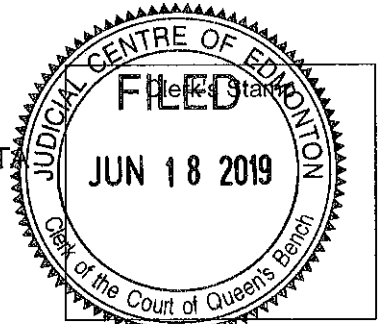
JUDICIAL CENTRE EDMONTON

PLAINTIFF FORTIS LGS STRUCTURES INC.

DEFENDANTS STATION POINT DEVELOPMENTS LTD. and BCM DEVELOPMENTS LTD.

DOCUMENT **ORDER (APPOINTING BUILDERS' LIEN TRUSTEE AND RECEIVER AND MANAGER)**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT MCCARTHY TÉTRAULT LLP  
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*I hereby certify this to be a true copy of the original.*  
*[Signature]*  
 For Clerk of the Court

**DATE ON WHICH ORDER WAS PRONOUNCED:** June 18, 2019

**NAME OF JUDGE WHO MADE THIS ORDER:** Justice K.G. Nielsen

**LOCATION OF HEARING** Edmonton, Alberta

**UPON** the application (the "**Application**") of KingSett Mortgage Corporation ("**KingSett**"), for an order appointing KSV Kofman Inc. as receiver and manager, to act in respect of the hereinafter described assets, properties and undertakings of Station Point Developments Ltd. (the "**Debtor**"); **AND UPON** reading the Application, the Affidavit of Daniel Pollack sworn June 10, 2019 (the "**Pollack Affidavit**"); **AND UPON** noting the consent of KSV Kofman Inc. to act as Receiver (as hereinafter defined); **AND UPON** hearing the submissions of counsel for KingSett and any other persons present;

**IT IS HEREBY ORDERED AND DECLARED THAT:**

**SERVICE**

1. The time for service of the notice of application for this order (the "**Order**") is hereby abridged and deemed good and sufficient and this application is properly returnable today.

## APPOINTMENT

2. KSV Kofman Inc. be and it is hereby appointed trustee pursuant to s. 54 of the *Builders' Lien Act* and receiver and manager pursuant to s. 13(2) of the *Judicature Act*, RSA 2000 c. J-2 and s. 243 of the *Bankruptcy and Insolvency Act*, RSC 1985 c B-3 (in all such capacities hereinafter collectively referred to as the "Receiver") without security of all the lands and premises legally described as:

### Firstly

PLAN 0924862  
BLOCK 3  
LOT 1  
CONTAINING 1.345 HECTARES (3.32 ACRES) MORE OR LESS  
EXCEPTING THEREOUT:                      HECTARES    (ACRES) MORE OR LESS  
A) PLAN 1821512 – SUBDIVISION            0.53            1.31  
EXCEPTING THEREOUT ALL MINES AND MINERALS

### Secondly

PLAN 1821512  
BLOCK 3  
LOT 2  
EXCEPTING THEREOUT ALL MINES AND MINERALS  
AREA: 0.53 HECTARES (1.31 ACRES) MORE OR LESS

(the "**Mortgaged Lands**"), and the undertakings, properties and assets of the Debtor situated upon or relating to the Mortgaged Lands (together with the Mortgaged Lands, and including all proceeds thereof, the "**Property**"). In this order, the term "Mortgage" means the mortgage dated December 2, 2015 between Kingsett and the Debtor and registered against title to the Mortgaged Lands as Instrument No. 162 007 723 as amended by amending agreement dated June 11, 2016 and registered against title to the Mortgaged Lands by caveat bearing Instrument No. 162 179 259, all as may be amended, restated or supplemented from time to time.

## RECEIVER'S POWERS

3. The Receiver be and it is hereby authorized and empowered to perform or do any or all acts or things that in its opinion are necessary or desirable for the purposes of receiving, preserving, protecting, completing construction or realizing on the Property, or any part or parts thereof, and that, without limiting the generality of the foregoing, the Receiver be and

it is hereby authorized and empowered, but not obligated, to do the following until further Order of the Court:

- (a) to advance (in part or through to completion) the construction of the project known as Station Pointe Phase 1 and 2 located at 403 Belvedere Gate, Edmonton, Alberta;
- (b) to manage, operate and carry on the business of the Debtor relating to the Property, including the power to enter into any agreements, including, without limiting the generality of the foregoing, the ability to enter into an agreement with a general contractor or other contractors, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor relating to the Property;
- (c) to enter into the Facility Agreement attached as Exhibit "R" to the Pollack Affidavit;
- (d) to receive, preserve and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (e) from and after August 1, 2019, to do all things necessary or desirable to market and sell the Property and, in such case, to apply for a vesting order or orders for all or any part of the Property to the extent deemed necessary or advisable by the Receiver;
- (f) to obtain possession and control of all funds of the Debtor, including funds held in any bank account at any financial institution and funds held in trust for or on behalf of the Debtor relating to the Property, including any trust funds as may be held in any solicitor's trust account;
- (g) to execute in the name of and on behalf of the Debtor all necessary bills of sale, conveyances, deeds and documents of whatsoever nature which the Receiver

considers to be necessary or incidental to the exercise of the powers granted hereunder;

- (h) to invoice, receive and collect all monies now or hereinafter due or owing to the Debtor in respect of the Property, and to exercise all remedies of the Debtor in collecting such monies;
- (i) to settle, extend or compromise any indebtedness owing to or by the Debtor in respect of the Property;
- (j) to apply for any permits, licenses, approvals or permissions or any renewals hereof on behalf of the Debtor in relation to the Property or as may be required by any government or regulatory authority;
- (k) to execute such powers of attorney or documents in the name of and on behalf of the Debtor in relation to the Property. Any such powers of attorney or documents so executed by the Receiver shall have the same force and effect as if executed by the Debtor;
- (l) to obtain any necessary appraisals of the Property or any part or parts thereof;
- (m) to take steps for the preservation and protection of the Property, including without restricting the generality of the foregoing (i) the right to make repairs and improvements to the Property or any parts thereof; and (ii) the right to make payments for ongoing services in respect of the Property;
- (n) to purchase or lease such machinery, equipment, premises or other assets or supplies as may be necessary or desirable in the opinion of the Receiver;
- (o) to register notice of this Order against title to the Mortgaged Lands, and when submitted by the Receiver for registration this Order shall be immediately registered by the Registrar of Land Titles of Alberta, or any other similar government authority, notwithstanding Section 191 of the *Land Titles Act*, RSA 2000, c. L-4, and notwithstanding that the appeal period in respect of this Order has not elapsed and the Registrar of Land Titles of Alberta shall accept all Affidavits of Corporate Signing Authority submitted by the Receiver in its capacity as Receiver of the Debtor and not in its personal capacity;

- (p) to report to, meet with and discuss with such affected Person (as hereinafter defined) as the Receiver deems appropriate all matters relating to the Property, and to share information, subject so such terms as to confidentiality as the Receiver deems advisable;
- (q) to terminate or consent to the termination of any contracts or agreements to which the Debtor is a party or in respect of the Property; and
- (r) to take any steps, enter into any agreements or incur any obligations necessary or reasonably incidental to the exercise of the powers granted to the Receiver pursuant to this Order, whether in the name of the Debtor or otherwise, including, without limitation, entering into banking arrangements and to join in and execute, assign, issue, endorse and negotiate cheques, drafts, bills of exchange and other instruments;

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including the Debtor, and without interference from any other Person (as defined below).

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. (i) The Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property (excluding Property subject to liens the validity of which is dependent on maintaining possession) to the Receiver upon the Receiver's request.
5. All Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs pertaining to the Property, and any computer programs, computer tapes, computer disks or other data storage media containing any such information (the foregoing, collectively, the "**Records**")

in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or documents prepared in contemplation of litigation or due to statutory provisions prohibiting such disclosure.

6. If any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names, and account numbers that may be required to gain access to the information.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

7. No proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

8. No Proceeding against or in respect of the Debtor insofar as it pertains to the Property or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and (i) any and all Proceedings currently under way against or in respect of the Debtor or the Property; and (ii) the counterclaim issued by the

Defendants in the within action are hereby stayed and suspended pending further Order of this Court, provided, however, that nothing in this Order shall: (i) prevent any Person from commencing a proceeding regarding a claim that might otherwise become barred by statute or an existing agreement if such proceeding is not commenced before the expiration of the stay provided by this paragraph; and (ii) affect a Regulatory Body's investigation in respect of the debtor or an action, suit or proceeding that is taken in respect of the debtor by or before the Regulatory Body, other than the enforcement of a payment order by the Regulatory Body or the Court. "Regulatory Body" means a person or body that has powers, duties or functions relating to the enforcement or administration of an Act of Parliament or of the legislature of a Province.

#### **NO EXERCISE OF RIGHTS OF REMEDIES**

9. All rights and remedies of any Person, whether judicial or extra-judicial, statutory or non-statutory (including, without limitation, set-off rights) against or in respect of the Debtor as it pertains to the Property or the Receiver or affecting the Property are hereby stayed and suspended and shall not be commenced, proceeded with or continued except with leave of this Court provided, however, that this stay and suspension does not apply in respect of any "eligible financial contract" (as defined in the BIA), and further provided that nothing in this Order shall:
  - (a) empower the Debtor to carry on any business that the Debtor is not lawfully entitled to carry on;
  - (b) prevent the filing of any registration to preserve or perfect a security interest;
  - (c) prevent the registration of a claim for lien; or
  - (d) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment.
  
10. Nothing in this Order shall prevent any party from taking an action against the Debtor where such an action must be taken in order to comply with statutory time limitations in order to preserve their rights at law, provided that no further steps shall be taken by such party except in accordance with the other provisions of this Order, and notice in writing of such action be given to the Receiver at the first available opportunity.

## **NO INTERFERENCE WITH THE RECEIVER**

11. No Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor in respect of the Property, except with the written consent of the Debtor and the Receiver, or leave of this Court [Nothing in this Order shall prohibit any party to an eligible financial contract (as defined in the BIA) from closing out and terminating such contract in accordance with its terms

## **CONTINUATION OF SERVICES**

12. All persons having:
  - (a) statutory or regulatory mandates for the supply of goods and/or services; or
  - (b) oral or written agreements or arrangements with the Debtor, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Debtor

are hereby restrained until further order of this Court from discontinuing, altering, interfering with, suspending or terminating the supply of such goods or services as may be required by the Debtor in relation to the Property or exercising any other remedy provided under such agreements or arrangements.

## **RECEIVER TO HOLD FUNDS**

13. All funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further order of this Court.



## EMPLOYEES

14. Subject to employees' rights to terminate their employment, all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*, S.C. 2005, c.47 ("**WEPPA**").
  
15. Pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## LIMITATION ON ENVIRONMENTAL LIABILITIES

16. (a) Notwithstanding anything in any federal or provincial law, the Receiver is not personally liable in that position for any environmental condition that arose or environmental damage that occurred:
  - (i) before the Receiver's appointment; or
  - (ii) after the Receiver's appointment unless it is established that the condition arose or the damage occurred as a result of the Receiver's gross negligence or wilful misconduct.

- (b) Nothing in sub-paragraph (a) exempts a Receiver from any duty to report or make disclosure imposed by a law referred to in that sub-paragraph.
- (c) Notwithstanding anything in any federal or provincial law, but subject to sub-paragraph (a) hereof, where an order is made which has the effect of requiring the Receiver to remedy any environmental condition or environmental damage affecting the Property, the Receiver is not personally liable for failure to comply with the order, and is not personally liable for any costs that are or would be incurred by any person in carrying out the terms of the order,
  - (i) if, within such time as is specified in the order, within 10 days after the order is made if no time is so specified, within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, or during the period of the stay referred to in clause (ii) below, the Receiver:
    - A. complies with the order, or
    - B. on notice to the person who issued the order, abandons, disposes of or otherwise releases any interest in any real property affected by the condition or damage;
  - (ii) during the period of a stay of the order granted, on application made within the time specified in the order referred to in clause (i) above, within 10 days after the order is made or within 10 days after the appointment of the Receiver, if the order is in effect when the Receiver is appointed, by,
    - A. the court or body having jurisdiction under the law pursuant to which the order was made to enable the Receiver to contest the order; or
    - B. the court having jurisdiction in bankruptcy for the purposes of assessing the economic viability of complying with the order; or
  - (iii) if the Receiver had, before the order was made, abandoned or renounced or been divested of any interest in any real property affected by the condition or damage.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

17. Except for gross negligence or wilful misconduct, as a result of its appointment or carrying out the provisions of this Order the Receiver shall incur no liability or obligation that exceeds an amount for which it may obtain full indemnity from the Property. Nothing in this Order shall derogate from any limitation on liability or other protection afforded to the Receiver under any applicable law, including, without limitation, Section 14.06, 81.4(5) or 81.6(3) of the BIA.

### **RECEIVER'S ACCOUNTS**

18. The Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case, incurred at their standard rates and charges. The Receiver and counsel to the Receiver shall be entitled to the benefits of and are hereby granted a charge (the "**Receiver's Charge**") on the Property as security for their professional fees and disbursements incurred at the normal rates and charges of the Receiver and such counsel, both before and after the making of this Order in respect of these proceedings, and the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subject to section 14.06(7), 81.4(4) and 81.6(2) and 88 of the BIA.
19. The Receiver and its legal counsel shall pass their accounts from time to time.
20. Prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including the legal fees and disbursements, incurred at the normal rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

### **FUNDING OF THE RECEIVERSHIP**

21. The Receiver be at liberty and it is hereby empowered to borrow in accordance with the Facility Agreement, by way of further advances under the Mortgage such that the aggregate principal amount under the Mortgage does not exceed the all-inclusive amount of \$17,000,000, for the purpose of exercising the powers and duties conferred by this Order, including interim expenditures. The whole of the Property and all monies and

proceeds of realization received in respect thereof or relating thereto shall be secured by way of a fixed and specific charge as security for the payment of monies borrowed, together with interest and charges thereon, which shall rank in priority to all security interests, mortgages, liens, builders' liens, charges, caveats and other encumbrances held by any Person on, in or to the same, whether or not registered, but subject to Receiver's Charge.

22. Neither the Receiver's Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. The Receiver shall be allowed to repay any amounts borrowed pursuant to the Facility Agreement out of the Property or any proceeds, including any proceeds from the sale of any assets without further approval of this Court.

#### **ALLOCATION**

24. Any interested party may apply to this Court on notice to any other party likely to be affected, for an order allocating the Receiver's Charge and the borrowings under the Facility Agreement amongst the various assets comprising the Property.

#### **GENERAL**

25. The Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
26. Notwithstanding Rule 6.11 of the *Alberta Rules of Court*, unless otherwise ordered by this Court, the Receiver will report to the Court from time to time, which reporting is not required to be in affidavit form and shall be considered by this Court as evidence. The Receiver's reports shall be filed by the Court Clerk notwithstanding that they do not include an original signature.
27. KingSett shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the KingSett's security or, if not so provided by the KingSett's security, then on a substantial indemnity basis, including legal costs on a solicitor-client full indemnity basis, to be paid by the Receiver from any proceeds arising

from the disposition of the Property with such priority and at such time as this Court may determine.

28. The Debtor shall be entitled at any time to complete a financing in an amount sufficient to indefeasibly repay in cash all obligations outstanding to: (i) KingSett including, without limitation, all of KingSett's accrued interest in addition to all costs provided for in the Mortgage and other loan and security documents held by KingSett, including legal costs on a full indemnity basis; and (ii) the Receiver and its counsel, on account of their fees, disbursements, liabilities and expenses, and upon such repayment being made, to apply to Court on notice to all interested parties for an order discharging the Receiver on such terms as this Court may order.
29. Nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor.
30. Any interested party may apply to this Court to vary or amend this Order on not less than 7 days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

#### FILING

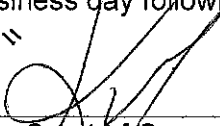
31. The Receiver shall establish and maintain a website in respect of these proceedings at <https://www.ksvadvisory.com/insolvency-cases/case/Station-Point-Developments-Ltd> (the "**Receiver's Website**") and shall post there as soon as practicable:
  - (a) all materials prescribed by statute or regulation to be made publically available; and
  - (b) all applications, reports, affidavits, orders and other materials filed in these proceedings by or on behalf of the Receiver, or served upon it, except such materials as are confidential and the subject of a sealing order or pending application for a sealing order.
32. Service of this Order shall be deemed good and sufficient by:
  - (a) serving the same on:
    - (i) the persons listed on the service list created in these proceedings or otherwise served with notice of these proceedings;

- (ii) any other person served with notice of the application for this Order;
- (iii) any other parties attending or represented at the application for this Order;  
and

(d) posting a copy of this Order on the Receiver's Website

and service on any other person is hereby dispensed with.

33. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

  
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Justice of the Court of Queen's Bench of Alberta