



**SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**ENDORSEMENT**

**COURT FILE  
NO.:**

CV-23-00709180-00CL

**DATE:** September 25, 2024

**NO. ON LIST:** 4

**TITLE OF  
PROCEEDING:**

**KINGSETT MORTGAGE CORPORATION et al v VANDYK UPTOWNS  
LIMITED et al**

**BEFORE  
JUSTICE:**

**OSBORNE**

**PARTICIPANT INFORMATION**

**For the Plaintiff, Applicant, Moving Party:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
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**For the Defendant, Respondent, Responding Party:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
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**For Other, Self-Represented:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
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**ENDORSEMENT OF JUSTICE OSBORNE:**

1. The Receiver seeks an order:
  - a. amending the First Amended and Restated Receivership Order to approve the Uptown CM Contract and authorizing and directing the Receiver to perform and give effect to that Contract; and
  - b. authorizing the Receiver to borrow up to \$60 million, pursuant to the Commitment Letter and granting the Receiver's Uptown's Borrowings Charge in respect thereof to rank subordinate to the Receiver's Charge and *pari passu* with the Receiver's General Borrowings Charge and Receiver's Lakeview Borrowings Charge.
2. The Receiver also seeks an Ancillary Matters Order vesting all of the rights, title and interest of Uptowns in and to the Subject Property in the Corporation of the City of Brampton, free and clear of encumbrances.
3. The Receiver relies upon the Fourth Report dated September 18, 2024.
4. Defined terms in this Endorsement have the meaning given to them in the motion materials, including the Fourth Report.
5. The Service List has been served. The relief sought today is unopposed. It is strongly supported by KingSett, who is the primary economic stakeholder in these proceedings.
6. The sales process was approved by this Court in March, 2024. The Receiver engaged in discussions with key stakeholders and determined that the Uptowns and Lakeview Projects should be completed to maximize potential benefits to stakeholders.
7. Uptowns is a single-purpose real estate development company that owns property on Heart Lake Road, Brampton, Ontario, on which it is developing a residential project consisting of approximately 342 stacked townhomes which the Receiver intends to complete if the relief is granted.
8. Following an RFP process and other related matters and steps, the Receiver entered into a Construction Management Contract - the Uptowns CM Contract. On September 13, 2024, the Receiver entered into an agreement with Elm for the preservation and protection of the Uptowns Property - the Stabilization Agreement. The basis and context for all of this is set out in the materials.
9. I am satisfied that the Uptowns CM Contract will be accretive to the maximization of value for stakeholders of Uptowns. The Receiver is familiar with Elm from other engagements and is satisfied that Elm is an experienced and reputable construction manager.
10. I am also satisfied that the General Borrowings Charge should be increased as the majority of funds already borrowed have been used to fund pre-construction and general maintenance costs.
11. KingSett has agreed to provide the Uptowns Construction Facility in the amount of \$60 million, pursuant to a commitment letter dated September 18, 2024. The Receiver is satisfied that the terms are reasonable and that the effect of annualized interest rate of the loans and lender fees are consistent with, or lower than, market for a loan of this nature. The Uptowns Construction Facility is required to restart construction of the Uptowns Project and is in the interest of maximizing recoveries for all stakeholders.
12. Finally, Uptowns is a party to a Memorandum of Agreement dated February 14, 2022, with the City of Brampton, and the Regional Municipality of Peel - the Site Plan Agreement. The approvals granted by the

City pursuant thereto were subject to terms, including the term that the Subject Properties be transferred to the City. They consist of narrow, 0.3 m strips of land which abut certain municipal roads.

- 13. Such conveyances are very typical conditions of site plan approval and I am satisfied that satisfaction of this Conveyance Condition, which is in turn a necessary pre-condition to the development of the Uptowns Project, will maximize recoveries for stakeholders generally. No prejudice will be suffered as the lands are of limited to no value given the nature of the Subject Property.
- 14. Sections 31(1) and 243 of the *BIA* authorize a receiver to borrow and grant security on the property of the Debtor on terms such as may be authorized. Section 243 also grants the Court. The power to authorize a receiver to exercise any control of the court considers advisable over the property of a debtor and to further take any other action that the court considers advisable.
- 15. For all of these reasons, the requested relief is approved. Orders to go in the form signed by me today, both of which are effective immediately and without the necessity of issuing and entering.



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**OSBORNE, J.**

**DATE: 25 SEPTEMBER, 2024**