



October 7, 2024

**Fifth Report to Court of
KSV Restructuring Inc.
as Receiver and Manager of certain
real property, assets and undertakings of
Vandyk – Uptowns Limited,
Vandyk – Heart Lake Limited,
2402871 Ontario Inc.,
Vandyk – The Ravine Limited,
Vandyk – Lakeview-DXE-West Limited and
Vandyk – Lakeview-DXE-East Limited**

Contents

Page

1.0	Introduction	1
1.1	Purposes of this Report	2
1.2	Currency.....	4
1.3	Restrictions.....	4
2.0	Background	4
2.1	Vandyk Group	4
2.2	Uptowns	5
2.3	Heart Lake.....	5
2.4	Lakeview	6
3.0	Creditors.....	6
3.1	Uptowns	6
3.2	Heart Lake.....	7
4.0	Uptowns Pre-Sale APSs.....	8
4.1	APS Amendments	8
4.2	Service, Insurance and Other Pre-Sale APS Matters.....	9
4.3	Recommendation re: APS Amendments and Disclaimer of Pre-Sale APSs	10
4.4	Sealing	11
5.0	Heart Lake Project.....	11
5.1	Heart Lake CM Contract	12
5.2	Recommendation re: Retention of Elm and Approval of the Heart Lake CM Contract	13
6.0	Funding of the Heart Lake Project	14
6.1	Receiver's General Borrowings Charge	14
6.2	Heart Lake Construction Facility	15
6.3	Recommendation re: Heart Lake Construction Facility and Receiver's Heart Lake Borrowings Charge.....	17
7.0	Conveyance	17
8.0	Sale Process Update	18
9.0	Conclusion	19

Appendices

Appendix	Tab
Second Amended and Restated Receivership Order	A
Heartlake CM Contract.....	B
Interim Statement of Receipts & Disbursements	C
Heart Lake Commitment Letter	D

Confidential Appendix	Tab
Uptowns Project Pro-Forma.....	1
APS Amendment Schedule	2



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**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION

APPLICANTS

- AND -

**VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE LIMITED, 2402871 ONTARIO
INC., VANDYK – THE RAVINE LIMITED, VANDYK – LAKEVIEW-DXE-WEST LIMITED
AND VAND VANDYK – LAKEVIEW-DXE-EAST LIMITED**

RESPONDENTS

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED, AND
SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED**

**FIFTH REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER**

OCTOBER 7, 2024

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on November 14, 2023, (the "Receivership Order") as most recently amended and restated on September 25, 2024 (the "Second Amended and Restated Receivership Order"), KSV Restructuring Inc. ("KSV") was appointed receiver and manager (in such capacity, the "Receiver") of the real property described on Schedule "A" to the Receivership Order (the "Real Property") and all present and future assets, undertakings and personal property of Vandyk – Uptowns Limited ("Uptowns"), Vandyk – Lakeview-DXE-West Limited ("Lakeview"), Vandyk – Heart Lake Limited ("Heart Lake"), 2402871 Ontario Inc. ("240") and Vandyk – The Ravine Limited ("Ravine" and collectively with Uptowns, Lakeview, Heart Lake and 240, the "KingSett Debtors" and each a "KingSett Debtor"), located at, related to, used in connection with or arising from or out of the Real Property, or which is necessary to the use and operation of the Real Property, including all proceeds therefrom, together with all agreements of purchase and sale executed by Vandyk – Lakeview-DXE-East Limited ("Lakeview 2") related to any of the Real Property (collectively with the Real Property, the "Property"). A copy of the Second Amended Receivership Order is attached as **Appendix "A"**.

2. Although issued on November 14, 2023, the Receivership Order only became effective as against Lakeview, Heart Lake, 240 and Ravine on January 8, 2024 in accordance with its terms.
3. Pursuant to five additional orders granted by the Court on December 11, 2023, December 12, 2023, January 18, 2024¹ and January 23, 2024, KSV was also appointed receiver and manager of certain property of other companies within the Vandyk Group (as defined below) (collectively, the “Other Vandyk Debtors”).
4. Pursuant to an Order of the Court dated March 8, 2024 (the “Sale Process Approval Order”), the Court approved a sale process (the “Sale Process”) for the Property owned by Heart Lake, Ravine, 240, and the property of the Other Vandyk Debtors.
5. On June 13, 2024, the Receivership Order was amended to include Lakeview 2 as a Respondent, expand the scope of “Property” to include all agreements of purchase and sale executed by Lakeview 2 related to Real Property, approve a construction management contract between Lakeview and PCL Constructors Canada Inc. (“PCL”) and approve Lakeview’s borrowing under a commitment letter to finance construction.
6. On September 25, 2024, the Receivership Order was amended to:
 - a) approve a construction management contract between the Receiver and O&L LP by its general partner O&L GP Inc., doing business as ELM Forward (“Elm”), a real estate construction manager (the “Uptowns CM Contract”); and
 - b) approve a construction financing facility (the “Uptowns Construction Facility”) provided by KingSett Mortgage Corporation (“KingSett”), pursuant to a commitment letter dated September 18, 2024 between the Receiver and KingSett (the “Uptowns Commitment Letter”).
7. This report (the “Report”) is filed by KSV in its capacity as Receiver and addresses the Receiver’s recommendations with respect to the projects being constructed on the Real Property of Uptowns, Heart Lake and Lakeview.

1.1 Purposes of this Report

1. The purposes of this report are to:
 - a) provide an update on Uptowns and the status of the project on its Real Property (the “Uptowns Project”), including the Receiver’s rationale for seeking an Order (the “Ancillary Matters Order”) from the Court, authorizing the Receiver to negotiate and enter into an amendment (each an “APS Amendment” and collectively, the “APS Amendments”) with respect to each pre-sale purchase agreement executed prior to the date of the Receivership Order (each a “Pre-Sale APS” and collectively, the “Pre-Sale APSs”), failing which the Receiver shall be authorized to disclaim and terminate same;
 - b) provide an update on the status of the project on the Heart Lake Real Property (the “Heart Lake Project”);

¹ The Court issued two receivership orders on January 18, 2024.

- c) summarize the terms of a CCDC 5A Construction Management Contract – for Services (2010) dated October 7, 2024, between the Receiver and Elm (the “Heart Lake CM Contract”), pursuant to which Elm, subject to Court approval, would act as construction manager to complete the Heart Lake Project;
- d) summarize the terms of a construction financing facility (the “Heart Lake Construction Facility”) to be provided by KingSett, pursuant to a commitment letter dated October 7, 2024 between the Receiver and KingSett (the “Heart Lake Commitment Letter”);
- e) discuss the rationale for seeking the conveyance of the Subject Property (as defined below) owned by Lakeview to the Corporation of the City of Mississauga (the “City”) and the Regional Municipality of Peel (the “Region”);
- f) provide an update to the Court in respect of the Sale Process;
- g) recommend that this Court issue:
 - i. the Ancillary Matters Order, which, among other things:
 - authorizes the Receiver to negotiate and enter into the APS Amendments in respect of the Pre-Sale APSs;
 - authorizes and directs the Receiver to terminate and disclaim the Pre-Sale APSs with Uptowns Project home buyers that do not enter into an APS Amendment by the APS Amendment Deadline (as defined below); and
 - seals the Uptowns Project Pro-Forma and APS Amendment Schedule (each as defined below) until the earlier of: (i) the completion of the Uptowns Project; or (ii) further Order of this Court;
 - ii. the proposed amendments to the Second Amended and Restated Receivership Order (the “Third Amended and Restated Receivership Order”), which, among other things:
 - approves the Heart Lake CM Contract, and authorizes and directs the Receiver to comply with its terms and to take such necessary steps to execute and deliver such additional documentation required to give effect to the Heart Lake CM Contract; and
 - authorizes the Receiver to borrow up to an aggregate principal amount of \$120,325,000 under the Heart Lake Commitment Letter and grants a charge (the “Receiver’s Heart Lake Borrowings Charge”) against the Heart Lake Property as security for the payment of the monies borrowed under the Heart Lake Construction Facility, to rank subordinate to the Receiver’s Charge and *pari passu* with the Receiver’s General Borrowings Charge, Receiver’s Lakeview Borrowings Charge and the Receiver’s Uptowns Borrowings Charge (each as defined in the proposed Third Amended and Restated Receivership Order); and

- iii. a Conveyance Order (the “Conveyance Order”) that, among other things, vests all of Lakeview’s right, title and interest, in and to the Subject Property to and in favour of the City and the Region on an “as is, where is” basis.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon: (i) the books and records of the KingSett Debtors; (ii) discussions with various suppliers, tradespeople and consultants to the KingSett Debtors; and (iii) the receivership application materials (collectively, the “Information”).
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.
3. Additional background information regarding the KingSett Debtors and the reasons for the appointment of the Receiver are provided in the application materials of KingSett and Dorr Capital Corporation (“Dorr”). Copies of the Court materials filed to-date in these proceedings are available on the Receiver’s case website: <https://www.ksvadvisory.com/experience/case/vandyk>.

2.0 Background

2.1 Vandyk Group

1. The KingSett Debtors are part of a broader group of development companies (collectively, the “Vandyk Group”), a real estate developer headquartered in Mississauga, Ontario. The Vandyk Group mainly develops low, mid and high-rise residential projects in the Greater Toronto Area.
2. Several companies within the Vandyk Group are not currently subject to these receivership proceedings, including certain corporate entities through which the Vandyk Group conducted its development operations.
3. The Receiver understands that the KingSett Debtors do not have any employees.
4. Each of the KingSett Debtors is a single-purpose real estate development company that owns a specific project that it is developing on its respective Real Property. The Real Properties are all located in the Greater Toronto Area.

2.2 Uptowns

1. Uptowns is a single-purpose real estate development company that owns the real property located at 10302 Heart Lake Road, Brampton, Ontario, where it is developing a residential project consisting of approximately 342 stacked townhomes, of which the Receiver understands 329 were pre-sold. As at the date of the Receivership Order, the Uptowns Project was partially constructed.
2. On September 25, 2024, the Court issued the Second Amended and Restated Receivership Order, providing the Receiver with the necessary approvals to commence construction of the Uptowns Project. The Receiver, with Elm as the construction manager, has since commenced construction of the Uptowns Project.
3. The Fourth Report of the Receiver dated September 18, 2024 (the “Fourth Report”), a copy of which is available [here](#), provides the Receiver’s rationale for completing the Uptowns Project in these receivership proceedings to maximize potential benefits and returns for stakeholders.

2.3 Heart Lake

1. Heart Lake is a single-purpose real estate development company that owns the real property located at 10194 Heart Lake Road, Brampton, Ontario, where it is developing a residential project consisting of 200 stacked townhomes, of which 109 had been pre-sold prior to the commencement of these proceedings. Construction of the Heart Lake Project has not yet commenced.
2. In accordance with the terms of the Sale Process Approval Order, on or around March 15, 2024, the Receiver, with the assistance of two national real estate brokerage firms, commenced a sale process for the Property owned by Heart Lake, with a bid deadline of May 15, 2024. The Receiver received two offers at the bid deadline.
3. Pursuant and subject to the terms of the Court-approved Sale Process, the Receiver has the right to reject any and all offers and is under no obligation to accept any offer, including the highest or best offers.
4. In consultation with KingSett, the first ranking mortgagee of Heart Lake, the Receiver determined that the offers received for the Heart Lake Property were unsatisfactory due to, primarily, the contemplated purchase prices being insufficient to repay the KingSett loans to Heart Lake (or any other debt subordinate thereto).
5. The Receiver, in consultation with KingSett, engaged with Elm to evaluate the feasibility of completing the Heart Lake Project, including preparing a project budget and pro-forma. The Receiver, in consultation with KingSett, ultimately determined that the Heart Lake Project should be completed during the receivership proceedings to maximize the benefits to stakeholders, including secured lenders and pre-sale home buyers. As discussed in Section 5 below, the Receiver is now ready to commence construction of the Heart Lake Project and is seeking corresponding approvals in the form of the Third Amended and Restated Receivership Order to facilitate same.

2.4 Lakeview

1. Lakeview is a single-purpose real estate development company that owns the real property located at 1345 Lakeshore Road East, Mississauga, Ontario, where it is developing a residential condominium project consisting of two mid-rise condo towers with a combined 478 residential units, and commercial space with two levels of underground parking.
2. On June 13, 2024, the Court issued the First Amended and Restated Receivership Order, providing the Receiver with the necessary approvals to commence construction of the Lakeview Project. The Receiver, with PCL as the construction manager, has since commenced construction of the Lakeview Project.
3. The Third Report of the Receiver dated June 6, 2024 (the “Third Report”), a copy of which is available [here](#), provides the Receiver’s rationale for completing the Lakeview Project in these receivership proceedings in order to maximize the potential benefits and return to stakeholders.

3.0 Creditors

1. The Affidavit of Daniel Pollack sworn November 7, 2023 in support of the receivership application contains detailed information regarding the secured amounts owing to KingSett and Dorr from the KingSett Debtors, and, accordingly, that detailed information is not repeated herein. A copy of Mr. Pollack’s Affidavit is available on the Receiver’s Website at the following [Link](#).

3.1 Uptowns

1. The table below summarizes the mortgages registered against the Uptowns Real Property and the approximate amounts outstanding under each as at August 31, 2024, which amounts continue to accrue interest and fees.

<i>(Unaudited; \$000s)</i>	
Secured Creditor	Amount Owing
KingSett	25,269
Trisura Guarantee Insurance Company (“Trisura”)	14,718
KingSett (includes a portion which is a KingSett loan serviced by Dorr) ²	53,064
O Canada Capital Inc.	3,000
Diversified Capital Inc.	16,000
Total	112,051

2. The Receiver notes that Trisura’s registered mortgage on the Uptowns property is \$45.75 million. However, the amount in the table above reflects Trisura’s current exposure based on the total pre-sale purchaser deposits that were released to Uptowns.

² This is a blanket mortgage over both the Uptowns Real Property and Heart Lake Real Property.

3. In addition to the above, several parties that provided services to the Uptowns Project, including construction trades and real estate consultants, have registered construction liens against the Uptowns property. A portion of the amounts owing to the construction trade vendors may take priority over the secured claims discussed above, although this determination will be made in future court proceedings.
4. The amounts borrowed pursuant to the Receiver's General Borrowings Charge (maximum of \$8 million) are secured by a priority charge against the Property of Uptowns (as well as the Property of the other KingSett Debtors). As at the date of this Report, the Receiver had borrowed approximately \$6 million under the Receiver's General Borrowings Charge, of which approximately \$3.3 million was used for Uptowns. In August 2024, the Receiver made a repayment of approximately \$1.48 million, leaving a current outstanding balance of \$4,517,028 under the Receiver's General Borrowings Charge.
5. Based on Uptowns' books and records, as at the date of the Receivership Order, Uptowns' unsecured obligations totalled approximately \$12.9 million. These obligations are primarily owed to construction trade vendors, consultants, and real estate brokerage firms.

3.2 Heart Lake

1. The table below provides a summary of the mortgages registered on title to the Heart Lake Real Property, and the approximate amounts outstanding under each as at August 31, 2024, which amounts continue to accrue interest and fees.

<i>(Unaudited; \$000s)</i>	
Secured Creditor	Amount Owing
KingSett (includes a portion which is a KingSett loan serviced by Dorr) ²	53,064
Supertrin Properties Inc.	4,500
Diversified Capital Inc.	16,000
Total	73,564

2. The amounts borrowed pursuant to the Receiver's General Borrowings Charge (maximum of \$8 million) are also secured by a priority charge against the Heart Lake property (as well as the Property of the other KingSett Debtors). As at the date of this Report, the Receiver had borrowed approximately \$6 million under the Receiver's General Borrowings Charge, approximately \$236,000 of which was used for Heart Lake. In August 2024, the Receiver made a repayment of approximately \$1.48 million, leaving a current outstanding balance of \$4,517,028 under the Receiver's General Borrowings Charge.
3. Based on Heart Lake's books and records, as at the date of the Receivership Order, Heart Lake's unsecured obligations totalled approximately \$975,000, primarily owed to consultants and real estate brokerage firms.

4.0 Uptowns Pre-Sale APSs

1. The Pre-Sale APSs have near-term termination dates (the “Termination Dates”), with the majority expiring in April 2025 and a smaller subset in March 2026, after which counterparties may have the ability to terminate these agreements. In addition, based on the Receiver’s review of pre-sale launch prices and resale prices of recent comparable stacked townhome developments in the Greater Toronto Area, the Receiver is of the view that 287 out of the 329 Pre-Sale APSs contemplate a purchase price that is significantly below current market values
2. Based on a project pro-forma prepared by Elm (the “Uptowns Project Pro-Forma”), which factors in projected revenue from existing purchase prices under the Pre-Sale APSs and a construction budget prepared by a third-party cost consultant, the Uptowns Project is projected to have a deficit of approximately \$57.3 million. Given the significant financial shortfall, KingSett is not prepared to advance additional financing without an adequate increase to the purchase prices. A copy of the Uptowns Project Pro-Forma, including the third-party cost consultant budget report, is filed as **Confidential Appendix “1”**, and the Receiver’s rationale for recommending that the Court seal the same is provided in Section 4.4 below.
3. As noted in the Fourth Report, the total loan amount provided for under the Uptowns Commitment Letter (up to \$60,000,000) is insufficient to cover the anticipated cost of completing the Uptowns Project, for which it is estimated that an additional \$120,550,000 in financing will be required to complete the Uptowns Project. In the Receiver’s view, it is unlikely that a lender would be willing to provide the Uptowns Project with any further construction financing at this time as, based on its extensive real estate experience, such construction financing will generally not be available unless a developer has pre-sold 60-75% of units at “market” price, which requirement is not satisfied by the current Pre-Sale APSs (as a result of pricing as well as the Termination Dates precluding them from counting towards the base pre-sale requirement). Additionally, the Uptowns Commitment Letter provides that KingSett is only required to fund up to \$6 million before the Receiver obtains an Order from the Court that authorizes the Receiver to negotiate amendments to Pre-Sale APSs that the parties may determine are reasonably necessary to obtain financing for the completion of the Uptowns Project.

4.1 APS Amendments

1. To address the Termination Dates, below market-pricing of the Pre-Sale APSs and the projected deficit, the Receiver is seeking the authority to negotiate and enter into APS Amendments with each respective Pre-Sale APS counterparty, and to terminate and disclaim any Pre-Sale APSs for which an APS Amendment has not been executed prior to the earlier of: (i) the date that is thirty (30) days after a draft APS Amendment is sent to the Pre-Sale APS counterparty, or such later date as determined by the Receiver in its sole discretion (the “APS Amendment Deadline”); and (ii) the counterparty to the Pre-Sale APS advising the Receiver that it is not prepared to execute the APS Amendment. These amendments would: (i) extend the Termination Date to October 1, 2027; and (ii) increase the purchase prices for the 287 of 329 Pre-Sale APSs that are currently under market value up to a Court-approved maximum increase per pre-sold unit (the “Amended Prices”), as detailed below.

2. Based on advice from Elm, the Receiver believes that the proposed new Termination Date provides an adequate timeframe to complete the Uptowns Project.
3. In consultation with KingSett and Elm, the Receiver has developed a schedule of proposed Amended Prices (the “APS Amendment Schedule”). This pricing is designed to take the Uptowns Project out of its projected deficit, make the completion of the Uptowns Project financeable, and allow home buyers to retain value.
4. In preparing the APS Amendment Schedule, the Receiver, in consultation with KingSett and Elm, categorized each unit into 13 groups at the Uptowns Project, based on unit-specific factors such as:
 - a) overall floor plan (i.e. number of bedrooms and bathrooms);
 - b) total interior square footage;
 - c) the outdoor square footage (i.e. terrace, rooftop patio);
 - d) location within the townhome block (i.e. floor, exposure, accessibility); and
 - e) features and finishes.
5. The Receiver reviewed pre-sale launch prices as well as resale prices of recent comparable stacked townhome developments in the Greater Toronto Area to determine the current market price for each category of units. These market prices were then used to establish the proposed Amended Prices for each respective type of unit included in the APS Amendment Schedule attached as **Confidential Appendix “2”**. The Receiver’s rationale for sealing the schedule is provided in Section 4.4 below.
6. As provided in the APS Amendment Schedule, the Amended Price for each category of units is below the current market price for their respective categories, representing an average discount of approximately 13%. Such discount will allow pre-sale home buyers to preserve value while at the same time increasing the likelihood of satisfying pre-sale requirements for obtaining further construction financing. Notably, approximately 42 of the 329 Pre-Sale APSs are already priced at or above the proposed Amended Price, meaning no price adjustment is necessary for these units. If this Court grants the proposed Ancillary Matters Order, the Receiver, with the assistance of Elm, will contact each Pre-Sale APS counterparty to discuss the amendments. However, if the Court does not grant the requested relief, the Receiver anticipates that it will need to commence a sale process for the Uptowns Project given that construction would not be financeable, which, in the Receiver’s view, would almost certainly result in the ultimate termination of all Pre-Sale APSs.

4.2 Service, Insurance and Other Pre-Sale APS Matters

1. The Receiver will serve each counterparty to the Pre-Sale APSs with this motion by email (if available) or by registered mail. The Receiver will also post a notice on its website informing homebuyers of the motion.
2. The Receiver understands that deposits made by homebuyers under the Pre-Sale APSs are covered by a Trisura surety policy, ensuring that any counterparties to disclaimed Pre-Sale APSs will receive a refund of their deposits.

3. The Receiver has reviewed the form of Pre-Sale APS that it was provided with, which expressly provides that: (i) the purchaser subordinates and postpones their agreement to any mortgages arranged by Uptowns and to any advances under such mortgages; (ii) the purchaser covenants not to register the agreement or notice thereof on title to the Real Property; and (iii) the agreement does not confer on the purchaser any legal, equitable, or proprietary interest in the Real Property or any portion thereof.
4. No Pre-Sale APSs are registered on title to the Real Property.

4.3 Recommendation re: APS Amendments and Disclaimer of Pre-Sale APSs

1. The Receiver recommends that the Court issue the Ancillary Matters Order authorizing, among other things, the negotiation of the APS Amendments and the disclaimer of any Pre-Sale APSs with counterparties who do not execute amendments by the APS Amendment Deadline, for the following reasons:
 - a) the Ancillary Matters Order and the relief related to the Pre-Sale APSs is a condition precedent to securing any further advances under the Uptowns Construction Facility (beyond the initial \$6 million advance). Without the Ancillary Matters Order, the Receiver will be unable to continue construction on the Uptowns Project, which would reduce potential recovery and benefits to stakeholders (i.e., a sale process would likely lead to substantially less recovery and, given the below market prices for the Pre-Sale APSs, likely culminate in a transaction requirement for the termination of same);
 - b) without the Ancillary Matters Order, the Receiver will be unable to secure the construction financing required to complete the project. The Receiver believes that addressing the expiring Termination Dates and the budget deficit caused by under-market Pre-Sale APS prices is necessary to obtain additional financing;
 - c) while it would be financially beneficial to the Uptowns Project to disclaim and resell the 287 units that are currently significantly below market value, the proposed Amended Prices allow homebuyers to retain value in their Pre-Sale APSs, as the Amended Prices remain below current market rates, while providing for the prospect of achieving the pre-sale thresholds in the near term required for the Uptowns Project to be financeable;
 - d) there is sufficient legal precedent for the Court to authorize the termination of Pre-Sale APSs;
 - e) granting the Ancillary Matters Order will help prevent costly construction delays that could further erode value for stakeholders and make it more difficult to complete the Uptowns Project on time;
 - f) the Amendment Order helps mitigate the risk of the Uptowns Project's financial position deteriorating further and protects the value of the assets for all stakeholders involved; and
 - g) KingSett, the primary financial stakeholder of Uptowns, supports the relief sought pursuant to the Ancillary Matters Order.

4.4 Sealing

1. The Receiver recommends that the Uptowns Project Pro-Forma (Confidential Appendix “1”) and the APS Amendment Schedule (Confidential Appendix “2”) be filed with the Court on a confidential basis and remain sealed pending the earlier of the completion of the Uptowns Project and further Order of this Court.
2. The Uptowns Project Pro-Forma contains sensitive financial information regarding the project’s economics, which could negatively impact ongoing negotiations with construction trade vendors and financial stakeholders. Public disclosure of this information may pose a significant risk to the successful completion of the Uptowns Project, as it could undermine negotiations.
3. The APS Amendment Schedule includes the proposed Amended Prices. Public disclosure of these prices could harm the future marketability of the units if certain homebuyers choose not to execute the APS Amendments. In such a case, the Receiver anticipates that it would need to secure a higher price upon resale, at a minimum, to recover additional marketing and selling costs, and that the disclosure of the Amended Prices may create an artificial ceiling for new sale prices.
4. For the above noted reasons, the Receiver is of the view that sealing the Uptowns Project Pro-Forma and APS Amendment Schedule is vital for safeguarding the project’s integrity and financial viability.
5. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Receiver is not aware of any party that will be prejudiced if the information is sealed or any public interest that will be served if such details are disclosed in full. Additionally, the sealing relief is appropriately limited in time and scope. The Receiver is of the view that the sealing of the Confidential Appendices is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25. Accordingly, the Receiver believes the proposed sealing of the Confidential Appendices is appropriate in the circumstances.

5.0 Heart Lake Project

1. As noted above, the Receiver, after discussions with key stakeholders, determined that the Heart Lake Project should be completed during the receivership proceedings in order to maximize the potential benefits to stakeholders, and engaged with Elm to evaluate the feasibility of the same.
2. Following Elm’s assessment of the Heart Lake Project, which was to the satisfaction of the Receiver and KingSett, on August 6, 2024, the Receiver and Elm entered into a Memorandum of Understanding (the “MOU”), regarding the selection of Elm as the construction manager and development manager for the Heart Lake Project. Shortly thereafter, the Receiver and Elm started negotiating the definitive documents contemplated therein. On October 7, 2024, the Receiver and Elm executed the Heart Lake CM Contract.

3. The Receiver selected Elm because:
 - a) Elm is an experienced construction manager that has experience building similar townhome projects;
 - b) Based on the Receiver's experience with other Vandyk projects, it is of the view that the fees under the Heart Lake CM Contract are below market pricing;
 - c) given that the Receiver and Elm recently entered into the Uptowns CM Contract for the Uptowns Project, the Receiver was able to generate considerable time and cost savings by negotiating definitive documents for the Heart Lake Project that are substantially in the same form; and
 - d) KingSett, the primary economic stakeholder in these proceedings and the party funding the construction costs during the receivership (through the Heart Lake Construction Facility and the Receiver's general borrowings), supports the retention of Elm and the terms of the Heart Lake CM Contract.

5.1 Heart Lake CM Contract

1. The Heart Lake CM Contract is in the form of the CCDC-5A (Construction Management Contract – for Services), which is a widely accepted form of contract in the Canadian construction industry, along with customary supplementary conditions. The Heart Lake CM Contract is attached as **Appendix "B"**. A summary of the key terms of the Heart Lake CM Contract is as follows:
 - a) **Construction Manager:** O&L LP by its general partner O&L GP Inc. doing business as Elm.
 - b) **Services to be provided:** the Heart Lake CM Contract covers the services to be provided by the construction manager, being the pre-construction, construction and post-construction advisory services (collectively, the "Services").
 - c) **Services:** the Services are broken down into the pre-construction phase (including pre-design, schematic design, design development, construction development and construction procurement phases), the construction phase (including general services and cost control/accounting) and post-construction phase (which is limited). Each phase has a separate list of services to be provided; however, several of the Services under the pre-construction phase have already been completed and therefore will not be required under the Heart Lake CM Contract.
 - d) **Budget:** the Heart Lake CM Contract includes a revised estimate of the hard costs to complete the Heart Lake Project (the "Heart Lake Construction Budget"), which is attached as a schedule to the Heart Lake CM Contract. The Heart Lake Construction Budget estimates site servicing costs of approximately \$12.6 million and hard costs for the townhouses and stacked townhouses of approximately \$50.4 million.

- e) **Construction Manager's fee:** the Heart Lake CM Contract provides that Elm shall be paid a fixed construction management fee of \$1.5 million plus a reimbursement for the actual expenses that it incurs performing the Services.
- f) **Schedule:** the schedule assumes that the construction will commence promptly following Court-approval with a completion target date of 26 months.
- g) **Payments to Trade Contractors:** the Owner is responsible for paying trade contractors.
- h) **Insurance:** the Heart Lake Project requires specified insurance coverage, which the Receiver is in the process of arranging.
- i) **Receiver's Right to Termination:** the Receiver may terminate the Heart Lake CM Contract at any time, but it is noted that the Heart Lake Commitment Letter requires that the Receiver obtain KingSett's consent to do so. Upon such termination, Elm will be entitled to: (i) payment for its Services performed up to the date of termination, including reimbursable expenses; and (ii) certain costs and associated fees up to the date of termination, but not for anticipated loss of profit. The Receiver may also terminate the Heart Lake CM Contract if Elm is in default (e.g. Elm fails to comply with the requirements of the Heart Lake CM Contract to a substantial degree) or becomes insolvent. Upon such termination, Elm will only be entitled to payment for its Services performed up to the date of termination, including reimbursable expenses.
- j) **Elm's Right to Terminate:** Elm may terminate the Heart Lake CM Contract if the Receiver substantially violates the terms under the Heart Lake CM Contract, including but not limited to, non-payment of compensation for the Services to Elm. Upon termination, Elm shall be entitled to payment for its Services performed up to the date of termination and certain costs and associated fees up to the date of termination.
- k) **Occupational Health & Safety:** Elm is responsible for all site safety and fulfills the role of "constructor" and "employer" under the *Occupational Health and Safety Act* (Ontario) and its regulations.
- l) **Limit of Liability:** Elm's liability for losses for which insurance is to be provided is limited to the insurance limit for the loss. Elm's liability for losses which insurance is not required to be provided is \$10,000,000. In addition, there is a mutual waiver of consequential damages.

5.2 Recommendation re: Retention of Elm and Approval of the Heart Lake CM Contract

1. For the following reasons, the Receiver recommends that the Court issue the Third Amended and Restated Receivership Order, among other things, approving the Heart Lake CM Contract, directing the Receiver and Elm to comply with the terms of the Heart Lake CM Contract, and authorizing the Receiver to take such steps and execute and deliver such additional documentation as may be necessary or desirable to give effect to the Heart Lake CM Contract:

- a) Elm has been involved with the Heart Lake Project since June 2024, and in that time has become intimately familiar with the Heart Lake Project, including through: (i) assisting the Receiver to determine the feasibility of the Heart Lake Project; and (ii) assisting the Receiver to communicate with consultants, engineers and construction trade vendors, including to review existing contracts, tender new contracts and negotiate settlements;
- b) if the Heart Lake CM Contract is not approved, the Receiver would be required to negotiate a new construction management contract with another party, which the Receiver anticipates would be on less favourable terms and cause further delays;
- c) Elm is an experienced and reputable construction manager and the Receiver is familiar with Elm from its other engagements, including through its engagement with Elm as the construction manager of the Uptowns Project;
- d) completing the Heart Lake Project is intended to create value for Heart Lake's stakeholders;
- e) KingSett supports the retention of Elm pursuant to the terms of the Heart Lake CM Contract; and
- f) KingSett has agreed to provide the Heart Lake Construction Facility pursuant to the terms of the Heart Lake Commitment Letter, as further discussed in Section 6.2 below, subject to the issuance of the Third Amended and Restated Receivership Order which provides for the approval of the Heart Lake CM Contract.

6.0 Funding of the Heart Lake Project

6.1 Receiver's General Borrowings Charge

1. The amounts borrowed pursuant to the Receiver's General Borrowings Charge (maximum of \$8 million) are secured by a priority charge against the Property, including the Property of Heart Lake. As at the date of this Report, the Receiver had borrowed approximately \$6 million under the Receiver's General Borrowings Charge, approximately \$236,000 of which was used for the Heart Lake Project (the remaining funds were used for the other KingSett Debtors). The majority of the funds borrowed by the Receiver for the Heart Lake Project have been used to fund pre-construction and general maintenance costs.
2. Attached as **Appendix "C"** is the Receiver's interim statement of receipts and disbursements for Heart Lake for the period from the commencement of the proceedings to October 4, 2024.

6.2 Heart Lake Construction Facility³

1. Certain key terms of the Heart Lake Commitment Letter are summarized below. A copy of the Heart Lake Commitment Letter is attached as **Appendix “D”**.

- a) **Borrower**: the Receiver.
- b) **Lender**: KingSett.
- c) **Loan Amount**: \$120,325,000.
- d) **Maturity Date**: the date that is 24 months after the first calendar day of the month next following the date of the initial advance of the loan.

The term of the loan can be extended by two extensions of three months each (total of six months) upon written request by the Borrower, at the sole discretion of the Lender.

- e) **Interest Rate**: Prime Rate + 5.00% per annum.
- f) **Project Budget**: the Lender has approved a Project Budget (included as Schedule “G” to the Commitment Letter) which shall be no greater than \$153,850,891. The Project Budget may be amended or modified from time to time subject to the prior written consent of the Lender.

The Receiver notes that the Project Budget includes costs that have been already incurred to date (i.e. the land acquisition and construction costs).

- g) **Project Monitor**: Glynn Group, an independent project monitor (in such capacity, the “Project Monitor”), will be engaged to act on behalf of the Lender throughout the duration of the Heart Lake Project, at the Borrower’s expense. The scope of the Project Monitor’s mandate is outlined in Schedule “C” of the Commitment Letter. The Lender shall have the right to expand or vary the scope of the Project Monitor or to require the replacement of the Project Monitor at any time, in its discretion, acting reasonably.
- h) **Costs and Expenses**: the Borrower shall bear all costs and expenses incurred by the Lender from time to time in connection with the Loan, including but not limited to, legal fees, payment of property taxes as a protective disbursement, environmental site assessment reports, appraisal reports, building condition reports, insurance consulting reviews, reliance letters, title insurance, Project Monitor mandates, out-of-pocket expenses for property inspections and any applicable sales tax related to all such costs and expenses.
- i) **Security**: the obligations of the Borrower under the Heart Lake Construction Facility are to be secured by a priority charge on all the Property of Heart Lake, being the “Receiver’s Heart Lake Borrowings Charge”.

³ Capitalized terms in this section have the meaning provided to them in the Heart Lake Commitment Letter unless otherwise defined herein

- j) **Conditions:** a fulsome list of the conditions precedent to advance(s) are provided in Section “C” of the Heart Lake Commitment Letter and include, among other things, that the Court shall have granted the Third Amended and Restated Receivership Order.
- k) **Events of Default:** the Events of Default under the Heart Lake Construction Facility are provided in Schedule “D” to the Heart Lake Commitment Letter, and include, among other things:
 - i. a failure to pay any amount of the principal of the Loan when due;
 - ii. a failure to pay any interest, fees or other obligations of the Borrower to the Lender under the Heart Lake Commitment Letter (other than any principal amount of the Loan) when due and such default continues for three business days after notice of such default has been given by the Lender to the Borrower;
 - iii. a material breach by the Borrower of the covenants under the Heart Lake Commitment Letter, if not remedied within 15 days of becoming aware of such breach;
 - iv. if construction at the Heart Lake Project ceases for a single period of 20 days or more, except as the result of force majeure;
 - v. if any Material Adverse Change (as defined in the Heart Lake Commitment Letter) occurs; and
 - vi. if any delay in construction on the Heart Lake Project of 120 days or more occurs as a result of strikes of employees, contractors or subcontractors.
- l) **Reporting:** the Reporting requirements are set out in Schedule “E” of the Heart Lake Commitment Letter, and include, among other things, that the Borrower shall provide the Lender with:
 - i. information regarding the insurance policies, including renewals and amendments;
 - ii. ongoing information regarding the Heart Lake Project;
 - iii. evidence of payment of property taxes and local improvement rates and charges with respect to the Heart Lake Project; and
 - iv. updates regarding the pre-sales.

6.3 Recommendation re: Heart Lake Construction Facility and Receiver's Heart Lake Borrowings Charge

1. For the following reasons, the Receiver recommends that the Court issue the Third Amended and Restated Receivership Order approving the Heart Lake Construction Facility and granting the Receiver's Heart Lake Borrowings Charge to secure the obligations thereunder:
 - a) in the Receiver's view, the terms of the Heart Lake Construction Facility are reasonable;
 - b) based on KSV's recent experience, including its extensive real estate experience, the effective annualized interest rate of the loans (estimated to be currently 11.45%) is consistent with or lower than market for a loan of this nature;
 - c) the Heart Lake Construction Facility is required to restart construction of the Heart Lake Project, which is in the interest of maximizing recoveries for all stakeholders;
 - d) the Heart Lake Construction Facility is to be provided by KingSett, who is the existing primary financial stakeholder in these proceedings, and is supportive of the construction of the Heart Lake Project in these receivership proceedings;
 - e) KingSett requires the Receiver's Heart Lake Borrowings Charge in order to fund the Heart Lake Construction Facility; and
 - f) if the Receiver does not obtain additional funding, it will be unable to complete the Heart Lake Project, which will impair value and may result in the termination of the existing condominium agreements of purchase and sale.

7.0 Conveyance

1. Lakeview is party to a Development Agreement dated August 22, 2024 with the City and the Region (the "Development Agreement"), pursuant to which, among other things, the City and the Region have provided certain zoning and other approvals for the Lakeview Project, subject to the terms and conditions therein, including the conveyance of the Subject Property (as defined below) to the City and the Region, as applicable, free of all encumbrances.
2. The Receiver understands that municipalities have the jurisdiction under section 41 of the *Planning Act* (Ontario) to require the conveyance of lands that are undevelopable because of environmental protection policies, or are required for road widenings or "day-lighting" triangles for traffic safety purposes, as well as a 0.3m strip of land along certain municipally owned property, which is to ensure landowners can only access the municipal property if they have permission from the municipality. Given the nature of such lands, the Receiver anticipates that they have limited to no value, while the conveyance of such land is a standard requirement for municipal authorization for a development to proceed and is contemplated as a requirement under the Development Agreement (the satisfaction of which is necessary for the authorizations provided for, and required for the development of, the Lakeview Project).

3. Pursuant to the Development Agreement, the City and the Region require that certain parts of the Lakeview Real Property identified as Part of PIN 13482-0071 (LT) being Part of Lots 3 and 22, PL H-23, designated as Part 1, Plan 43R40951, Mississauga be transferred to the City and Part of PIN 13482-0071 (LT) being Part of Lots 1 and 24, PL H-23, designated as Parts 3, 5, 6, 7, 8 and 9, Plan 43R40951, Mississauga (collectively, the “Subject Property”), be transferred to the Region, or be subject to an easement in favour of the Region. These conveyances are for environmental protection, road widening or traffic safety (daylighting triangle) purposes.
4. The Conveyance Order contemplates a transfer of applicable Subject Property to the City and the Region on an “as is, where is” basis, free and clear of any encumbrances. All parties who have an interest in the Subject Property or who may be affected by the relief sought are being served with this Report and the balance of the Receiver’s motion materials.
5. The Conveyance Order, if granted, will allow the Receiver to satisfy the conveyance condition in the Site Plan Agreement and proceed to develop the Lakeview Project.
6. KingSett, a primary economic stakeholder in these proceedings, supports the conveyance of the Subject Property to the City.

8.0 Sale Process Update

1. Pursuant to the Sale Process Approval Order, the Court approved a Sale Process for the Property of certain of the KingSett Debtors, as well as certain of the Other Vandyk Debtors.
2. The Sale Process provided for certain timelines for the Receiver to market the respective Property, solicit offers, and in the event an offer was selected as a successful bid, return to Court for approval of a transaction. The Receiver notes that the timelines under the Sale Process have been exceeded and a transaction has not yet been identified for the Property of 240, Ravine and certain of the Other Vandyk Debtors (in some cases a sale transaction has already been approved by the Court and completed).
3. The Receiver understands, in consultation with the respective listing agents, that there has been slower activity in the Canadian land development market over the first and second quarters of 2024 due to the high-interest rate environment, which has impacted the ability to identify a transaction for the Property of 240 or Ravine.
4. Notwithstanding that the timelines under the Sale Process have been exceeded, the Receiver is continuing to market for sale the Property of 240 and Ravine, as well as certain of the Other Vandyk Debtors for which a transaction has not yet been identified. As a result of the recent interest rate cuts in Canada, the Receiver has recently received renewed interest from certain parties that participated in the Sale Process, which have reengaged with the Receiver and are contemplating submitting better offers than they initially submitted.

5. The Receiver is also considering alternative realization strategies in respect of the property of certain of the KingSett Debtors and will return to Court for necessary approvals if an alternative realization strategy requiring same is identified.

9.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make the orders granting the relief detailed in Section 1.1(1)(g) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
CERTAIN REAL PROPERTY, ASSETS AND UNDERTAKINGS
OF VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE LIMITED,
2402871 ONTARIO INC., VANDYK – THE RAVINE LIMITED,
VANDYK – LAKEVIEW-DXE-WEST LIMITED AND
VANDYK – LAKEVIEW-DXE-EAST LIMITED
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”



Court File No.: CV-23-00709180-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE)
JUSTICE OSBORNE)
WEDNESDAY, THE 25TH
DAY OF SEPTEMBER, 2024

BETWEEN:

KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION

Applicants

- and -

**VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE LIMITED, 2402871
ONTARIO INC., VANDYK – THE RAVINE LIMITED, VANDYK – LAKEVIEW- DXE-
WEST LIMITED AND VANDYK – LAKEVIEW-DXE EAST LIMITED**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**SECOND AMENDED & RESTATED ORDER
(Amending the Order Appointing Receiver)**

THIS APPLICATION made by KingSett Mortgage Corporation and Dorr Capital Corporation (together, the "**Applicants**") for an Order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") without security, of the real property legally described in Schedule "A" to this Order (the "**Real Property**") and all present and future assets, undertakings and personal property of Vandyk – Lakeview-DXE-

West Limited ("**Lakeview**"), Vandyk – Heart Lake Limited ("**Heart Lake**"), 2402871 Ontario Inc. ("**240**"), Vandyk – The Ravine Limited ("**Ravine**") and Vandyk – Uptowns Limited ("**Uptowns**" and collectively with Lakeview, Heart Lake, 240 and Ravine, the "**Debtors**" and each a "**Debtor**"), located at, related to, used in connection with or arising from or out of the Real Property or which is necessary to the use and operation of the Real Property, including all proceeds therefrom, together with all agreements of purchase and sale executed by Vandyk – Lakeview-DXE-East Limited ("**Lakeview 2**") related to any of the Real Property (collectively with the Real Property, the "**Property**") was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Daniel Pollack sworn November 7, 2023 and the Exhibits thereto (the "**Pollack Affidavit**"), the affidavit of Richard Ma affirmed November 12, 2023 and the Exhibits thereto, the affidavit of Daniel Pollack sworn January 8, 2024 and the Exhibits thereto, the Third Report of the Receiver dated June 6, 2024 (the "**Third Report**") and the Fourth Report of the Receiver dated September 18, 2024 (the "**Fourth Report**"), on hearing the submissions of counsel for the Applicants, the Respondents, the Receiver and such other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the affidavit of service sworn and filed, on being advised that the Respondents consent to the issuance of this Order, and on reading the consent of KSV to act as the Receiver,

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that all terms not otherwise defined herein shall have the meaning ascribed to them in the Pollack Affidavit.

APPOINTMENT

3. THIS COURT ORDERS that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property.

RECEIVER'S POWERS

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) 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 the 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;
- (c) to manage, operate, and carry on the business of the Debtors, or any of them, in connection with the Property, including the powers to enter into any agreements or incur any obligations in the ordinary course of business in connection with the Property, cease to carry on all or any part of the business of the Debtors in connection

with the Property, or any of them, or cease to perform or disclaim any contracts of any of the Debtors or Lakeview 2 in respect of the Property, provided that the Receiver shall not disclaim any agreement of purchase and sale related to the Real Property without further Order of this Court on notice to the service list in these proceedings;

- (d) to engage construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other Persons (as defined below) from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
- (e) to undertake any construction at the Property in connection with the exercise of the Receiver's powers and duties conferred pursuant to this Order, including, without limitation, paragraph 4(b), as contemplated by the Commitment Letters or the Construction Management Contracts (each as defined below), and/or as necessary to bring the property into compliance with applicable laws and building codes;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any of them, in connection with the Property or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to any of the Debtors or Lakeview 2 in connection with the Property (including, without limitation, any rent payments in respect of the Real Property) and to exercise all

remedies of any of the Debtors or Lakeview 2 in collecting such monies and accounts, including, without limitation, to enforce any security held by any of the Debtors;

- (h) to settle, extend or compromise any indebtedness owing to any of the Debtors or Lakeview 2 in connection with the Property;
- (i) to deal with any lien claims, trust claims, and trust funds that have been or may be registered (as the case may be) or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Debtors or to or on behalf of any beneficiaries of such trust funds pursuant to section 85 of the *Construction Act*, R.S.O. 1990, c. C.30;
- (j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of any of the Debtors or Lakeview 2, for any purpose pursuant to this Order;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to any of the Debtors or Lakeview 2 (as such proceedings relate to the Property or any portion thereof), the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or

applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (l) to investigate, and report to this Court on, intercompany payments, transactions and other arrangements between any of the Debtors and other Persons, including, without limitation, other companies and entities that are affiliates of any of the Debtors, that appear to the Receiver to be out of the ordinary course of business. All Persons shall be required to provide any and all information and documents related to the Debtors requested by the Receiver in connection with such investigations;
- (m) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtors thereon;
- (n) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion, and with the Applicants' consent, may deem appropriate;
- (o) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and

- (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act* as the case may be, shall not be required;
- (p) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (q) to report to, meet with and discuss with such affected Persons as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (r) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (s) to apply for any permits, licences, 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 Receiver, in the name of any of the Debtors and to meet with and discuss with such governmental authority and execute any agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);

- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Debtors;
- (u) to undertake any investigations deemed appropriate by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (v) to exercise any shareholder, partnership, joint venture or other rights which any of the Debtors may have; and
- (w) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors or Lakeview 2,

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 each of the Debtors and Lakeview 2, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) each of the Debtors and Lakeview 2, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, (iii) all construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants and service providers, and all other persons acting on their instructions or behalf, and (iv) 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 to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that 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, information and cloud-based data of any kind related to the business or affairs of any of the Debtors, Lakeview 2 or the Property, and any computer programs, computer tapes, computer disks, cloud 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, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 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 due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer, in a cloud 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 7, 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, cloud or other system and providing the Receiver with any and all access codes, account names, account numbers and account creating credentials that may be required to gain access to the information.

8. THIS COURT ORDERS that, without limiting the generality of paragraphs 5-7 of this Order, all Persons, including, without limitation, any affiliates of any of the Debtors (collectively, the "**Vandyk Group**"), and each of them, shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any of them, Lakeview 2 and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, the Vandyk Group, or any of them, shall be required to do the following: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents relevant to any of the Debtors and/or the Property: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days' notice of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required or requested with respect to the exercise of the Receiver's authority hereunder.

NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that 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 DEBTORS OR THE PROPERTY

10. THIS COURT ORDERS that no Proceeding, including for greater certainty the Proceedings in the Ontario Superior Court of Justice bearing Court File No. CV-22-00689146-0000 and Court File No. CV-22-00686376-0000, against or in respect of any of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of any of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court. Notwithstanding the foregoing, the Plaintiffs in the Ontario Superior Court of Justice actions bearing Court File No. CV-22-00689146-0000 and Court File No. CV-22-00686376-0000 may continue with their motion for contempt against Exquisite Bay Development Inc., Bay Homes Inc., Bay International Inc., 2474229 Ontario Inc., 2468924 Ontario Inc., Ahmed Raza Yousuf, and Muhammad Yousuf returnable on December 19, 2023, before Justice Centa, and may take such further or other steps required to conclude the contempt motion and enforce compliance with any penalties imposed or remedies granted in the contempt motion.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that all rights and remedies against the Debtors, Lakeview 2, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or 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 paragraph 11 shall (i) empower the Receiver or any of the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or any of the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. THIS COURT ORDERS that no Person shall 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 any of the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. THIS COURT ORDERS that all Persons having oral or written agreements with any of the Debtors or Lakeview 2 or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, accounting services, centralized banking services, payroll services, insurance, transportation services, utility or other services to any of the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of any of the Debtors' current 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 date of this Order are paid by the Receiver in accordance with normal payment

practices of each of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

14. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from any of the Debtors to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

RECEIVER TO HOLD FUNDS

15. THIS COURT ORDERS that 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

16. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the applicable Debtor until such time as the Receiver, on the applicable 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 subsection

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 subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

17. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, 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 each of the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. THIS COURT ORDERS that nothing herein contained shall require the Receiver 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, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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.

LIMITATION ON THE RECEIVER'S LIABILITY

19. THIS COURT ORDERS that the Receiver shall incur no liability or obligation (including, without limitation, any personal liability or obligation under or in connection with (i) the Commitment Letters or the Construction Management Contracts; (ii) the performance, actions, errors, omissions or negligence by or of any construction manager, project manager, developer, contractor, subcontractor or other service provider, and all other persons acting on their behalf, or (iii) as a result of its appointment or the carrying out of the provisions of this Order), save and except for liability arising from any gross negligence or wilful misconduct on its part, as determined pursuant to a final order of this Court that is not subject to appeal or other review and all rights to seek any such appeal or other review shall have expired, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

20. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. THIS COURT ORDERS that 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 legal fees and disbursements, incurred at the standard 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

23. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow, pursuant to the Commitment Letter dated as of June 6, 2024 among the Receiver and KingSett Mortgage Corporation (the "**Lender**") (with such minor amendments that are not

inconsistent with this Order, as the Lender and the Receiver may agree to, the "**Lakeview Commitment Letter**"), such monies from time to time as it may consider necessary or desirable on the terms contained in the Lakeview Commitment Letter, provided that draws made under the Lakeview Commitment Letter do not exceed the aggregate principal amount of \$255,250,000, plus interest, fees and charges.

24. THIS COURT ORDERS that the Receiver is hereby authorized and empowered to execute and deliver such other definitive documents (collectively, the "**Lakeview Definitive Documents**"), as are contemplated by the Lakeview Commitment Letter or as may be reasonably required by the Lender pursuant to the terms thereof, and the Receiver is hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the Lender under and pursuant to the Lakeview Commitment Letter and the Lakeview Definitive Documents as and when the same become due and are to be performed, subject to the terms of the Lakeview Commitment Letter and paragraph 19.

25. THIS COURT ORDERS that the whole of the Property of Lakeview and Lakeview 2 shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Lakeview Borrowings Charge**") as security for the payment of the monies borrowed pursuant to the Lakeview Commitment Letter, together with interest, fees and charges thereon, as set forth in the Lakeview Commitment Letter and the Lakeview Definitive Documents, and all other amounts Lakeview is responsible for pursuant to the Lakeview Commitment Letter or any of the Lakeview Definitive Documents, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, except: (i) the Receiver's General Borrowings Charge, with which it shall rank *pari passu*, (ii) the Receiver's Uptowns Borrowings Charge, with which it shall rank *pari passu*, and (iii) the

Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA, to which it shall be subordinate in priority.

26. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the Receiver and the Lender may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Receiver's Lakeview Borrowings Charge or any of the Lakeview Definitive Documents;
- (b) upon the occurrence of an event of default under the Lakeview Commitment Letter, any of the Lakeview Definitive Documents or the Receiver's Lakeview Borrowings Charge, the Lender, subject to paragraph 32 of this Order, may exercise any and all of its rights and remedies against Lakeview or the Property of Lakeview and/or Lakeview 2 under or pursuant to the Lakeview Commitment Letter, any of the Lakeview Definitive Documents and the Receiver's Lakeview Borrowings Charge, including, without limitation, to immediately cease making advances to the Receiver and set off and/or consolidate any amounts owing by the Lender to the Receiver against the obligations of the Receiver to the Lender under the Lakeview Commitment Letter, any of the Lakeview Definitive Documents or the Receiver's Lakeview Borrowings Charge, make demand, accelerate payment and give other notices, or to apply to this Court for a bankruptcy order against Lakeview and for the appointment of a trustee in bankruptcy of Lakeview; and
- (c) the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy of Lakeview or the Property of Lakeview and/or Lakeview 2.

27. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow, pursuant to the Commitment Letter dated as of September 18, 2024 among the Receiver and the Lender (with such minor amendments that are not inconsistent with this Order, as the Lender and the Receiver may agree to, the "**Uptowns Commitment Letter**", and together with the Lakeview Commitment Letter, the "**Commitment Letters**"), such monies from time to time as it may consider necessary or desirable on the terms contained in the Uptowns Commitment Letter, provided that draws made under the Uptowns Commitment Letter do not exceed the aggregate principal amount of \$60,000,000, plus interest, fees and charges.

28. THIS COURT ORDERS that the Receiver is hereby authorized and empowered to execute and deliver such other definitive documents (collectively, the "**Uptowns Definitive Documents**"), as are contemplated by the Uptowns Commitment Letter or as may be reasonably required by the Lender pursuant to the terms thereof, and the Receiver is hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the Lender under and pursuant to the Uptowns Commitment Letter and the Uptowns Definitive Documents as and when the same become due and are to be performed, subject to the terms of the Uptowns Commitment Letter and paragraph 19.

29. THIS COURT ORDERS that the whole of the Property of Uptowns shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Uptowns Borrowings Charge**") as security for the payment of the monies borrowed pursuant to the Uptowns Commitment Letter, together with interest, fees and charges thereon, as set forth in the Uptowns Commitment Letter and the Uptowns Definitive Documents, and all other amounts Uptowns is responsible for pursuant to the Uptowns Commitment Letter or any of the Uptowns Definitive Documents, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and

encumbrances, statutory or otherwise, in favour of any Person, except: (i) the Receiver's General Borrowings Charge, with which it shall rank *pari passu*, (ii) the Receiver's Lakeview Borrowings Charge, with which it shall rank *pari passu*, and (iii) the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA, to which it shall be subordinate in priority.

30. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the Receiver and the Lender may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Receiver's Uptowns Borrowings Charge or any of the Uptowns Definitive Documents;
- (b) upon the occurrence of an event of default under the Uptowns Commitment Letter, any of the Uptowns Definitive Documents or the Receiver's Uptowns Borrowings Charge, the Lender, subject to paragraph 32 of this Order, may exercise any and all of its rights and remedies against Uptowns or the Property of Uptowns under or pursuant to the Uptowns Commitment Letter, any of the Uptowns Definitive Documents and the Receiver's Uptowns Borrowings Charge, including, without limitation, to immediately cease making advances to the Receiver and set off and/or consolidate any amounts owing by the Lender to the Receiver against the obligations of the Receiver to the Lender under the Uptowns Commitment Letter, any of the Uptowns Definitive Documents or the Receiver's Uptowns Borrowings Charge, make demand, accelerate payment and give other notices, or to apply to this Court for a bankruptcy order against Uptowns and for the appointment of a trustee in bankruptcy of Uptowns; and

- (c) the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy of Uptowns or the Property of Uptowns.

31. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from the Lender by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$8,000,000 (which is separate and apart from any and all draws made under the Commitment Letters) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's General Borrowings Charge**" and, together with the Receiver's Lakeview Borrowings Charge and the Receiver's Uptowns Borrowings Charge, the "**Receiver's Borrowings Charges**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, except: (i) the Receiver's Lakeview Borrowings Charge, which shall rank *pari passu* with the Receiver's General Borrowings Charge, (ii) the Receiver's Uptowns Borrowings Charge, which shall rank *pari passu* with the Receiver's General Borrowings Charge, and (iii) the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA, to which it shall be subordinate.

32. THIS COURT ORDERS that neither the Receiver's Borrowings Charges nor any other security granted by the Receiver in connection with its borrowings under this Order or the Commitment Letters shall be enforced without leave of this Court; provided, however, that nothing

in this paragraph 32 shall prohibit the Lender from ceasing to make advances to the Receiver pursuant to the Commitment Letters upon an event of default thereunder.

33. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to paragraph 31 of this Order.

34. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to the Commitment Letters or this Order or any further order of this Court and any and all of the Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the Lender.

SERVICE AND NOTICE

35. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.ksvadvisory.com/experience/case/vandyk>.

36. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Receiver is at liberty to serve or distribute 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 facsimile transmission to any of the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile 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.

37. THIS COURT ORDERS that the Applicants, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

DEPOSITS

38. THIS COURT ORDERS that notwithstanding anything else contained herein, the "Property" as defined in the preamble of this Order shall not include any current or future funds related to deposits held in trust by any law firm or credit union acting on behalf of a Debtor with respect to the purchase of a residential unit located on any of the Real Property, including, without limitation, the deposits held by Schneider Ruggiero Spencer Milburn LLP in trust pursuant to deposit trust agreements related to Uptowns', Lakeview's and Lakeview 2's respective projects.

CONSTRUCTION MANAGEMENT CONTRACTS

39. THIS COURT ORDERS that the CCDC 5A Construction Management Contract – for Services (2010) contract between Lakeview and PCL Constructors Canada Inc. ("**PCL**") dated June 13, 2023, as amended pursuant to the First Amending Agreement between the Receiver and PCL dated May 27, 2024, in the form attached as Appendix "B" to the Third Report (the "**Lakeview CM Contract**"), be and is hereby approved.

40. THIS COURT ORDERS that the CCDC contract between Uptowns and O&L LP dated August 27, 2024, in the form attached as Appendix "B" to the Fourth Report (together with the Lakeview CM Contract, the "**Construction Management Contracts**"), be and is hereby approved.

41. THIS COURT ORDERS that the parties to the Construction Management Contracts are authorized and directed to comply with the terms of the respective Construction Management Contracts, and the Receiver is authorized to take such steps and execute such additional documentation as may be necessary or desirable to give effect to the Construction Management Contracts.

CRITICAL PAYMENTS

42. THIS COURT ORDERS that the Receiver may, with the prior written consent of the Applicants, make payments owing by any of the Debtors to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to November 14, 2023 that are reasonably required for the preservation of the Property.

GENERAL

43. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

44. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Debtors.

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

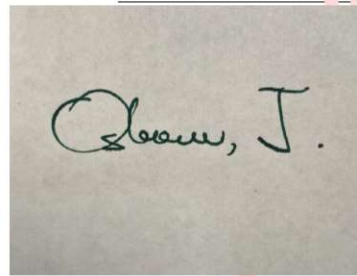
46. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized 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.

47. THIS COURT ORDERS that the Applicants shall have their costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicants' security or, if not so provided by the Applicants' security, then on a substantial indemnity basis to

be paid by the Receiver from the net realizations from the Property with such priority and at such time as this Court may determine.

48. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (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.

49. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.



Digitally
signed by
Osborne J.

Date:
2024.09.25
13:06:28[®]
-04'00'

SCHEDULE "A"

REAL PROPERTY

Vandyk – Heart Lake Limited (f/k/a 2366885 Ontario Inc.) and Vandyk – Uptowns Limited

PIN 14227-1291 (LT)

PT LOT 12, CONCESSION 2, EHS DES PT 1, PL 43R33117; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1, 43R35581 AS IN PR2508870; SUBJECT TO AN EASEMENT IN GROSS AS IN PR3253482; SUBJECT TO AN EASEMENT IN GROSS AS IN PR3770466; SUBJECT TO AN EASEMENT AS IN PR3853334; CITY OF BRAMPTON

PIN 14227-1266 (LT)

PT LT 11 CON 2 EHS CHING DES PT 1 PL 43R-19750, SAVE AND EXCEPT PT 7 PL 43R-31217; BRAMPTON

PIN 14227-1264 (LT)

PT LT 11 CON 2 EHS CHING AS IN CH21799, SAVE AND EXCEPT BL 696, PTS 1, 2, 3, 4, 5 PL 43R-31098, LYING NORTH EAST OF PT 1 PL 43R-31217 AND PTS1, 2 PL43R-31192; BRAMPTON; T/W ROW OVER PT LT 11 CON 2 EHS CHING DESPTS 1, 2, 3, 4, 5 PL 43R-31098, AS IN PR1167589

PIN 14227-1262 (LT)

PT LT 11 CON 2 EHS CHING DES PTS 1, 2 PL 43R-31192; BRAMPTON; T/W ROW OVER PT LT 11 CON 2 EHS CHING DES PTS 1, 2, 3, 4, 5 PL 43R-31098, AS IN PR1167589

2402871 Ontario Inc.

PIN 07617-0889 (LT)

LOTS 159, 160 & 161 PLAN 164 EXCEPT PART LOTS 160 & 161 PLAN 164, PART 2 66R28185; ETOBICOKE; TOGETHER WITH AN EASEMENT OVER PART LOTS 160 & 160 PLAN 164, PART 2 66R28185 AS IN AT4215394; SUBJECT TO AN EASEMENT IN GROSS AS IN AT4264438; SUBJECT TO AN EASEMENT IN GROSS AS IN AT4274323; SUBJECT TO AN EASEMENT AS IN AT3989173; CITY OF TORONTO

Vandyk – Lakeview – DXE – West Limited

PIN 13482 - 0071 (LT)

LTS 1, 2, 3, 22, 23 & 24, PL H23 ; EXCEPT PT 1 43R16245 & PT 1 43R21276; MISSISSAUGA

Vandyk – The Ravine Limited

PIN 13214-0871 (LT)

LOT 1, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0872 (LT)

LOT 2, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0873 (LT)

LOT 3, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0874 (LT)

LOT 4, PLAN 43M2113; SUBJECT TO AN EASEMENT IN GROSS OVER PART 4, 43R40043
AS IN PR3908805; CITY OF MISSISSAUGA

PIN 13214-0875 (LT)

LOT 5, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0876 (LT)

LOT 6, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0877 (LT)

LOT 7, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0878 (LT)

LOT 8, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0879 (LT)

LOT 9, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0880 (LT)

LOT 10, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0881 (LT)

LOT 11, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0882 (LT)

LOT 12, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0883 (LT)

LOT 13, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0884 (LT)

LOT 14, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0885 (LT)

LOT 15, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0886 (LT)

LOT 16, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0887 (LT)

LOT 17, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0888 (LT)

LOT 18, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0889 (LT)

LOT 19, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0890 (LT)

LOT 20, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0891 (LT)

LOT 21, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0892 (LT)

LOT 22, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0893 (LT)

LOT 23, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0894 (LT)

LOT 24, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0895 (LT)

LOT 25, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0896 (LT)

LOT 26, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0897 (LT)

LOT 27, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0898 (LT)

LOT 28, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0899 (LT)

LOT 29, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0900 (LT)

LOT 30, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0901 (LT)

LOT 31, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0902 (LT)

LOT 32, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0903 (LT)

LOT 33, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0904 (LT)

LOT 34, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0905 (LT)

LOT 35, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0906 (LT)

LOT 36, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0907 (LT)

LOT 37, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0908 (LT)

LOT 38, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0909 (LT)

LOT 39, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0910 (LT)

LOT 40, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0911 (LT)

LOT 41, PLAN 43M2113; CITY OF MISSISSAUGA

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") without security, of the real property legally described in Schedule "A" (the "**Real Property**") to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated September 25, 2024 (the "**Order**") and all present and future assets, undertakings and personal property of Vandyk – Uptowns Limited, Vandyk – Heart Lake Limited, 2402871 Ontario Inc., Vandyk – The Ravine Limited, and Vandyk – Lakeview-DXE-West Limited (collectively, the "**Debtors**"), located at, related to, used in connection with or arising from or out the Real Property or which is necessary to the use and operation of the Real Property, including all proceeds therefrom, together with all agreements of purchase and sale executed by Vandyk – Lakeview-DXE-East Limited related to the Real Property (collectively with the Real Property, the "**Property**"), appointed by the Order made in an application having Court File Number CV-23-00709180-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_, being part of the total principal sum of \$___ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of __ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the __ day of _____, 2024.

KSV Restructuring Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per:

Name:

Title:

**KINGSETT MORTGAGE CORPORATION AND
DORR CAPITAL CORPORATION** and

**VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE
LIMITED, 2402871 ONTARIO INC., VANDYK – THE RAVINE
LIMITED, VANDYK – LAKEVIEW-DXE-WEST LIMITED AND
VANDYK-LAKEVIEW-DXE EAST LIMITED**

Applicants

Respondents

Court File No.: CV-23-00709180-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**SECOND AMENDED & RESTATED APPOINTING
ORDER**

BENNETT JONES LLP

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Lawyers for the Applicants

Appendix “B”

CCDC 5A

Construction Management Contract – for Services

2 0 1 0

Jordan

Apply a CCDC 5A copyright seal here. The application of the seal demonstrates the intention of the party proposing the use of this document that it be an accurate and unamended form of CCDC 5A – 2010 except to the extent that any alterations, additions or modifications are set forth in supplementary conditions.

CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE
CANADIAN CONSTRUCTION DOCUMENTS COMMITTEE

TABLE OF CONTENTS

ARTICLES OF AGREEMENT

A-1	The Services
A-2	Agreements and Amendments
A-3	Description of the Project
A-4	Contract Documents
A-5	Compensation for Services
A-6	Payment
A-7	Receipt of and Addresses for Notices in Writing
A-8	Language of the Contract
A-9	Succession

SCHEDULES

A1	Services and Compensation
A2	Reimbursable Expenses Applicable to Schedule A1
B1	Additional Services and Compensation
B2	Reimbursable Expenses Applicable to Schedule B1
C	Time-Based Rates for Personnel Employed by the Construction Manager

DEFINITIONS

Class A Construction Cost Estimate
Class B Construction Cost Estimate
Class C Construction Cost Estimate
Class D Construction Cost Estimate
Construction Cost
Construction Cost Estimate
Construction Documents
Construction Manager
Consultant
Contract
Contract Documents
Contract Time
Notice in Writing
Owner
Payment Certifier
Place of the Project
Project
Project In-Use Date
Services
Substantial Performance of Work
Supplier
Temporary Work
Trade Contractor
Value Added Taxes
Work
Working Day

GENERAL CONDITIONS

Part 1 General Provisions

GC 1.1	Contract Documents
GC 1.2	Law of the Contract
GC 1.3	Rights and Remedies
GC 1.4	Assignment
GC 1.5	Project Representatives

Part 2 Construction Manager's Responsibilities

GC 2.1	Services
--------	----------

Part 3 Owner's Responsibilities

GC 3.1	Provision of Information and Obligations
--------	--

Part 4 Payment

GC 4.1	Applications for Payment
GC 4.2	Payment

Part 5 Changes

GC 5.1	Changes to the Project
GC 5.2	Changes in Services

Part 6 Default Notice

GC 6.1	Owner's Right to Terminate the Contract
GC 6.2	Construction Manager's Right to Terminate the Contract

Part 7 Dispute Resolution

GC 7.1	Negotiation, Mediation and Arbitration
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Part 8 Insurance

GC 8.1	Insurance
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Part 9 Indemnification and Waiver of Claims

GC 9.1	Indemnification
GC 9.2	Waiver of Claims

CCDC 5A is the product of a consensus-building process aimed at balancing the interests of all parties on the construction project. It reflects recommended industry practices. CCDC 5A can have important consequences. The CCDC and its constituent member organizations do not accept any responsibility or liability for loss or damage which may be suffered as a result of the use or interpretation of CCDC 5A.

AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER – FOR SERVICES

This agreement made on the 7 day of October in the year 2024
by and between

Vandyk - Heart Lake Limited, by KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver and manager of certain assets, property and undertakings of Vandyk - Heart Lake Limited and not in its personal, corporate or any other capacity

hereinafter called the *Owner*
and

O&L LP by its general partner O&L GP Inc. doing business as ELM Forward

hereinafter called the *Construction Manager*

The *Owner* and *Construction Manager* agree as follows:

ARTICLE A-1 THE SERVICES

The *Construction Manager* shall

1.1 perform the *Services* for

Jordan

insert above the title of the Project

located at

Brampton, Ontario

insert above the Place of the Project

and as further described in Article A-3 – DESCRIPTION OF THE PROJECT, for which the Agreement has been signed
by the parties, and for which

Kohn Architects

insert above the name of the Consultant

is acting as and is hereinafter called the “*Consultant*”, and

1.2 do and fulfill everything indicated by the *Contract Documents*, and

1.3 commence the *Services* by the _____ day of _____ in the year 2024 and continue in accordance with any schedule provided in Article A-3 – DESCRIPTION OF THE PROJECT. The *Construction Manager’s* obligation to provide *Services* shall end no later than one year after the *Project In-Use Date*.

ARTICLE A-2 AGREEMENTS AND AMENDMENTS

2.1 This *Contract* supersedes all prior negotiations, representations or agreements, either written or oral, relating in any manner to the *Services*.

2.2 This *Contract* may be amended as provided in the *Contract Documents*.

ARTICLE A-3 DESCRIPTION OF THE PROJECT

3.1 The following is a description of the *Project* including intended use, scope, budget, schedule, phases if applicable, the anticipated *Project In-Use Date*, and any other information which further generally describes the nature of the *Project*:

The project is partially graded, distressed project and Elm Forward is being brought on as the Construction Manager to complete the construction, including all servicing work. Elm Forward acknowledges this is a distressed project on an environmentally significant wetland that has required significant remediation to date and which may face additional challenges and complications due to Vandyk not having paid all previous consultants, trades and suppliers in the past.

Elm Forward will work with the Owner to expeditiously find the best path forward for the project and such aforementioned challenges are expected to be encountered and will be incorporated in any schedules and budgets Elm Forward provides the Owner. Elm Forward acknowledges that as an experienced and prudent construction manager it has sufficient experience and expertise to successfully complete a 200 unit project split across 15 blocks comprised of a mix of lane townhouses, stacked townhouses and back to back townhouses.

The scope includes all servicing work (both civil and electrical site servicing) and all vertical construction work. It is also acknowledged that there is an existing MOU in place with Elm Forward to act as the development manager, and that as long as Elm Forward is engaged in a Development management capacity any challenges / delays /difficulties encountered on the development side will not be raised as a reason for delaying construction activities.

The construction schedule, including all servicing work, is expected to commence in the Fall of 2024, with vertical construction to the townhouses / stacked townhouses to commence in April 2025 with a target completion of all the blocks by December 2026 and no later than April 2027

ARTICLE A-4 CONTRACT DOCUMENTS

4.1 The following are the *Contract Documents* referred to in Article A-1 of the Agreement – THE SERVICES:

- the Agreement Between *Owner* and *Construction Manager* (including the Schedules to the Agreement)
- the Definitions
- the General Conditions

*

- Supplementary Conditions

The following Schedules are also provided and included as part of the contract:

1. Division 1 Cost Estimate
2. Hard Costs
3. Major Milestones /Timelines

4. Architectural drawings by Kohn, named “Issued For KSV Restructuring Inc., In Its Capacity As Receiver Of Vandyk-Heart Lake Limited” and dated October 1, 2024

5. Skira & Associates Civil Drawings, named “Revised per site plan comments” and dated October 2024

6. Electrical servicing drawings by RTG Systems Inc, named “Rev per Civil, dual pedestals per current best practice” and dated October 2, 2024

7. JD Barnes Survey, Part of Lot 11 Concession 2 East of Hurontario Street City of Brampton

The parties acknowledge and agree that the Contract Documents are preliminary in nature at the date of this Agreement and will be updated from time to time as the Project progresses, with such updates agreed upon in writing by the parties.

* (Insert here, attaching additional pages if required, a list identifying all other Contract Documents)

ARTICLE A-5 COMPENSATION FOR SERVICES

- 5.1 The *Construction Manager's* compensation shall be equal to the sum of the *Construction Manager's* fee as specified in paragraph 5.2 and the reimbursable expenses as described in paragraph 5.3.
 - 5.2 The *Construction Manager's* fee is comprised of one or more of the following:
 - 1. ~~A fixed amount of "1,500,000.00"; and~~
 - 2. ~~A percentage amount of " " percent (" " %) of the *Construction Cost*. In the event that the *Owner* furnishes labour or material below market cost or materials are re-used beyond that anticipated in the original scope of the *Project*, the *Construction Cost* for purposes of establishing the *Construction Manager's* fee is the cost of all materials and labour necessary to complete the *Project* as if all materials had been new and as if all labour had been paid for at market prices at the time of construction or, in the event that the construction does not proceed, at existing market prices at the anticipated time of construction. Where the actual cost has not been determined for all or part of the *Project*, the *Construction Cost* shall be the *Construction Cost Estimate*, as agreed by the *Owner* and the *Construction Manager*, at market rates at the anticipated time of construction; and~~
 - 3. ~~An amount based on the time-based rates for personnel employed by the *Construction Manager* as described in Schedule C to the Agreement and engaged in performing the *Services* to the level of effort agreed prior to the commencement of the *Services*.~~
- * *Strike out inapplicable paragraph(s).*
- 5.3 The reimbursable expenses are the actual expenses, supported by receipts or invoices, that the *Construction Manager* incurred in performing the *Services*, and as identified in Schedules A2 and B2 to the Agreement plus the administrative charge of "Zero" percent (" " %). If there are no receipts or invoices, the expenses shall be at rates prevailing in the area of the *Place of the Project* and supported with suitable documentation.
 - 5.4 The *Owner* may by written request require the *Construction Manager* to:
 - 1. provide prior to commencement of the *Services* an estimate of the total amount of the *Construction Manager's* fee for the *Services* as described in paragraph 5.2.3;
 - 2. provide prior to commencement of the *Services* an estimate of the total amount of the reimbursable expenses as described in paragraph 5.3 for evaluation and verification purposes; and
 - 3. inform the *Owner* in writing prior to incurring reimbursable expenses as described in paragraph 5.3.
 - 5.5 All amounts are in Canadian funds.

ARTICLE A-6 PAYMENT

- 6.1 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Project*. The *Owner* shall pay the *Construction Manager*:
 - 1. payments on account of the compensation described in Article A-5 of the Agreement – COMPENSATION FOR SERVICES together with such *Value Added Taxes* as may be applicable to such payments, and
 - 2. upon completion of the *Services*, the unpaid balance of the compensation together with such *Value Added Taxes* as may be applicable to such payments.
- 6.2 Should the *Owner* fail to make payments as they become due under the terms of the *Contract* or in an award by arbitration or court, interest at the following rates on such unpaid amounts shall also become due and payable until payment:
 - 1. 2% per annum above the prime rate for the first 60 days.
 - 2. 4% per annum above the prime rate after the first 60 days.

Such interest shall be compounded on a monthly basis. The prime rate shall be the rate of interest quoted by

Bank of Canada

(Insert name of chartered lending institution whose prime rate is to be used)

for prime business loans as it may change from time to time.

ARTICLE A-7 RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING

- 7.1 *Notices in Writing* will be addressed to the recipient at the address set out below.
- 7.2 The delivery of a *Notice in Writing* will be by hand, by courier, by prepaid first class mail, or by facsimile or other form of electronic communication during the transmission of which no indication of failure of receipt is communicated to the sender.
- 7.3 A *Notice in Writing* delivered by one party in accordance with this *Contract* will be deemed to have been received by the other party on the date of delivery if delivered by hand or courier, or if sent by mail it shall be deemed to have been received five calendar days after the date on which it was mailed, provided that if either such day is not a *Working Day*, then the *Notice in Writing* shall be deemed to have been received on the *Working Day* next following such day.
- 7.4 A *Notice in Writing* sent by facsimile or other form of electronic communication shall be deemed to have been received on the date of its transmission provided that if such day is not a *Working Day* or if it is received after the end of normal business hours on the date of its transmission at the place of receipt, then it shall be deemed to have been received at the opening of business at the place of receipt on the first *Working Day* next following the transmission thereof.
- 7.5 An address for a party may be changed by *Notice in Writing* setting out the new address delivered to the other party in accordance with this Article.

Owner

Vandyk - Heart Lake Limited, by KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver and manager of certain assets, property and undertakings of Vandyk - Heart Lake Limited and not in its personal, corporate or any other capacity

*name of Owner**

220 Bay Street, Suite 1300,
Toronto, Ontario M5J 2W4

address

_____	ngoldstein@ksvadvisory.com and mtallat@ksvadvisory.com
<i>facsimile number</i>	<i>email address</i>

Construction Manager

O&L LP by its general partner O&L GP Inc. doing business as ELM Forward

*name of Construction Manager**

1931 Highway 7, Concord, ON, L4K 1V5

address

_____	esteiner@elmdevelopments.com
<i>facsimile number</i>	<i>email address</i>

** If it is intended that the notice must be received by a specific individual, that individual's name shall be indicated.*

ARTICLE A-8 LANGUAGE OF THE CONTRACT

- 8.1 When the *Contract Documents* are prepared in both the English and French languages, it is agreed that in the event of any apparent discrepancy between the English and French versions, the English/French# language shall prevail.
- 8.2 This Agreement is drawn in English at the request of the parties hereto. La présente convention est rédigée en anglais à la demande des parties.
Complete this statement by striking out inapplicable term.

ARTICLE A-9 SUCCESSION

9.1 This *Contract* shall enure to the benefit of and be binding upon the parties hereto, their respective heirs, legal representatives, successors and assigns.

In witness whereof the parties hereto have executed this Agreement by their respective hands or by the hands of their duly authorized representatives.

SIGNED AND DELIVERED
in the presence of:

WITNESS

signature

name of person signing

signature

name of person signing

WITNESS

signature

name of person signing

signature

name of person signing

OWNER

Vandyk - Heart Lake Limited, by KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver and manager of certain assets, property and undertakings of Vandyk - Heart Lake Limited and not in its personal, corporate or any other capacity

name of Owner

Noah Goldstein, Managing Director

signature

name and title of person signing

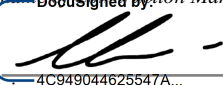
signature

name and title of person signing

CONSTRUCTION MANAGER

O&L LP by its general partner O&L GP Inc. doing business as ELM Forward

name of Construction Manager

DocuSigned by:

4C9A9044625547A...
signature

Elliot Steiner, A.S.O.

name and title of person signing

signature

name and title of person signing

- N.B. Where legal jurisdiction, local practice, or Owner or Construction Manager requirement calls for:
- (a) proof of authority to execute this document, attach such proof of authority in the form of a certified copy of a resolution naming the representative(s) authorized to sign the Agreement for and on behalf of the corporation or partnership; or
 - (b) the affixing of a corporate seal, this Agreement should be properly sealed.

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

<p>1. PRECONSTRUCTION</p> <p>(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)</p>	<p>Performed by the Owner or Someone Other Than the Construction Manager</p>	<p>Performed by the Construction Manager (*F1/F2/F3)</p>	<p>Not Applicable</p>
<p>1.1 General Services</p> <p>.1 Attend regular <i>Project</i> meetings with the <i>Owner</i> and the <i>Consultant</i>.</p> <p>.2 Provide advice to the <i>Owner</i> and the <i>Consultant</i> with respect to construction and market conditions.</p>		<p>F1 F1</p>	
<p>1.2 Predesign</p> <p>.1 Estimating:</p> <p>(1) Confirm or prepare a <i>Class D Construction Cost Estimate</i>.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action.</p> <p>.2 Scheduling: Prepare a preliminary overall <i>Project</i> schedule.</p>	<p><input type="checkbox"/></p>	<p>F1 F1</p>	<p><input type="checkbox"/></p>
<p>1.3 Schematic Design Phase</p> <p>.1 Constructability: Provide advice on site use and possible improvements, selection of materials, assembly systems, and, equipment and provide recommendations on construction feasibility, availability of materials and labour, time requirements for installation and construction, and factors related to alternative designs and possible economies.</p> <p>.2 Estimating:</p> <p>(1) Prepare a <i>Class C Construction Cost Estimate</i> at the end of the Schematic Design Phase.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendation for corrective action.</p> <p>.3 Scheduling: Prepare in consultation with the <i>Consultant</i> and the <i>Owner</i> a preliminary <i>Project</i> schedule for the <i>Owner's</i> review; such <i>Project</i> schedule shall take into consideration the sequence and timing of the required basic program decisions, including anticipated design time, approval period, preparation of documentation, bid calls and subsequent evaluations, trade contract awards, on-site construction activities, and the <i>Project-In-Use Date</i>.</p> <p>.4 Other Services: Assist in providing liaison and coordination among government authorities, utility companies, and other authorities having jurisdiction over the <i>Place of the Project</i>.</p>		<p>F1 F1 F1 F1</p>	
<p>1.4 Design Development Phase</p> <p>.1 Constructability:</p> <p>(1) Provide updates as necessary regarding the availability of materials and labour, building systems, and possible economies.</p> <p>(2) Make recommendations to the <i>Owner</i> and the <i>Consultant</i> regarding the scope of <i>Work</i> packages, to help facilitate the subsequent bidding and awarding of trade and supply contracts.</p> <p>(3) Review the specifications and drawings and at the end of the Design Development Phase, make recommendations to the <i>Owner</i> and the <i>Consultant</i> as to constructability and coordination among the <i>Trade Contractors</i>.</p> <p>(4) Prepare general functional layout of construction site access and organization and <i>Temporary Work</i>.</p> <p>.2 Estimating and Cost Control:</p> <p>(1) Prepare a <i>Class B Construction Cost Estimate</i> at the end of the Design Development Phase.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget, and make recommendations for corrective action.</p> <p>(3) Establish a cost control program, and prepare a cash flow forecast for the <i>Project</i>.</p> <p>.3 Scheduling:</p> <p>(1) Review and update the <i>Project</i> schedule with appropriate details.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Project</i> schedule may vary from that specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i>, update the <i>Project</i> schedule, and make recommendations for corrective action.</p> <p>(3) Make recommendations to the <i>Owner</i> regarding any equipment or materials, which should be pre-ordered to meet the <i>Project</i> schedule.</p>		<p>F1 F1 F1</p>	

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

<p>1. PRECONSTRUCTION</p> <p>(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)</p>	<p>Performed by the Owner or Someone Other Than the Construction Manager</p>	<p>Performed by the Construction Manager (*F1/F2/F3)</p>	<p>Not Applicable</p>
<p>1.5 Construction Document Phase</p> <p>.1 Constructability:</p> <p>(1) Provide updates as necessary regarding the availability of materials and labour, building systems, and possible economies.</p> <p>(2) Review the specifications and drawings and make recommendations to the <i>Owner</i> and the <i>Consultant</i> as to clarity, consistency, constructability, and coordination among <i>the Trade Contractors</i>.</p> <p>(3) Assist the <i>Owner</i> and the <i>Consultant</i> in preparing bid documents for <i>Trade Contractors</i>.</p> <p>(4) Assist the <i>Owner</i> in determining the contract security requirements of <i>Trade Contractors</i>.</p> <p>.2 Estimating and Cost Control:</p> <p>(1) Update the <i>Class B Construction Cost Estimate</i> at defined intervals of <i>Construction Documents</i> completion.</p> <p>(2) Prepare a <i>Class A Construction Cost Estimate</i> at the end of the Construction Document Phase.</p> <p>(3) Update the cash flow forecasts for the <i>Project</i>.</p> <p>(4) Advise the <i>Owner</i> if it appears that the <i>Construction Cost Estimate</i> may exceed the <i>Project</i> budget and make recommendations for corrective action.</p> <p>.3 Scheduling:</p> <p>(1) Review and update the <i>Project</i> schedule with appropriate details.</p> <p>(2) Advise the <i>Owner</i> if it appears that the <i>Project</i> schedule may vary from that specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i>, and make recommendations for corrective action, including changes to <i>Project</i> scope, schedule or budget.</p> <p>.4 Make recommendations to the <i>Owner</i> regarding any equipment or materials which should be pre-ordered to meet the <i>Project</i> objective.</p> <p>.5 Prepare general requirements.</p> <p>.6 Collate, assemble and distribute bid documents.</p>		<p>F1</p> <p>F1</p> <p>F1</p> <p>F1</p> <p>F1</p> <p>F1</p> <p>F1</p>	
<p>1.6 Construction Procurement Phase</p> <p>.1 Scheduling:</p> <p>(1) Review and update the <i>Project</i> schedule with appropriate details.</p> <p>.2 Contracting:</p> <p>(1) Develop methods of solicitation for <i>Trade Contractors</i> and the distribution of addenda.</p> <p>(2) Prepare the prequalification criteria for <i>Trade Contractors</i> and <i>Suppliers</i> as required by the <i>Owner</i>.</p> <p>(3) Review for completeness and coordinate all bid documents for the solicitation of competitive bids for the <i>Work</i> of each <i>Trade Contractor</i>.</p> <p>.3 Solicit bids.</p> <p>.4 Assist the <i>Owner</i> in the evaluation and awarding of contracts.</p> <p>.5 Update the cash flow forecasts for the <i>Project</i>.</p>	<p><input type="checkbox"/></p>	<p>F1</p> <p>F3</p> <p>F1</p> <p>F1</p> <p>F1</p>	<p><input type="checkbox"/></p>

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

<p>2. CONSTRUCTION</p> <p>(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)</p>	<p>Performed by the Owner or Someone Other Than the Construction Manager</p>	<p>Performed by the Construction Manager (*F1/F2/F3)</p>
<p>2.1 General Services</p> <p>.1 Chair and minute regular <i>Project</i> meetings with the <i>Owner</i>, the <i>Consultant</i> and <i>Trade Contractors</i>.</p> <p>.2 Organize and distribute all documents related to the performance of the contract and execution of the <i>Work</i> of each <i>Trade Contractor</i>.</p> <p>.3 Provide administration as described in the trade contract documents including.</p> <p>(1) Facilitate all communications among the <i>Owner</i>, the <i>Consultant</i>, the <i>Payment Certifier</i>, and <i>Trade Contractors</i> that relate to the <i>Project</i>.</p> <p>(2) In the first instance, receive all questions in writing by the <i>Owner</i> or <i>Trade Contractors</i> for interpretations and findings relating to the performance of the <i>Work</i> or the interpretation of the trade contract documents except with respect to financing information required of the <i>Owner</i>.</p> <p>(3) In the first instance, give interpretations and make findings on matters in question relating to the performance of any <i>Work</i> or the requirements of the trade contract documents, except with respect to any and all architectural and engineering aspects of the <i>Project</i> or financing information required of the <i>Owner</i>.</p> <p>(4) During the progress of the <i>Work</i>, issue supplemental instructions to <i>Trade Contractors</i> with reasonable promptness or in accordance with a schedule for such instructions agreed to by the <i>Construction Manager</i> and <i>Trade Contractors</i>.</p> <p>(5) Promptly investigate, make findings and inform the <i>Owner</i>, <i>Trade Contractors</i> and the <i>Consultant</i> concerning all concealed or unknown conditions which are discovered by the <i>Construction Manger</i> or of which <i>Notice in Writing</i> is given to the <i>Construction Manager</i>.</p> <p>(6) Make findings upon all claims for a change in any trade contract price, and provide <i>Notice in Writing</i> of such findings to all parties within 30 <i>Working Days</i> after receipt of such claim or within such other time period as may be agreed by the parties.</p> <p>(7) Give instructions necessary for the proper performance of <i>Work</i> of each <i>Trade Contractor</i> during any dispute so as to prevent delays pending settlement of such dispute.</p> <p>(8) Investigate the impact on <i>Work of each Trade Contractor</i> of the discovery of any fossils, coins, articles of value or antiquity, structures and other remains or things of scientific or historic interest discovered at the <i>Place of the Project</i>, and advise the <i>Owner</i> concerning the issuance of appropriate instructions for any change in <i>Work</i> as a result of such discovery.</p> <p>(9) Act on behalf of the <i>Owner</i>, <i>Trade Contractors</i> and the <i>Consultant</i> for the purpose of adjusting the amount of any loss or damage payment with insurers under property or boiler and machinery policies affecting any <i>Work</i>.</p>		<p>F1</p> <p>F1</p> <p>F1</p>
<p>2.2 Project Control and Scheduling</p> <p>.1 (1) Establish and implement organization and procedures with respect to all aspects of the <i>Project</i>.</p> <p>(2) Provide to <i>Trade Contractors</i> the <i>Project</i> schedule that indicates the timing of major activities of the <i>Project</i> in sufficient detail for <i>Trade Contractors</i> to schedule their <i>Work</i>.</p> <p>(3) Provide coordination and general direction for the progress of the <i>Project</i>.</p> <p>(4) Monitor the <i>Work</i> of each <i>Trade Contractor</i>.</p> <p>(5) Coordinate all <i>Trade Contractors</i> in the performance of their respective <i>Work</i>, with one another and with the activities and responsibilities of the <i>Owner</i> and the <i>Consultant</i>.</p> <p>(6) Review the performance of <i>Trade Contractors</i>’ personnel and equipment and the availability of materials and supplies to meet the <i>Project</i> schedule and recommend courses of action to the <i>Owner</i> when requirements of a trade contract are not being met.</p> <p>(7) Provide regular monitoring of the schedule as construction progresses. Identify potential variances to planned completion dates. Review schedule for work not started or incomplete and recommend to the <i>Owner</i> and <i>Trade Contractors</i> adjustments in the schedule to achieve the <i>Project In-Use Date</i>. Provide summary reports of each monitoring and document all changes in schedule.</p>		<p>F1</p>

<p>2. CONSTRUCTION</p> <p>(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)</p>	<p>Performed by the Owner or Someone Other Than the Construction Manager</p>	<p>Performed by the Construction Manager (*F1/F2/F3)</p>
<p>2.3 Common Construction Facilities and Services .1 Arrange for the required <i>Temporary Work</i>.</p>		<p>F1</p>
<p>2.4 Cost Control and Accounting .1 (1) Prepare and update the <i>Construction Cost</i> cash flow forecasts in accordance with the <i>Project</i> budget as specified in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT or otherwise agreed with the <i>Owner</i>. (2) Develop, implement and maintain a system of <i>Project</i> cost control and accounting. (3) Advise the <i>Owner</i> and the <i>Consultant</i> on the variances between actual cost and <i>Construction Cost Estimate</i>. (4) Provide reasonable assistance and information to permit recovery of all tax rebates where applicable. (5) Jointly with each <i>Trade Contractor</i>, prepare a schedule showing when items called for under cash allowances must be ordered to avoid delaying the progress of <i>Work</i>. (6) Provide recommendations to the <i>Owner</i> for necessary changes to maintain <i>Project</i> budget and <i>Project</i> schedule.</p>		<p>F1</p>
<p>2.5 Changes in Work .1 (1) Develop and implement a system for processing changes in any <i>Work</i>. (2) Recommend appropriate changes in any <i>Work</i> to the <i>Owner</i> and the <i>Consultant</i>. (3) Review requests for changes in any <i>Work</i> and provide recommendations to the <i>Owner</i> and the <i>Consultant</i> and, if necessary, assist in negotiation. (4) Prepare and issue to <i>Trade Contractors</i> change orders and change directives, including written descriptions of proposed changes in <i>Work</i>, all of which are to be prepared in consultation with the <i>Consultant</i> when they are related to the specifications and drawings.</p>		<p>F1</p>
<p>2.6 Payments to Trade Contractors and Suppliers .1 (1) Develop and implement a procedure for timely process of payments to <i>Trade Contractors</i> and <i>Suppliers</i>. (2) Promptly inform the <i>Owner</i> of the date of receipt of the <i>Trade Contractors</i>' applications for payment. (3) Promptly forward to the <i>Payment Certifier</i> the applications for payment received from the <i>Trade Contractors</i>. .2 (1) Determine the amounts owing to <i>Trade Contractors</i> and issue certificates for payment based on the <i>Construction Manager</i>'s observations and evaluation of <i>Trade Contractors</i>' applications for payment.</p>		<p>F1 F1</p>
<p>2.7 Field Review .1 (1) Develop, implement and maintain a system for quality assurance and quality control. (2) Reject work that in the opinion of the <i>Construction Manager</i> or the <i>Consultant</i> does not conform to the requirements of the trade contract documents and whenever it is considered necessary or advisable, require inspection or testing of work.</p>		<p>F1</p>
<p>2.8 Health and Construction Safety .1 (1) Subject to paragraph 3.1.2 of GC 3.1 – PROVISION OF INFORMATION AND OBLIGATIONS, be responsible for establishing, initiating, maintaining, and overseeing the health and safety precautions and programs required to be put in place at the <i>Place of the Project</i> and review with the <i>Owner</i> all safety programs for adequacy. (2) Review with the <i>Owner</i> the <i>Trade Contractors</i>' safety programs for compliance.</p>		<p>F1</p>

SCHEDULE A1 TO THE AGREEMENT – SERVICES AND COMPENSATION

<p>2. CONSTRUCTION</p> <p>(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)</p>	<p>Performed by the Owner or Someone Other Than the Construction Manager</p>	<p>Performed by the Construction Manager (*F1/F2/F3)</p>
<p>2.9 Submittals</p> <p>.1 (1) Establish procedures for processing submittals. (2) Coordinate all relevant information required to perform any <i>Work</i>. (3) Upon request by any <i>Trade Contractor</i> or the <i>Consultant</i>, jointly prepare a schedule of the dates for provision, review and return of shop drawings. (4) Forward to the <i>Consultant</i> for review all shop drawings that are considered to be complete. (5) Indicate in writing the <i>Consultant's</i> acceptance or rejection of all deviations in the shop drawings from the requirements of the trade contract documents. (6) Return all shop drawings in accordance with the agreed schedule, or in the absence of such agreed schedule, with reasonable promptness so as to cause no delay in the performance of any <i>Work</i>.</p>		<p>F1</p>
<p>2.10 Reports and Project Site Documents</p> <p>.1 (1) Keep a daily log available to the <i>Owner</i> and the <i>Consultant</i>. (2) Maintain copies of all necessary documents at the <i>Place of the Project</i>. (3) Collate and compile record documents and operating and maintenance manuals in accordance with the <i>Owner's</i> requirements.</p>		<p>F1</p>
<p>2.11 Start-up</p> <p>.1 (1) Assist the <i>Owner</i> in coordinating and monitoring initial start-up and testing conducted by <i>Trade Contractors</i>. (2) Coordinate the commissioning of utilities, systems and equipment.</p>		<p>F1</p>
<p>2.12 Substantial Performance of the Work</p> <p>.1 (1) Subject to applicable legislation, arrange for the issuance of the necessary certificates respecting <i>Substantial Performance of the Work</i> of each <i>Trade Contractor</i> or designated portions thereof, lists of incomplete or unsatisfactory items, and schedules for their completion. (2) Distribute certificates of <i>Substantial Performance of the Work</i> and final certificates for payment of <i>Work</i> of each <i>Trade Contractor</i>. (3) Arrange with <i>Trade Contractors</i> to finish <i>Work</i> to be completed or corrected.</p>		<p>F1</p>
<p>2.13 Project In-Use Date</p> <p>.1 (1) Determine, in consultation with the <i>Owner</i> and the <i>Consultant</i>, and advise <i>Trade Contractors</i> in writing of, the <i>Project In-Use Date</i>.</p>		<p>F1</p>
<p>2.14 Handover</p> <p>.1 (1) Inform the <i>Owner</i> and the <i>Consultant</i> in writing when <i>Work</i> of each <i>Trade Contractor</i> is ready for final review prior to issuance of final certificate for payment. (2) Seek, obtain and transmit to the <i>Owner</i> warranties (in consultation with the <i>Consultant</i>, if applicable), affidavits, releases, bonds, insurances, and waivers received from <i>Trade Contractors</i>. (3) Turn over to the <i>Owner</i> all keys and maintenance stocks. (4) Arrange for the issuance of the final certificate for payment for each <i>Trade Contractor</i>. (5) Assist the <i>Owner's</i> operating staff to facilitate a smooth and proper takeover of <i>Work</i> of each <i>Trade Contractor</i> and the <i>Project</i>, including all necessary training and instruction of the <i>Owner's</i> operating staff.</p>		<p>F1</p>

<p>3. POST-CONSTRUCTION</p> <p>(*Note: F1 Included in the fixed amount as described in paragraph 5.2.1 of Article A-5 – COMPENSATION FOR SERVICES. F2 Included in the percentage amount as described in paragraph 5.2.2 of Article A-5 – COMPENSATION FOR SERVICES. F3 Fee to the <i>Construction Manager</i> based on time-based rates as described in paragraph 5.2.3 of Article A-5 – COMPENSATION FOR SERVICES.)</p>	Performed by the Owner or Someone Other Than the Construction Manager	Performed by the Construction Manager (*F1/F2/F3)
<p>3.1 General Services</p> <p>.1 (1) Chair and minute <i>Project</i> meetings with the <i>Owner</i>, the <i>Consultant</i>, and <i>Trade Contractors</i>. (2) Prepare final <i>Construction Cost</i> report.</p>		F1
<p>3.2 Occupancy Review</p> <p>.1 Assist the <i>Owner</i> in conducting post-construction occupancy review.</p>		F1
<p>3.3 Warranties</p> <p>.1 Assist the <i>Owner</i> in administering warranties.</p>		F1

SCHEDULE A2 – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE A1

Unless otherwise agreed to by the parties or as indicated in the following table, all expense items relating to *Services* are included in the *Construction Manager’s* fee as described in paragraph 5.2 of Article of the Agreement A-5 – COMPENSATION FOR SERVICES.

	Costs Included in the Construction Manager’s Fee (A5.2)	Reimbursable Expenses (A5.3)
1. Travel and subsistence expenses of the <i>Construction Manager’s</i> personnel outside a radius of 50km from the <i>Place of the Project</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Charges for long distance telephone and facsimile communications, courier services, and reproduction of trade contract documents incurred in relation to the performance of this <i>Contract</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. The cost of <i>Project</i> specific information technology support in accordance with the method determined by the parties.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Deposits lost, provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		<input checked="" type="checkbox"/>
5. The costs to the <i>Construction Manager</i> that result from any <i>Trade Contractor’s</i> insolvency or failure to perform.		<input checked="" type="checkbox"/>
6. Charges levied by authorities having jurisdiction at the <i>Place of the Project</i> .		<input checked="" type="checkbox"/>
7. Royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefore.		<input checked="" type="checkbox"/>
8. Any adjustment in taxes and duties directly related to the <i>Project</i> for which the <i>Construction Manager</i> is liable.		<input checked="" type="checkbox"/>
9. Losses and expenses sustained by the <i>Construction Manager</i> for matters which are the subject of the insurance coverages obtained pursuant to GC 8.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, within the deductible amounts or are not insurable.		<input checked="" type="checkbox"/>
10. The costs incurred due to emergencies affecting the safety of persons or property.		<input checked="" type="checkbox"/>
11. Legal costs incurred by the <i>Construction Manager</i> in relation to the performance of the <i>Services</i> provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		<input checked="" type="checkbox"/>
12. Such other costs directly incurred by the <i>Construction Manager</i> in the performance of this <i>Contract</i> as follows:		<input checked="" type="checkbox"/>

SCHEDULE B1 – ADDITIONAL SERVICES AND COMPENSATION

The *Construction Manager* will provide the following additional services and *Temporary Work* that are within the scope of the *Services*:

	Method of Compensation (*F1/F2/F3)

SCHEDULE B2 – REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE B1

Unless otherwise agreed to by the parties or as indicated in the following table, all expense items relating to additional services are included in the *Construction Manager's* fee as described in paragraph 5.2 of Article of the Agreement A-5 – COMPENSATION FOR SERVICES.

	Costs Included in the Construction Manager's Fee (A5.2)	Reimbursable Expenses (A5.3)
1. Travel and subsistence expenses of the <i>Construction Manager's</i> personnel outside a radius of 50km from the <i>Place of the Project</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2. Charges for long distance telephone and facsimile communications, courier services, reproduction of trade contract documents incurred in relation to the performance of this <i>Contract</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
3. Deposits lost provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. The costs to the <i>Construction Manager</i> that result from any <i>Trade Contractor's</i> insolvency or failure to perform.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
5. The cost of all products purchased by the <i>Construction Manager</i> for the <i>Project</i> , including cost of transportation thereof.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
6. The cost of all equipment and services required for the <i>Construction Manager's</i> field office.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
7. The amounts of all contracts between the <i>Construction Manager</i> and subcontractors and suppliers.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. The cost of quality assurance such as independent inspection and testing services.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Any adjustment in premiums for insurance which the <i>Construction Manager</i> is required, by this <i>Contract</i> , to purchase and maintain.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. If applicable, the cost of time-based rate for labour in the direct employ of the <i>Construction Manager</i> in performing the additional services described in Schedule B1.	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Charges levied by authorities having jurisdiction at the <i>Place of the Project</i> .		<input checked="" type="checkbox"/>
12. Royalties, patent licence fees and damages for infringement of patents and cost of defending suits therefore.		<input checked="" type="checkbox"/>
13. Any adjustment in taxes and duties directly related to the <i>Project</i> for which the <i>Construction Manager</i> is liable.		<input checked="" type="checkbox"/>
14. Losses and expenses sustained by the <i>Construction Manager</i> for matters which are the subject of the insurance coverages obtained pursuant to GC 8.1 – INSURANCE when such losses and expenses are not recoverable because the amounts are in excess of collectible amounts, are within the deductible amounts or are not insurable.		<input checked="" type="checkbox"/>
15. The costs incurred due to emergencies affecting the safety of persons or property.		<input checked="" type="checkbox"/>
16. Legal costs, incurred by the <i>Construction Manager</i> in relation to the performance of the <i>Project</i> provided that they are not caused by negligent acts or omissions of the <i>Construction Manager</i> and the <i>Services</i> are performed in accordance with this <i>Contract</i> .		<input checked="" type="checkbox"/>
17. Such other costs directly incurred by the <i>Construction Manager</i> in performing the additional services as follows: <div style="border: 1px solid black; height: 100px; width: 100%; margin-top: 5px;"></div>		<input checked="" type="checkbox"/>

SCHEDULE C – TIME-BASED RATES FOR PERSONNEL EMPLOYED BY THE CONSTRUCTION MANAGER

Personnel employed by the Construction Manager in the performance of the Services	Unit	Rate
Labourer	hr	95.46
Hoist Operator	hr	95.46
Handyman	hr	95.46
Carpenter/Framer/Drywaller	hr	95.46
Machine Operator	hr	95.46
Assistant Superintendent	hr	115.00
Working Foreman	hr	115.00
General Superintendent	hr	160.00
Administration		n/a
Construction Manager		n/a
Senior Project Manager		n/a
Project Manager		n/a
Project Coordinator		n/a
Field Engineer / Field Coordinator		n/a
Building System Coordinator		n/a
Rates are subject to increase in accordance with Union labour rate adjustments, as applicable. Rates may change with a 30-day written notice to the Owner.		

DEFINITIONS

The following Definitions apply to the *Contract Documents*. References in the definition to the singular shall be considered to include the plural as the context requires.

Class A Construction Cost Estimate

The *Class A Construction Cost Estimate* is an estimate of the *Construction Cost* based on the completed *Construction Documents*. *Class A Construction Cost Estimate* is the final estimate before the bid or proposal call. *Class A Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

Class B Construction Cost Estimate

The *Class B Construction Cost Estimate* is an estimate of the *Construction Cost* with a level of precision that is based on the degree of completion of the *Construction Documents* at the time of preparation of the estimate. The *Class B Construction Cost Estimate* is typically prepared when all site or installation investigations are completed and the design of the major systems and sub-systems of the *Project* (including outline specifications and preliminary drawings and models) are well underway. *Class B Construction Cost Estimate* shall be presented in elemental format and include labour and material costs, allowance for all costs resulting from the *Project* schedule, all actual associated costs, including cash allowances, contingencies, allowances for design, escalation, market conditions and anticipated amendment amounts as applicable.

Class C Construction Cost Estimate

The *Class C Construction Cost Estimate* is an estimate of the *Construction Cost* based on updated *Owner* requirements, general description of the *Project*, preliminary site information and existing conditions, and takes into consideration market conditions as well as basic implementation logistics. *Class C Construction Cost Estimate* shall include labour and material costs and the *Owner's* construction contingencies and allowances.

Class D Construction Cost Estimate

The *Class D Construction Cost Estimate* is an estimate of the *Construction Cost* based on the *Owner's* functional requirements to the degree known at the time. The *Class D Construction Cost Estimate* shall as a minimum be based on historical cost data for similar projects, suitably adjusted for such factors as inflation, location, risk, quality, size, and time. All related factors affecting cost are considered to the extent possible. The *Class D Construction Cost Estimate* provides the *Owner* an indication of the order of magnitude of the *Construction Cost* for a project completed within the estimated completion date, and shall include labour and material costs and the *Owner's* construction contingencies and allowances.

Construction Cost

Construction Cost means the actual cost of all elements of the *Project* including all applicable taxes but excluding the applicable value added taxes, whether recoverable or not. *Construction Cost* does not include the compensation of the *Construction Manager* and the *Consultant*.

Construction Cost Estimate

Construction Cost Estimate is either a *Class A Construction Cost Estimate*, a *Class B Construction Cost Estimate*, a *Class C Construction Cost Estimate*, or a *Class D Construction Cost Estimate*, as the context shall require and is prepared with a level of precision commensurate with the level of detail of information available at the time.

Construction Documents

The *Construction Documents* consist of the specifications and drawings that are consistent with the *Contract Documents* and are prepared by the *Consultant* and accepted by the *Owner* after execution of the Agreement for the performance of the *Project*.

Construction Manager

The *Construction Manager* is the person or entity identified as such in the Agreement.

Consultant

The *Consultant* is the person or entity engaged by the *Owner* and identified as such in the Agreement. The *Consultant* is the Architect, the Engineer or entity licensed to practise in the province or territory of the *Place of the Project*.

Contract

The *Contract* is the undertaking by the parties to perform their respective duties, responsibilities and obligations as prescribed in the *Contract Documents* and represents the entire agreement between the parties.

Contract Documents

The *Contract Documents* consist of those documents listed in Article A-4 of the Agreement – CONTRACT DOCUMENTS and amendments agreed upon between the parties.

Contract Time

The *Contract Time* is the time stipulated in paragraph 1.3 of Article A-1 of the Agreement – THE SERVICES.

Notice in Writing

A *Notice in Writing*, where identified in this *Contract*, is a written communication between the parties that is transmitted in accordance with the provisions of Article A-7 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

Owner

The *Owner* is the person or entity identified as such in the Agreement.

Payment Certifier

The *Payment Certifier* is either the *Construction Manager* or the *Consultant* identified as such in a trade contract.

Place of the Project

The *Place of the Project* is the designated site or location of the *Project* identified in this Agreement.

Project

The *Project* means the total construction as described in Article A-3 of the Agreement – DESCRIPTION OF THE PROJECT contemplated by the *Owner*.

Project In-Use Date

Project In-Use Date shall have been reached when the *Project* is ready for use or is being used for the purpose intended and is so confirmed in writing by the *Construction Manager* in consultation with the *Consultant* and the *Owner*.

Services

The *Services* means all services described in Schedule A1 to the Agreement – SERVICES AND COMPENSATION and Schedule B1 to the Agreement – ADDITIONAL SERVICES AND COMPENSATION to be performed by the *Construction Manager* under this *Contract*.

Substantial Performance of the Work

Substantial Performance of the Work is defined in the lien legislation applicable to the *Place of the Project* with respect to each *Trade Contractor*. If such legislation is not in force or does not contain such definition, or if the *Work* is governed by the Civil Code of Quebec, *Substantial Performance of the Work* shall have been reached when the *Work* of each *Trade Contractor* is ready for use or is being used for the purpose intended and is so certified by the *Payment Certifier*.

Supplier

A *Supplier* is a person or entity having a direct contract with the *Owner* to supply products.

Temporary Work

Temporary Work means temporary supports, structures, facilities, services, and other temporary items required for the execution of *Work* but not incorporated into *Work*.

Trade Contractor

Trade Contractor is the person or entity identified as such in a trade contract between the *Owner* and the *Trade Contractor* to perform *Work*.

Value Added Taxes

Value Added Taxes means such sums as shall be levied upon the *Owner's* payment to the *Construction Manager* by the Federal or any Provincial or Territorial government and is computed as a percentage of such payment and includes the Goods and Services Tax, the Quebec Sales Tax, The Harmonized Sales Tax, and any other similar tax, the collection and payment of which have been imposed on the *Construction Manager* by tax legislation.

Work

Work means the construction and related services required to be performed by a *Trade Contractor*.

Working Day

Working Day means a day other than a Saturday, Sunday, statutory holiday, or statutory vacation day that is observed by the construction industry in the area of the *Place of the Project*.

GENERAL CONDITIONS

PART 1 GENERAL PROVISIONS

GC 1.1 CONTRACT DOCUMENTS

1.1.1 If there is a conflict within the *Contract Documents*:

- .1 the order of priority of documents, from highest to lowest, shall be
 - the Agreement between the *Owner* and the *Construction Manager* (including the Schedules to the Agreement),
 - the Definitions,
 - Supplementary Conditions, if any
 - the General Conditions.
- .2 later dated documents shall govern over earlier documents of the same type.
- .3 amendments to documents shall govern over documents so amended.

GC 1.2 LAW OF THE CONTRACT

1.2.1 The law of the *Place of the Project* shall govern the interpretation of this *Contract*.

GC 1.3 RIGHTS AND REMEDIES

- 1.3.1 Except as expressly provided in the *Contract Documents*, the duties and obligations imposed by the *Contract Documents* and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights, and remedies otherwise imposed or available by law.
- 1.3.2 No action or failure to act by the *Owner* or the *Construction Manager* shall constitute a waiver of any right or duty afforded either of them under this *Contract*, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach thereunder, except as may be specifically agreed in writing.

GC 1.4 ASSIGNMENT

1.4.1 Neither party to this *Contract* shall assign this *Contract* or a portion thereof without the written consent of the other, which consent shall not be unreasonably withheld.

GC 1.5 PROJECT REPRESENTATIVES

1.5.1 The *Owner*, *Construction Manager* and *Consultant* may appoint one or more project representatives to assist in carrying out their responsibilities under this *Contract*. The duties, responsibilities and limitations of authority of such project representatives shall be as set forth in writing.

PART 2 CONSTRUCTION MANAGER'S RESPONSIBILITIES

GC 2.1 SERVICES

- 2.1.1 The *Construction Manager* shall provide the basic services identified in Schedule A1 to the Agreement and additional services identified in Schedule B1 to the Agreement.
- 2.1.2 The *Construction Manager* shall retain the personnel named in the Agreement in their designated roles for the duration of the assignment and promptly inform and obtain approval by the *Owner* of any change.
- 2.1.3 In providing the *Services*, the *Construction Manager* assumes no responsibility for, nor offers any professional advice with respect to, any and all architectural or engineering aspects of the *Project* or the *Consultant's* services.
- 2.1.4 The authority of the *Construction Manager* as agent of the *Owner* is expressly limited to the provision of the *Services* more particularly described in Schedules A1 and B1 to the Agreement.
- 2.1.5 Interpretations and findings of the *Construction Manager* shall be consistent with the intent of the *Contract Documents* as they relate to the *Work*. In making such interpretations and findings the *Construction Manager* will not show partiality to either the *Owner* or *Trade Contractors*.

PART 3 OWNER'S RESPONSIBILITIES

GC 3.1 PROVISION OF INFORMATION AND OBLIGATIONS

3.1.1 The *Owner* shall:

- .1 retain the *Consultant* who shall be responsible for the design and design-related services required for the *Project*;
- .2 inform the *Construction Manager* of the scope and terms of the *Consultant's* services;

- .3 inform the *Consultant* of the scope and terms of the *Services*;
- .4 coordinate and facilitate the services of the *Construction Manager* and the *Consultant*;
- .5 enter into contracts or written agreements with *Trade Contractors* to perform the *Work*. Such agreements shall be consistent with the requirements of CCDC 17 – STIPULATED PRICE CONTRACT BETWEEN OWNER AND TRADE CONTRACTOR FOR CONSTRUCTION MANAGEMENT PROJECTS;
- .6 inform the *Construction Manager* of the scope and terms of each trade contract;
- .7 upon request by the *Construction Manager*, furnish to the *Construction Manager* reasonable evidence that financial arrangements have been made and that adequate financing is available in order to ensure the completion of the *Project*;
- .8 communicate with *Trade Contractors* through the *Construction Manager* except:
 - (1) for direct communications with the *Payment Certifier*,
 - (2) with respect to formal notices in writing, or
 - (3) when expressly specified in a trade contract.
- .9 pay *Trade Contractors* in accordance with the terms and conditions of each trade contract;
- .10 furnish promptly to the *Construction Manager* all information that is required for the *Project* regarding the *Place of the Project* including surveys as to the physical characteristics of the site, soils reports, subsurface investigations, legal limitations, utility locations, and legal description. The *Construction Manager* shall be entitled to rely on such information;
- .11 provide full and timely information and approvals regarding the requirements of the *Project* for the orderly progress of the *Services*;
- .12 review documents submitted by the *Construction Manager* and give the *Construction Manager* timely decisions for the orderly progress of the *Services*;
- .13 obtain and pay for development approvals, building permit, permanent easements, rights of servitude, and all other necessary approvals and permits;
- .14 provide, maintain and pay for the insurance coverages required for the *Project* in accordance with Part 8 of the General Conditions – INSURANCE;
- .15 immediately notify the *Construction Manager* if the *Owner* observes or otherwise becomes aware of any fault or defect in the *Work*, the *Project* or any non-conformity with the requirements of the *Contract*;
- .16 designate in writing a representative who shall be fully acquainted with the *Project* and shall have the authority to act on the *Owner's* behalf in relation to all duties and responsibilities of the *Owner* under this *Contract*; and
- .17 designate in writing a *Payment Certifier* and advise the *Construction Manager* and the *Consultant*.

3.1.2 The *Owner* shall be responsible for construction health and safety at the *Place of the Project* in compliance with the rules, regulations and practices required by the applicable health and construction safety legislation.

PART 4 PAYMENT

GC 4.1 APPLICATIONS FOR PAYMENT

- 4.1.1 The *Construction Manager's* applications for payment shall be made monthly as the *Services* progress or in accordance with such other period agreed to by the *Owner* and the *Construction Manager*.
- 4.1.2 The amount claimed shall be in accordance with a schedule agreed to by the *Owner* and the *Construction Manager*, or in the absence of such a schedule, equal to the value of the *Services* provided as of the last day of the payment period.

GC 4.2 PAYMENT

- 4.2.1 The *Owner* shall make payment to the *Construction Manager* on account in accordance with the provisions of Article A-6 of the Agreement – PAYMENT no later than 20 calendar days following the date of receipt of an application for payment.
- 4.2.2 No deductions shall be made by the *Owner* from amounts payable to the *Construction Manager* other than those for which the *Construction Manager* is proven to be responsible as in accordance with Part 7 – DISPUTE RESOLUTION or has agreed to pay.
- 4.2.3 Variance from the *Construction Cost Estimate* established under this *Contract* shall not constitute grounds for the *Owner* to withhold fees due to the *Construction Manager*.
- 4.2.4 Where required by provincial or territorial legislation, payments shall be subject to the lien legislation applicable to the *Place of the Project*.

PART 5 CHANGES

GC 5.1 CHANGES TO THE PROJECT

- 5.1.1 The *Owner*, without invalidating this *Contract*, may make changes in the *Project* provided they are within the general scope of the *Project* and of the *Services*.
- 5.1.2 The *Construction Manager* shall promptly advise the *Owner* if a change contemplated by the *Owner* under paragraph 5.1.1 will change the *Construction Manager's* compensation or the *Project In-Use Date*.
- 5.1.3 If the *Owner* and the *Construction Manager* agree on an adjustment to the *Construction Manager's* compensation or *Contract Time*, such agreement shall be recorded in writing.
- 5.1.4 If the *Owner* and *Construction Manager* cannot agree on the change in *Construction Manager's* compensation, the matter shall be determined in accordance with the provisions of Part 7 of the General Conditions – DISPUTE RESOLUTION.
- 5.1.5 If the *Contract Time* is exceeded or extended through no fault of the *Construction Manager*, the *Construction Manager's* compensation shall be adjusted accordingly to cover the *Construction Manager's* additional costs.

GC 5.2 CHANGES IN SERVICES

- 5.2.1 Any agreement between the *Owner* and the *Construction Manager* on a change to the *Services* shall be recorded in writing.

PART 6 DEFAULT NOTICE

GC 6.1 OWNERS' RIGHT TO TERMINATE THE CONTRACT

- 6.1.1 If a party is adjudged bankrupt, or makes a general assignment for the benefit of creditors because of its insolvency, or a receiver is appointed because of its insolvency, the other party may, without prejudice to any other right or remedy it may have, terminate this *Contract* by giving the party or receiver or trustee in bankruptcy *Notice in Writing* to that effect.
- 6.1.2 If the *Construction Manager* neglects to properly perform the *Service* or otherwise fails to comply with the requirements of this *Contract* to a substantial degree, the *Owner* may, without prejudice to any other right or remedy the *Owner* may have, give the *Construction Manager Notice in Writing* that the *Construction Manager* is in default of the *Construction Manager's* contractual obligations and instruct the *Construction Manager* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 6.1.3 If the default cannot be corrected in the 5 *Working Days* specified or in such other time period as may be subsequently agreed in writing by the parties, the *Construction Manager* shall be in compliance with the *Owner's* instructions if the *Construction Manager*:
 - .1 commences the correction of the default within the specified time, and
 - .2 provides an acceptable schedule to the *Owner* for such correction, and
 - .3 corrects the default in accordance with the *Contract* terms and with such schedule.
- 6.1.4 If the *Construction Manager* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Owner* may have, the *Owner* may:
 - .1 correct such default and deduct the cost thereof from any payment then or thereafter due to the *Construction Manager*, or
 - .2 terminate the *Construction Manager's* right to continue with the *Services* in whole or in part or terminate this *Contract*.
- 6.1.5 If the *Owner* terminates this *Contract* as provided in paragraphs 6.1.1 and 6.1.4, the *Owner* shall pay the *Construction Manager* within 30 calendar days of the date that an invoice is submitted for all *Services* properly performed to the effective termination date, including reimbursable expenses and applicable taxes then due.
- 6.1.6 The *Owner* may, if conditions arise which make it necessary for reasons other than as provided in paragraphs 6.1.1 and 6.1.4, terminate this *Contract* by giving *Notice in Writing* to that effect to the *Construction Manager*.
- 6.1.7 Suspension of the *Project* shall be deemed to have occurred if:
 - .1 the *Project* has been stopped at the *Owner's* request or due to no fault of the *Construction Manager*, and
 - .2 such stoppage or stoppages have continued individually for a period of 30 calendar days or collectively for a period of 60 calendar days.

- 6.1.8 If the *Owner* terminates this *Contract* as provided in paragraph 6.1.6 or suspends the *Project* as described in paragraph 6.1.7:
- .1 the *Owner* shall pay the *Construction Manager* within 30 calendar days of the date that an invoice is submitted for all *Services* performed to the effective termination date, including reimbursable expenses and applicable taxes then due; and
 - .2 the *Construction Manager* shall be entitled to reasonable termination costs and an amount for anticipated loss of profit.

GC 6.2 CONSTRUCTION MANAGER’S RIGHT TO TERMINATE THE CONTRACT

- 6.2.1 If the *Owner* fails to comply with the requirements of this *Contract* to a substantial degree, including but not limited to the non-payment of compensation for *Services* described in Article A-5 – COMPENSATION FOR SERVICES, the *Construction Manager* may, without prejudice to any other right or remedy the *Construction Manager* may have, give the *Owner Notice in Writing* that the *Owner* is in default of the *Owner’s* contractual obligations and notify the *Owner* to correct the default in the 5 *Working Days* immediately following the receipt of such *Notice in Writing*.
- 6.2.2 If the *Owner* fails to correct the default in the time specified or in such other time period as may be subsequently agreed in writing by the parties, without prejudice to any other right or remedy the *Construction Manager* may have, the *Construction Manager* may terminate this *Contract*.
- 6.2.3 If the *Construction Manager* terminates this *Contract* as described in paragraph 6.2.2:
- .1 the *Owner* shall pay the *Construction Manager* within 30 calendar days of the date that an invoice is submitted for all *Services* performed to the effective termination date, including reimbursable expenses and applicable taxes then due; and
 - .2 the *Construction Manager* shall be entitled to reasonable termination costs and an amount for anticipated loss of profit.

PART 7 DISPUTE RESOLUTION

GC 7.1 NEGOTIATION, MEDIATION AND ARBITRATION

- 7.1.1 Differences between the parties to this *Contract* as to the interpretation, application or administration of this *Contract* or any failure to agree where agreement between the parties is called for, herein collectively called disputes, shall be settled in accordance with the requirements of this General Condition.
- 7.1.2 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.
- 7.1.3 If the parties so agree the dispute shall be submitted to mediation or arbitration in accordance with the provisions of the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect as at the date of this *Contract*.
- 7.1.4 If no agreement is made for mediation or arbitration as described in paragraph 7.1.3, the parties may refer the unresolved dispute to the courts or to any other agreed form of dispute resolution.

PART 8 INSURANCE

GC 8.1 INSURANCE

- 8.1.1 The *Owner* shall obtain, maintain and pay for ‘wrap-up’ general liability insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, all *Trade Contractors*, all subconsultants, and all trade subcontractors with limits of not less than \$10,000,000 per occurrence and a deductible not more than \$10,000. The insurance coverage shall be primary to all other insurance policies and shall not be substantially less than the insurance provided by IBC Form 2100 (including an extension for a standard provincial and territorial form of non-owned automobile liability policy) and IBC Form 2320, except for liability arising from damage to the *Project* during construction, which shall be limited to the completed operations period. The insurance shall be maintained from the date of commencement of the *Project* until 90 calendar days after the *Project In-Use Date*. The *Owner* is responsible to provide coverage for completed operations hazards from the *Project In-Use Date* for a period of 2 years.

- 8.1.2 The *Owner* shall obtain, maintain and pay for ‘broad form’ property insurance in the joint names of the *Owner*, the *Construction Manager*, the *Consultant*, and all *Trade Contractors*. The policy shall have limits of not less than the sum of 1.1 times the *Construction Cost Estimate* with a deductible not more than \$10,000. The “Broad Form” property insurance shall be provided from the date of commencement of the *Project* until the earliest of:
- .1 10 calendar days after the *Project In-Use Date*;
 - .2 on the commencement of use or occupancy of any part or section of the *Work* of any *Trade Contractors* unless such use or occupancy is for construction purposes, habitational, office, banking, convenience store under 465 square metres in area, or parking purposes, or for the installation, testing and commissioning of equipment forming part of the *Project*;
 - .3 when the *Place of the Project* is left unattended for more than 30 consecutive calendar days or when construction activity has ceased for more than 30 consecutive calendar days.
- 8.1.3 The *Owner* shall or cause to obtain, maintain and pay for an Aircraft or Watercraft Liability Insurance when owned or non-owned aircraft or watercraft are used directly or indirectly in the performance of the *Project*. The policy shall have limits of not less than \$10,000,000 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof and limits of not less than \$5,000,000 for aircraft passenger hazard.
- 8.1.4 The *Construction Manager* shall provide, maintain and pay for general liability insurance that has limits of not less than \$5,000,000 per occurrence and a deductible not more than \$5,000. The policy shall be maintained from the date of commencement of the *Project* until the *Construction Manager* completes the *Services*. Liability coverage shall be provided for completed operations hazards on an ongoing basis for a period of 6 years following the *Project In-Use Date*.
- 8.1.5 The *Construction Manager* shall provide, maintain and pay for Automobile Liability Insurance in respect of vehicles that are required by law to be insured under a contract by a Motor Vehicle Liability Policy. The policy shall have limits not less than \$5,000,000 inclusive per occurrence for bodily injury, death, and damage to property, covering all vehicles owned or leased by the *Construction Manager*. Where the policy has been issued pursuant to a government-operated automobile insurance system, the *Construction Manager* shall provide the *Owner* with confirmation of automobile insurance coverage for all automobiles registered in the name of the *Construction Manager*.
- 8.1.6 Prior to commencement of the *Project* and upon the placement, renewal, amendment, or extension of all or any part of the insurance, the parties shall promptly provide each other with confirmation of coverage that they are responsible for and, if required, a certified true copy of the policies certified by an authorized representative of the insurer together with copies of any amending endorsements applicable to the *Project*.
- 8.1.7 The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of this *Contract*.
- 8.1.8 All required insurance policies shall be with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Project*.

PART 9 INDEMNIFICATION AND WAIVER OF CLAIMS

GC 9.1 INDEMNIFICATION

- 9.1.1 The *Owner* and the *Construction Manager* shall each indemnify and hold harmless the other from and against all claims, demands, losses, costs, damages, actions, suits, or proceedings whether in respect to losses suffered by them or in respect to claims by third parties that arise out of, or are attributable in any respect to, their involvement as parties to this *Contract*, provided such claims are:
- .1 caused by:
 - (1) the negligent acts or omissions of the party from whom indemnification is sought or anyone for whose acts or omissions that party is liable, or
 - (2) a failure of the party to the *Contract* from whom indemnification is sought to fulfill its terms or conditions; and
 - .2 made by *Notice in Writing* within a period of 6 years from the date of *Project In-Use Date* or within such shorter period as may be prescribed by any limitation statute of the province or territory of the *Place of the Project*.
- The parties expressly waive the right to indemnity for claims other than those provided for in this *Contract*.
- 9.1.2 The obligation of either party to indemnify as set forth in paragraph 9.1.1 shall be limited as follows:
- .1 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is to be provided by either party pursuant to GC 8.1 – INSURANCE, the insurance limit for the loss so covered as prescribed in GC 8.1 – INSURANCE.

- .2 In respect to losses suffered by the *Owner* and the *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 8.1 – INSURANCE, the *Construction Manager*'s compensation as recorded in Article A-5 of the Agreement – COMPENSATION FOR SERVICES.
- .3 In respect to claims by third parties for direct loss resulting from bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, the obligation to indemnify is without limit. In respect to all other claims for indemnity as a result of claims advanced by third parties, the limits of indemnity set forth in paragraphs 9.1.2.1 and 9.1.2.2 shall apply.

9.1.3 The obligation of either party to indemnify the other as set forth in paragraphs 9.1.1 and 9.1.2 shall be inclusive of interest and all legal costs.

9.1.4 In respect to any claim for indemnity or to be held harmless by the *Owner* or the *Construction Manager*:

- .1 *Notice in Writing* of such claim shall be given within a reasonable time after the facts upon which such claim is based became known to the party required to give such *Notice in Writing*;
- .2 should either party be required as a result of its obligation to indemnify the other pay or satisfy a final order, judgment or award made against the party entitled by this *Contract* to be indemnified, then the indemnifying party, upon assuming all liability for any costs that might result, shall have the right to appeal in the name of the party against whom such final order or judgment has been made until such rights of appeal have been exhausted.

GC 9.2 WAIVER OF CLAIMS

9.2.1 As of the date of one year from the *Project In-Use Date*, the *Construction Manager* waives and releases the *Owner* from all claims which the *Construction Manager* has or reasonably ought to have knowledge of that could be advanced by the *Construction Manager* against the *Owner* arising from the *Construction Manager*'s involvement in the *Project*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the *Project In-Use Date*, except as follows:

- .1 claims arising prior to or on the *Project In-Use Date* for which *Notice in Writing* of claim has been received by the *Owner* from the *Construction Manager* no later than 20 days after the *Project In-Use Date*;
- .2 indemnification for claims advanced against the *Construction Manager* by third parties for which a right of indemnification may be asserted by the *Construction Manager* against the *Owner* pursuant to the provisions of this *Contract*;
- .3 claims resulting from acts or omissions which occur after the *Project In-Use Date*.

9.2.2 The *Construction Manager* waives and releases the *Owner* from all claims referenced in paragraph 9.2.1.3 except for those referred in paragraph 9.2.1.2 and claims for which *Notice in Writing* of claim has been received by the *Owner* from the *Construction Manager* within 395 calendar days following the *Project In-Use Date*.

9.2.3 As of the date of one year from the *Project In-Use Date*, the *Owner* waives and releases the *Construction Manager* from all claims which the *Owner* has or reasonably ought to have knowledge of that could be advanced by the *Owner* against the *Construction Manager* arising from the *Owner*'s involvement in the *Project*, including, without limitation, those arising from negligence or breach of contract in respect to which the cause of action is based upon acts or omissions which occurred prior to or on the *Project In-Use Date*, except as follows:

- .1 claims arising prior to or on the *Project In-Use Date* for which *Notice in Writing* of claim has been received by the *Construction Manager* from the *Owner* no later than 20 days from the *Project In-Use Date*;
- .2 indemnification for claims advanced against the *Owner* by third parties for which a right of indemnification may be asserted by the *Owner* against the *Construction Manager* pursuant to the provisions of this *Contract*;
- .3 damages arising from the *Construction Manager*'s actions which result in substantial defects or deficiencies in the *Project*. "Substantial defects or deficiencies" mean those defects or deficiencies in the *Project* which affect the *Project* to such an extent or in such a manner that a significant part or the whole of the *Project* is unfit for the purpose intended by this *Contract*;
- .4 claims arising from acts or omissions which occur after the *Project In-Use Date*.

9.2.4 The *Owner* waives and releases the *Construction Manager* from all claims referred to in paragraph 9.2.3.3 except for those referred in paragraph 9.2.3.2 and claims for which *Notice in Writing* of claim has been received by the *Construction Manager* from the *Owner* within a period of six years from *Project In-Use Date* should any limitation statute of the Province or Territory of the *Place of the Project* permit such agreement. If the applicable limitation statute does not permit such agreement, within such shorter period as may be prescribed by:

- .1 any limitation statute of the Province or Territory of the *Place of the Project*; or
- .2 the Civil Code of Quebec if the *Place of the Project* is the Province of Quebec.

- 9.2.5 The *Owner* waives and releases the *Construction Manager* from all claims referenced in paragraph 9.2.3.4 except for those arising from claims for which *Notice in Writing* has been received by the *Construction Manager* from the *Owner* within 395 calendar days following the *Project In-Use Date*.
- 9.2.6 *Notice in Writing* of claim as provided for in GC 9.2 – WAIVER OF CLAIMS to preserve a claim or right of action which would otherwise, by the provisions of GC 9.2 – WAIVER OF CLAIMS, be deemed to be waived, must include the following:
- .1 a clear and unequivocal statement of the intention to claim;
 - .2 a statement as to the nature of the claim and the grounds upon which the claim is based; and
 - .3 a statement of the estimated quantum of the claim.
- 9.2.7 The party giving *Notice in Writing* of claim as provided for in GC 9.2 – WAIVER OF CLAIMS shall submit within a reasonable time a detailed account of the amount claimed.
- 9.2.8 Where the event or series of events giving rise to a claim made under paragraphs 9.2.1 or 9.2.3 has a continuing effect, the detailed account submitted under paragraph 9.2.7 shall be considered to be an interim account and the party making the claim shall submit further interim accounts, at reasonable intervals, giving the accumulated amount of the claim and any further grounds upon which it is based. The party making the claim shall submit a final account after the end of the effects resulting from the event or series of events that gave rise to the claim.
- 9.2.9 If a *Notice in Writing* of claim pursuant to paragraph 9.2.1.1 is received on the 18th or 19th calendar day after the *Project In-Use Date*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 9.2.3.1 shall be extended to 24 calendar days after the *Project In-Use Date*.
- 9.2.10 If a *Notice in Writing* of claim pursuant to paragraph 9.2.3.1 is received on the 18th or 19th calendar day after the *Project In-Use Date*, the period within which *Notice in Writing* of claim shall be received pursuant to paragraph 9.2.1.1 shall be extended to 24 calendar days after the *Project In-Use Date*.

SUPPLEMENTARY CONDITIONS (HEART LAKE)

A. GENERAL

The following Supplementary Conditions shall be a part of the Contract Documents referred to in Article A-4 of the Canadian Standard Construction Document, CCDC5A - 2010, Construction Management Contract - for *Services* and shall modify, delete and/or add to the Agreement between the *Owner* and the *Construction Manager*, the Definitions and the General Conditions.

Throughout the Contract Documents, reference to the General Conditions shall imply the inclusion of these Supplementary Conditions. Section and paragraph references below are to the corresponding sections and paragraphs of the Agreement between the *Owner* and the *Construction Manager*, the Definitions and General Conditions.

B. AGREEMENT BETWEEN OWNER AND CONSTRUCTION MANAGER

Article A-1 - The Services

1.2 ADD at the end of Article A-1.2 before “, and” the following:

“using methods and expertise and taking steps that are commercially reasonable in the circumstances”

1.4 ADD as a new Article A-1.4 the following:

“1.4 The *Construction Manager* represents that it is knowledgeable and experienced in the management of the type of construction required for the *Project*, specifically, with respect to residential construction in Brampton, Ontario, with multiple lien claimants in respect of the *Project*. The *Construction Manager* acknowledges that it is being retained by the *Owner* because of its knowledge and expertise in that regard. In performing its obligations, duties and responsibilities under this *Agreement* the *Construction Manager* shall exercise the degree of care, skill and diligence that would normally be exercised by an experienced, prudent *Construction Manager* supplying similar services for similar projects. The *Construction Manager* also warrants that it has a sufficient staff of qualified and competent personnel to replace any of the key personnel, subject to *Owner*'s approval, in the event of death, incapacity, termination or resignation.”

Article A-5 - Compensation for Services

5.3 ADD in the last sentence of paragraph 5.3 after “If there are no receipts or invoices,” the following:

“the parties agree to review such costs and where approved by the *Owner*,”

5.4 DELETE the words “The *Owner* may by written request require the *Construction Manager* to:” and replace with “The *Construction Manager* will:”

5.6 ADD new paragraphs 5.6 to 5.8 as follows:

“5.6 The *Construction Manager* shall inform the *Owner* in writing prior to incurring reimbursable expenses as described in paragraph 5.3 of Article A-5 - COMPENSATION FOR SERVICES.

5.7 The *Construction Manager* may perform a portion of the *Work* with its own forces (“Own Forces Work”) with the approval of the *Owner*, which approval will not be unreasonably withheld, conditioned or delayed. Such *Own Forces Work* shall be demonstrated to the reasonable satisfaction of the *Owner* why the performance of such *Own Forces Work* is in the best interest of the *Owner*. The *Owner* shall pay to the *Construction Manager* the amount for such *Own Forces Work* in addition to the fees set out in Article A-5.

5.8 The *Construction Manager* shall provide Post-Construction *Services* as described in Section 3 - Post-Construction of Schedule A1 of the contract. The Post Construction phase shall begin on the *Final Occupancy Date* of the *Project* and shall end upon *Total Completion of the Project*.

Article A-6 - Payment

6.2 DELETE paragraph 6.2 in its entirety and replace it with the following:

“6.2 The *Construction Manager’s* fee shall accrue based on the estimated percentage of the *Work* that has been completed.”

Article A-7 - Receipt of and Addresses for Notices in Writing

7.2 In paragraph 7.2 delete the words “facsimile or other” and replace with the word “a”.

7.4 In paragraph 7.4 delete the words “facsimile or other” and replace with the word “a”.

Article A-9 - Succession

9.2 ADD new paragraph 9.2 as follows:

“9.2 KSV Restructuring Inc. is executing this Agreement on behalf of Vandyk - Heart Lake Limited solely in its capacity as Court-appointed receiver and manager of certain assets, property and undertakings of Vandyk - Heart Lake Limited and not in personal, corporate or any other capacity and none of KSV Restructuring Inc. (in its capacity as court-appointed receiver and manager of certain assets, property and undertakings of Vandyk - Heart Lake Limited), KSV Restructuring Inc. (in its own right) or any of their respective directors, officers, agents, servants or employees shall have any personal or corporate liability hereunder or at common law, or by statute, or equity or otherwise as a result hereof. Any claims of Construction Manager shall be limited to and only enforceable against the property of Vandyk-Heart Lake Limited.”

C. SCHEDULE A1 - SERVICES AND COMPENSATION

1. PRECONSTRUCTION

1.2.3 ADD a new paragraph 1.2.3 as follows:

“1.2.3 **Budgeting:** In connection with the *Project* budget, advise the *Owner* on which *Trade Contractors* should be retained taking into account and amounts payables and construction lien amounts.”

1.3.4 DELETE the words “Assist in providing liaison and coordination” and REPLACE with “Liaise and coordinate”

1.4.1 ADD to the end of paragraph 1.4.1(1) “and make commercially reasonable recommendations for alternatives based on any known potential issues of the foregoing.”

1.5.1(2) In first line add the word “commercially reasonable” between the words “make” and “recommendations”.

1.5.6 DELETE paragraph 1.5.6 in its entirety and replace with the following: “Prepare, collate, assemble and distribute bid packages/bid documents.”

1.6.1 DELETE paragraph 1.6.1(1) in its entirety and REPLACE it with the following:

“(1) Review, update and finalize the *Project* schedule (said schedule, and each update thereto, to be in electronic format, indicating the critical path for the *Project*) with appropriate details, and break down this schedule into individual networks for each phase of the *Project* where necessary, showing the sequence and timing of the main construction operations and the milestone completion operations and the milestone completion dates for the various phases. Initial schedule update to be provided by *Construction Manager* by November 1, 2024. The *Construction Manager* will make best efforts to finalize the milestone schedule by November 1, 2024. Initial occupancy is expected by December 2025 with a target completion of all blocks by December 2026. The milestone schedule includes sufficient days for adverse or inclement weather that prevent the *Work* from being conducted on that day (“Weather Days”). Notwithstanding same, the *Construction Manager* acknowledges and agrees that the *Owner* may have schedules in place with the *Trade Contractors* that are of shorter duration than the original/baseline schedule and that *Construction Manager* will continuously endeavour to improve the original/baseline schedule based on these *Trade Contractor* schedules. Each reference to “schedule” in this agreement shall refer to a type of schedule indicated within this paragraph.”

1.6.2(3) add the words “and manage” after the word “Review” and at the end of the same paragraph add the sentence “Prepare detailed Scopes of Work for each *Trade Contract*”.

1.6.3 DELETE AND REPLACE 1.6.3 as follows:

“With the exception of *Trade Contractors* required to commence work on the site servicing, for which *Construction Manager* is to proceed with immediately, solicit bids from a minimum of three (3) mutually acceptable *Trade Contractors* for scopes of work

cumulatively over \$50,000 in value, unless it is mutually agreed between the parties to revise this strategy. In addition, the parties agree to work together to identify criteria that will be used as part of the *Trade Contractor's* evaluation process prior to the *Owner's* award of the *Trade Contractor* for the *Project*. The primary criteria will include the *Trade Contractor's* ability to achieve the *Project* schedule and provide surety bonding to protect the *Owner* from *Supplier* or *Trade Contractor* default.”

1.6.4 ADD the following sentence at the end of 1.6.4:

“, including the development and implementation of a process whereby bids from *Trade Contractors* are to be opened and reviewed with *Owner* personnel present (bids received by email are exempted from this process). Conduct a detailed analysis of all trade bids including bid reviews with trades to confirm accuracy and completeness of the individual subtrade bids.”

1.6.6 ADD a new paragraph 1.6.6 as follows:

“1.6.6 Analyze, review and propose changes (if any) to proposed scope of work of *Trade Contractors*.”

1.6.7 ADD a new paragraph 1.6.7 as follows:

“1.6.7 Update the *Construction Cost* estimate to incorporate the prices of all trade contracts awarded including the variances to the budget.”

1.6.8 ADD a new paragraph 1.6.8 as follows:

“1.6.8 Participate in negotiations with *Trade Contractors* and *Suppliers* and prepare the CCDC 17 contracts together with supplementary conditions for each *Trade Contractor* with scope and terms that are approved in writing by the *Owner*.”

2. CONSTRUCTION

2.1.3 ADD the words “subject to informing and obtaining the *Owner's* approval” after the word “administration”.

2.1.3(4) DELETE AND REPLACE the wording “a schedule” with the wording “the schedule”.

2.1.3(6) DELETE AND REPLACE “30 *Working Days*” with “20 *Working Days*” and add the following to the end of the paragraph “For clarity, the *Construction Manager* will notify the *Owner* within 10 *Working Days* of any *Trade Contractor* claims and any findings on those claims will be presented within 20 *Working Days*”.

2.2.1(3) DELETE the word “general”.

2.2.2 ADD a new paragraph 2.2.2 as follows:

“2.2.2 (1) Prior to commencement of construction, and fully incorporating any schedules received from the *Trade Contractors*, submit to the *Owner* and the

Consultant for approval a baseline schedule indicating the critical path for the *Project*, demonstrating that the work will be performed within the contract time so as to meet the *Project-in-use Date*.

(2) Provide the expertise, resources and co-ordination necessary to ensure that the *Trade Contractors* are able to maintain progress of the *Project* schedule or any successor schedule or revised schedule approved by the *Owner*.

(3) Monitor the progress of the *Work* on a weekly basis relative to the *Project* schedule or any successor or revised schedule, updating the schedule on a monthly basis and promptly advise the *Consultant* and the *Owner* of any variation from the baseline or slippage of the schedule, and should it appear that the actual progress of the *Work* is behind schedule, or likely to become behind schedule, based on critical path methodology, promptly make recommendations to the *Owner* and the applicable *Trade Contractors* and take appropriate steps to enable the *Trade Contractors* to implement a recovery plan.”

2.4.1 ADD at the end of paragraph 2.4.1(6) after “schedule” the following words:

“, and update and revise the *Project* budget from time to time to account for changes and additions to the *Project*”

2.4.1(6) INSERT the word “feasible” before the word “recommendations”.

2.4.1 ADD a new paragraph 2.4.1(7) as follows:

“(7) Review *Trade Contractors*’ conformance with *Notice to Bidders* (if any) issued by the *Owner* and conformance with the scope of work, plans, drawings and specifications related to the individual *Trade Contractors*, advise the *Owner* of any non- conformance discovered by the *Construction Manager*, advise the *Owner* of any suggestions to get *Trade Contractor* to achieve conformance and carry out the *Owner*’s instructions to achieve conformance by such *Trade Contractors*.”

2.5.1(4) INSERT the words “*Owner* and the” before the word “*Consultant*”.

2.6.1(3) INSERT the words “*Owner* and the” before the words “*Payment Certifier*”.

2.6.2 ADD the words “, check and verify” after the word “determine” in paragraph 2.6.2(1).

2.6.2 ADD new paragraph 2.6.2(2) as follows:

“2.6.2(2) Advise the *Owner* on the maintenance and administration of the basic holdback and finishing holdback required by any lien Legislation applicable to the *Place of the Project* in respect of the *Work* of *Trade Contractors* and/or *Suppliers*.”

2.6.3 ADD a new paragraph 2.6.3 as follows:

“2.6.3 Assist the *Payment Certifier* and *Owner* with the review and verification of all applications for payment received by *Trade Contractors* and *Suppliers*.”

2.7.1 INSERT the words “the *Owner*,” before the words “the *Construction Manager*”.

2.7.1 ADD a new paragraph 2.7.1(3) as follows:

“2.7.1(3) Manage in a timely manner the rectification of all rejected, deficient and/or incomplete *Work* until it is completed to the satisfaction of and with the approval of the *Owner* and the *Consultant*.”

2.7.1 ADD anew paragraph 2.7.1(4) as follows:

“2.7.1(4) Review scope of work of all *Trade Contractors* and take all reasonable steps to ensure coordination as between *Trade Contractors* in the carrying out of the *Work*.”

2.8.1 DELETE paragraph 2.8.1(1) in its entirety and REPLACE it with the following:

“.1 (1) Subject to GC 10.6 SAFETY, be responsible for establishing, initiating, maintaining and supervising the health and safety precautions and programs at the *Place of the Project* in respect of the use of its own forces and the overall *Place of the Project* for all *Trade Contractors* and *Suppliers*, in compliance with the rules, regulations and practices required by the applicable health and construction safety legislation at the *Place of the Project* and as further specified herein.”

2.8.1 ADD at the end of paragraph 2.8.1(2) after “compliance” the words:

“with the rules, regulations and practices required by the applicable health and construction safety legislation and, subject to GC 10.6 SAFETY, take all reasonable steps to require each of those *Trade Contractors* to carry out their obligations under such applicable health and construction safety legislation while they are performing the *Work* at the *Place of the Project*. *Construction Manager* shall cooperate with *Owner’s* safety consultant, the cost of whom shall be borne solely by *Owner*. The parties agree that any such *Owner’s* safety consultant does not relieve the *Construction Manager* of any of its role and/or responsibilities related to health and safety.”

2.9.1(3) DELETE the words “Upon request by any *Trade Contractor* or the *Consultant, jointly*”.

2.10.1(2) INSERT the words “current and” after the word “all”.

2.11.1(1) DELETE the words “Assist the *Owner* in coordinating and monitoring” and INSERT in their place the words “Coordinate and monitor”.

2.11.1(2) ADD the words “for full building operation and use.” after the word “equipment”.

2.12.1(2) INSERT the words “which have been reviewed and approved by the *Owner*” after the words “Trade Contractor”.

2.12.1(3) INSERT the words “to 100% total completion” after the word “corrected”.

2.13.1 ADD a new paragraph 2.13.1(2) as follows:

“2.13.1(2) Carry out services that are reasonably required to obtain *Total Completion of the Project.*”

2.14.1 ADD a new paragraph 2.14.1(6) as follows:

“(6) Assemble all construction documents, manuals, maintenance materials and replacement parts in accordance with the specifications.”

3. POST-CONSTRUCTION

3.2.1 ADD the words “and directing all *Trade Contractors* to complete any work and provide any documents which the Owner requires to register the Project as a condominium pursuant to Section 2 of the Condominium Act”.

3.3.1 ADD at the beginning of paragraph 3.3.1 before “assist” the following:

“Obtain and deliver to the *Owner*, in an organized and collated fashion, those warranties, manuals and guarantees to which the *Owner* is entitled in respect of the *Project*, and”

ADD at the end of paragraph 3.3.1 after the word “warranties” the following:

“including, but not limited to, assisting in the seeming of warranty obligations being performed by the *Trade Contractors* and/or *Suppliers* and reviewing compliance with all warranty related items.”

3.3.2 ADD a new paragraph 3.3.2 as follows:

“3.3.2 Assist the *Owner* with condominium audits (i.e. first and/or second year TARION related audit carried out by the board of directors of the condominium corporation, or the entity directed by them, one year and/or two years after the registration of the *Project* as a condominium(s)) and manage the rectification of deficiencies and assist with deficiencies identified under the TARION guidelines.”

3.3.3 ADD a new paragraph 3.3.3 as follows:

“3.3.3 Assist with PDI process as mutually agreed with the *Owner*. For clarity, the *Owner* shall be responsible for the management of the PDIs, including scheduling inspections, meeting with homeowners, compiling lists, and final inspections. Responsibilities related to various inspections and audits is further delineated as follows:

Item	Managed by Construction Manager	Managed by Owner
PDI deficiency correction	✓	

30-day inspection deficiencies, other than those carried over	✓	
from the initial POI	✓	
Pre-tech audit deficiencies	✓	
Pre-tech audit cost	✓	
Tech audit major items requiring a Trade Contractor to return to fix a deficiency	✓	
Tech audit deficiencies not requiring a Trade Contractor to return	✓	

”

4. SERVICES DURING ALL PHASES OF THE PROJECT

3.4.1 ADD as 3.4.1 the following:

“3.4.1 Except as noted below, the following *Services* to be provided by the *Construction Manager* are to be paid as FI:

- (1) Attend regular design meetings during *Project* development and during the construction of the *Project* and provide recommendations on construction feasibility, alternatives, availability of materials and labour, time requirements for installation and construction, and factors related to cost.
- (2) Conduct a review and provide any relevant feedback (including comments on coordination issues) on drawings and specifications, it being acknowledged that the *Construction Manager* is not responsible for any aspect of the design of the *Project* or for coordination between design disciplines.
- (3) Provide suggestions to mitigate the impact of incomplete and uncoordinated documents whether resulting from early tender issues or otherwise, all without assuming any liability for the design of the *Project*.
- (4) Provide advice to the *Owner* and the *Consultant* with respect to the documentation required for and timing of tender document to be issued early in the *Project*.
- (5) Determine the logistics and requirements for the setup of the site during construction.
- (6) Work with the *Owner* and the *Consultant* to develop measures to optimize construction efficiencies and mitigate the impact of the construction on adjacent highways, occupied or public use areas. This requirement includes the *Construction Manager’s* compliance with all applicable health and safety laws and regulations,

including OHSА, as well as the *Owner's* policies and procedures and any supplementary requirements of the *Owner*.

- (7) The *Construction Manager*, in coordination with the *Owner* or a representative, will take steps to manage the rectification of construction defects and/or deficiencies as part of pre-delivery inspections of the condominium units and as part of the process of obtaining occupancy of the units. It is explicitly agreed and understood that the *Construction Manager* shall only be responsible for coordinating with the *Owner* or a representative with respect to rectification of construction defects and/or deficiencies in services and materials supplied by *Trade Contractors* following the signing of this *Contract*. The parties explicitly agree that the *Construction Manager* shall not be responsible for coordinating with any *Trade Contractors* who supplied services and/or materials prior to the signing of this *Contract*, unless otherwise accepted by the *Construction Manager* in writing on a case-by-case basis, provided that *Construction Manager* shall be responsible for an alternative solution to the rectification of construction defects and/or deficiencies in services and materials supplied by trade contractors prior to signing of the *Contract* sufficient to achieve *Ready for Occupancy*.
- (8) Implement, provide a copy of same to the *Owner* and the *Consultant*, and monitor a Quality Assurance/Quality Control plan and take all reasonable steps to ensure compliance with same in relation to all *Trade Contractors* and *Suppliers*.
- (9) The *Construction Manager* shall suggest value engineering cost savings proposals to the *Owner* and/or *Consultant* with respect to the *Work* on an ongoing basis without assuming liability for the design of the *Project*."

SCHEDULE A2 OF THE AGREEMENT

Item 1 In the first line DELETE the words "and subsistence" and ADD to the end of the paragraph "Subsistence expenses for travel related to the *Project* in excess of 150km from the *Place of the Project* shall be reimbursable".

Item 2 DELETE the words "long distance telephone and facsimile communications".

Item 5 ADD the word "direct" before the word "costs".

Item 6 ADD the following words to the end: "provided that the charges are not caused by negligent acts or omissions of the *Construction Manager* and the *Services* are performed in accordance with this *Contract*."

Item 7 ADD to the end of the paragraph the following: "provided these are not caused by the negligent acts or omissions of the *Construction Manager*."

Item 10 ADD the following at end of sentence "provided that the costs are not caused by negligent acts or omissions of the *Construction Manager* and the *Services* are performed in accordance with this *Contract*."

D. SCHEDULE B1 -ADDITIONAL SERVICES AND COMPENSATION

Add the following as additional services:

- “1. It is agreed that during the completion of the *Project* the *Construction Manager* may with the agreement of the *Owner* perform portions of the *Work* which would typically be performed by a *Trade Contractor* such as but not limited to clean up, *Temporary Work*, minor scopes and the like. The *Construction Manager* will be compensated for the performance of the *Work* as per F3 (based on time-based rates) as per the rates listed in Schedule C after receiving the *Owner's* written approval to perform any such *Work*. The *Construction Manager* will also be afforded the opportunity to bid for various scopes of work as own forces work but shall only carry out such work upon the written acceptance of said work by the *Owner*. No additional fee or additional costs shall be applied if general labour is used that is already contained within the project budget and costing.
2. If any claim for lien/construction lien of a *Trade Contractor* is registered against title to the *Project*, the *Construction Manager* will co-operate promptly and fully with the *Owner* to provide the *Owner* such information and documentation as the *Owner* reasonably requires to take the steps necessary to have the claim for lien vacated and/or discharged from the *Owner's* title and/or to assist the *Owner* in dealing with and/or resolving any claim for lien/construction lien.
3. All additional services provided by the *Construction Manager* on an F3 (fee to the *Construction Manager* based on time-based rates as described in paragraph 5.2.3 of Article A-5) basis are subject to the prior written agreement/approval of the *Owner* with rates and costs to be pre-approved and verified.”

E. DEFINITIONS***Consequential Damages***

ADD a new term to the Definitions as follows:

“*Consequential Damages* are indirect, incidental, special or consequential damages whatsoever arising out of or in connection with the *Contract*, whether arising out of a claim by the *Owner*, the *Construction Manager* or a claim by a third party, in negligence, tort, statute, equity or common law, or any other cause of action or legal theory even if the party has been advised of the possibility of those damages, including without limitation: lost profits, anticipated or lost revenue, loss of product, loss of use of any systems, networks, rental expenses, income, financing, business and reputation, loss of management or employee productivity or the services of such persons, principal office expenses, compensation of personnel stationed at principal office, failure to realize expected savings or any other commercial or economic loss, whether incurred by the *Owner*, the *Construction Manager* or a third party.”

ADD a new term to the Definitions as follows:

Indemnitees

Indemnitees means Owner, KSV Restructuring Inc. and their respective agents, representatives, directors, officers, employees and successors and assigns.

Construction Cost

DELETE the definition of *Construction Cost* and replace as follows:

“Construction Cost”

“Construction Cost means the actual cost of all elements of the Project but excluding applicable value added taxes, whether recoverable or not. Construction Cost includes *Supplier and Trade Contractor costs, Construction Manager’s fee for Services Reimbursable Expenses* and the cash allowance, but excludes Owners soft costs, permits, development charges, letters of credit, and all fixtures, furnishings and equipment), unless the Construction Manager is overseeing the installation of such fixtures, furnishings and equipment.”

Final Occupancy Date

ADD a new definition for *Final Occupancy Date*:

The *Final Occupancy Date* is the date on which the City of Brampton permits the occupancy of all of the apartment units included in the Project by issuing either an occupancy permit for the units or the last of a series of occupancy permits for the units.

Related Transaction

ADD a new term to the Definitions as follows:

“Related Transaction”

“A Related Transaction is a transaction in which the *Trade Contractor* under the control of or affiliated with the *Construction Manager* is performing or intending to perform *Work*.”

Payment Certifier

Delete the description of the *Payment Certifier* and replace it with the following:

“The Payment Certifier is Glynn Group or any replacement cost monitor that may be appointed by the construction lender to the *Owner*. “

Project In-Use Date

ADD to the end of the definition of *Project In-Use* date the following:

“and for greater clarity the Project In-Use Date will have been achieved when the *Project* has reached *Substantial Performance of the Work*. ”

Ready for Occupancy

ADD a new term to the Definitions as follows:

“Ready for Occupancy means all the Work in respect of a block is substantially complete and meets all of the requirements of the agreement of purchase and sale with the purchaser to allow for closing other than land titles registration.”

Total Completion of the Project

ADD a new term to the Definitions as follows:

“Total Completion of the Project”

“Total Completion of the Project means when the Work of all Trade Contractors, Suppliers, and any Work performed by the Construction Manager, except for those items relating to ongoing work required under warranties, has been performed to the requirements of the Construction Documents, interim and final occupancy permits have been obtained and the Work is deemed to be complete in accordance with the provisions of the Construction Act (Ontario) or any successor legislation and for greater certainty Total Completion of the Project is achieved when all of the Work that is required to register the Project as a condominium pursuant to Section 2 of the Condominium Act of Ontario has been completed to the extent that such Work forms part of the contracted scopes of the Construction Manager and Trade Contractors. For clarity, the Construction Manager will not be responsible to complete items that prevent registration of the Project as a condominium for items outside its control such as change of law or specific Owner responsibilities.”

Weather Day

ADD a new term to the Definitions as follows:

“Weather Day”

“Weather Day has the meaning ascribed in Schedule A1 paragraph 1.6.1(1) and for greater certainty work on the Project was unable to be conducted on that day.”

F. GENERAL CONDITIONS

GC 1.1 Contract Documents

1.1.1.1 DELETE paragraph 1.1.1.1 in its entirety and REPLACE it with the following:

“.1 The order of priority of documents, from highest to lowest, shall be

- Any changes to the Services pursuant to Part 5 Changes or any amendments to the Agreement as mutually agreed to by the Parties.*
- Supplementary Conditions,*

- the Agreement between the *Owner* and the *Construction Manager* (including the Schedules to the Agreement),
- the Definitions,
- the General Conditions,
- the specifications,
- material and finishing schedules,
- the drawings”

GC 2.1 Services

2.1.2 ADD to the end of paragraph 2.1.2 the following:

“, so long as these individuals are within the employ of the *Construction Manager*”

2.1.5 DELETE the last sentence starting with “In making such interpretations...”

2.1.6 ADD as a new paragraph 2.1.6 the following:

“2.1.6 The *Construction Manager* shall not undertake or recommend any *Related Transaction* on this *Project* unless it first obtains the written consent of the *Owner*.”

2.1.7 ADD as a new paragraph 2.1.7 the following:

“2.1.7 Should the *Construction Manager* become aware that the information provided by the *Owner* pursuant to paragraph 3.1.1.10 of GC 3.1 PROVISION OF INFORMATION AND OBLIGATIONS is incomplete or inaccurate, the *Construction Manager* shall notify the *Owner* in writing the particulars of the error.”

ADD new GC 2.2 Review and Inspection of the Work as follows:

“GC 2.2 REVIEW AND INSPECTION OF THE WORK

2.2.1 The *Construction Manager* shall provide the *Owner* and the *Consultant* access to the *Work* at all times. The *Construction Manager* shall provide sufficient, safe and proper facilities at all times for the review of the *Work* by the *Consultant* and the inspection of the *Work* by authorized agencies. If parts of the *Work* are in preparation at locations other than the *Place of the Project*, the *Owner* and the *Consultant* shall be given access to such work whenever it is in progress.

2.2.2 If work is designated for tests, inspections or approvals in the *Contract Documents*, or by the *Consultant*'s instructions, or by the laws or ordinances of the *Place of the Project*, the *Construction Manager* shall give the *Consultant* reasonable notification of when the work will be ready for review and inspection. The *Construction Manager* shall arrange for and shall give the *Consultant* reasonable notification of the date and time of inspections by other authorities.

- 2.2.3 The *Construction Manager* shall furnish promptly to the *Consultant* two copies of certificates and inspection reports relating to the *Work*.
- 2.2.4 If the *Construction Manager* covers, or permits to be covered, work that has been designated for special tests, inspections or approvals before such special tests, inspections or approvals are made, given or completed, the *Construction Manager* shall, if so directed, uncover such work, have the inspections or tests satisfactorily completed, and make good covering work at the *Construction Manager's* expense.
- 2.2.5 The *Consultant* may order any portion or portions of the *Work* to be examined to confirm that such work is in accordance with the requirements of the *Contract Documents*. If the work is not in accordance with the requirements of the *Contract Documents*, the *Construction Manager* shall correct the work and pay the cost of examination and correction at the *Construction Manager's* expense. If the work is in accordance with the requirements of the *Contract Documents*, the *Owner* shall pay the cost of examination and restoration.”

ADD new GC 2.3 Defective Work as follows:

“GC 2.3 DEFECTIVE WORK

- 2.3.1 The *Construction Manager* shall promptly supervise the correction defective work that has been rejected by the *Consultant* as failing to conform to the *Contract Documents* whether or not the defective work has been incorporated in the *Work* and whether or not the defect is the result of poor workmanship, use of defective products or damage through carelessness or other act or omission of the *Construction Manager or a Trade Contractor*.
- 2.3.2 The *Construction Manager* shall promptly direct the affected *Trade Contractor* to make good other contractors' work destroyed or damaged by such removals or replacements.”

GC 3.1 Provision of Information and Obligations

3.1.1.5 DELETE the second sentence in the paragraph that starts with “Such agreements”.

3.1.1.6 DELETE this paragraph and REPLACE with “provide the CM with final copy of all *Trade Contracts*.” 3.1.1.8 ADD to end of paragraph 3.1.1.8(2) “such formal notices to be prepared by the *Construction Manager*” before the word “or” 3.1.1.10 ADD at the end of paragraph 3.1.1.10 after the word “information” the following:

“unless the *Construction Manager*, acting reasonably, becomes aware that the information is in some way incomplete or inaccurate” 3.1.1.15 ADD at the end of paragraph 3.1.1.15 the following:

“, including, but not limited to any TARION requirements.”

3.1.2 DELETE the paragraph in its entirety and replace with “The *Construction Manager* shall be responsible for: construction health and safety at the *Place of the Project* in compliance

with the rules, regulations and practices required by the applicable health and safety legislation; and establishing, initiating, maintaining and supervising all health and safety precautions and programs in connection with the performance of the *Work*.

- 3.1.3 ADD new 3.1.3: “For greater certainty, as the “Constructor” within the meaning of the Occupational Health and Safety Act (Ontario) (“OHSA”) the *Construction Manager* shall be responsible for construction safety at the *Project* and for ensuring compliance with the rules, regulations and practices required by the OHSA. The Owner has authority to stop the progress of the *Work* whenever in the reasonable opinion of the Owner such stoppage is necessary to ensure the safety of life, or of the *Work* or of neighboring property.”
- 3.1.4 ADD new 3.1.4: “The *Construction Manager* shall, prior to the commencement of the work, provide to the *Owner*:
- a) A current WSIB clearance certificate;
 - b) Documentation of the *Construction Manager’s* safety related programs for the *Project*; and
 - c) Copies of the Notice of Project filed with the Ministry of Labour naming itself as the “Constructor” under the OHSA.

GC 4.1 Applications for Payment

- 4.1.3 ADD a new paragraph 4.1.3 as follows:

“4.1.3 Should the *Construction Manager’s* compensation be based in whole or in part on time-based rates for personnel employed by the *Construction Manager*, the application for payment shall include an itemized list of costs in respect of *Services* rendered and/or *Work* performed by the *Construction Manager*, its own forces or any one engaged directly by the *Construction Manager*, and shall also contain an itemized list of any compensation claimed for expenses included in SCHEDULE A2 - REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE A1 and SCHEDULE B2 - REIMBURSABLE EXPENSES APPLICABLE TO SCHEDULE B1.”

GC 4.2 Payment

- 4.2.1 DELETE the number “20” and replace with the number “28”.

- 4.2.5 ADD new paragraph 4.2.5 as follows:

“4.2.5 The Owner, or its agents, shall be afforded access to, and rights to audit, all accounts and records of the *Construction Manager* for the *Project* (including, without limitation, all relevant records, time sheets, docketed time for each individual, books, drawings, Subcontractor and supplier invoices, related correspondence, instructions, receipts, vouchers, memoranda and similar data) at any and all times during the term of this Contract.”

GC 5.1 Changes to the Project

- 5.1.5 ADD the words “reasonable and verified” after the word “additional”, and ADD “for on-site staff, site office and other related costs” after the wording ‘additional costs’

GC 6.1 Owners’ Right to Terminate the Contract

- 6.1.3.2 DELETE paragraph 6.1.3.2 in its entirety and replace it with the following:

“.2 provides a schedule that is acceptable to the *Owner*, acting reasonably, for such correction. and”

- 6.1.5 Delete the number “30” and replace it with the number “28”.

- 6.1.8.1 Delete the number “30” and replace it with the number “28”.

- 6.1.8.2 DELETE the paragraph in its entirety and replace with “The Construction Manager shall be entitled to costs and associated fees incurred up to the date of termination.”

GC 6.2 Construction Manager’s Right to Terminate the Contract

- 6.2.3.2 DELETE the paragraph in its entirety and replace with “The Construction Manager shall be entitled to costs and associated fees incurred up to the date of termination.”

GC 7.1 Negotiation, Mediation and Arbitration

- 7.1 DELETE General Conditions 7.1.1, 7.1.2, 7.1.3 and 7.1.4 and insert the following:

“7.1.1 If a dispute arises under the *Contract*, the claimant party or either party shall give *Notice in Writing* of such dispute to the other party. The notice shall set out particulars of the matters in dispute, the probable extent and value of any claim and the relevant provisions of the *Contract Documents*. The other party shall reply to such notice no later than fourteen (14) calendar days after it receives the notice, setting out in such reply its position on the dispute and any relevant provisions of the *Contract Documents*.

7.1.2 The parties shall make all reasonable efforts to resolve their dispute by amicable negotiations and agree to provide, without prejudice, frank, candid and timely disclosure of relevant facts, information and documents to facilitate these negotiations.

7.1.3 If the dispute has not been resolved within ten (10) *Working Days* following receipt of a responding party’s *Notice in Writing* in reply under paragraph 7.1.1 or within such further period agreed to by all parties, then by giving a *Notice in Writing* to the other party either party may refer the dispute to be finally resolved by arbitration in accordance with the Rules for Mediation and Arbitration of Construction Disputes as provided in CCDC 40 in effect as at the date of this *Contract*. Such notice of arbitration shall be given no later than 30 *Working Days* following receipt of a responding party’s *Notice in Writing* of reply under paragraph 7.1.1.

7.1.4 Prior to the arbitration being conducted and as soon as is reasonably practicable, the parties shall mediate their dispute with a mediator mutually chosen by them.”

- 7.1.5 ADD a new paragraph 7.1.5 as follows:

“7.1.5 Should either party wish to adjudicate any dispute that is properly subject of an adjudication pursuant to the Construction Act (Ontario), unless the parties agree otherwise, General Condition 7.1 shall no longer be applicable and the determination of the dispute, including appeal rights, shall be made in accordance with the Construction Act (Ontario).”

GC 8.1 Insurance

DELETE GC 8.1 and REPLACE as follows:

“GC 8.1 Insurance

8.1.1 Without restricting the generality of GC 9.1 - INDEMNIFICATION, or the responsibility of the *Construction Manager* under the Contract, insurance coverage will be arranged and paid for as follows:

8.1.2 Project Specific Insurance

The *Owner* shall purchase, maintain and pay for the following types of insurance policies issued by insurance companies licensed to carry on business in the Province of Ontario:

.1 “All Risk” Builders’ Risk (property) Insurance Coverage

This policy shall cover “All Risks” of direct physical loss or damage to the *Project*, including the perils of sewer back-up, earthquake and flood, subject to customary exclusions. The policy is to include, at minimum DE4/LEG3 extension, with respect to damage caused by faulty workmanship, materials or design. It shall cover all property forming part of the *Project*, including goods and materials to be incorporated in the *Project* while at the *Place of the Project*. It shall not provide coverage for contractors’ equipment (owned or leased or rented) other than scaffolding, formwork, fences, shoring, hoarding, falsework, tarpaulins and temporary buildings in connection with the construction operations.

The policy shall be written in the joint names of the *Owner, Construction Manager, Trade Contractors* of any tier, architects, engineers, consultants, and subconsultants (except for professional liability errors or omissions in professional services) engaged in the *Project*, excluding any such entities whose only function is to supply and/or transport materials, machinery or supplies to the *Place of the Project* and who do not perform any installation or construction work at the *Place of the Project*.

The policy shall provide for a limit of coverage not less than the estimated final completed value replacement cost of the *Project*, including but not limited to all applicable hard costs and recurring and soft costs, and if required by *Owner* delay in start-up coverage with a minimum 24-month indemnity period, and certain sublimits usual to this type of insurance. The policy shall contain a waiver of the insurer’s subrogation rights against all insureds and their directors, officers, employees, servants, and agents, with the exception of architects, engineers, manufacturers and consultants for their professional liability errors or omissions in professional services.

Each claim under this insurance policy shall be subject to a maximum general deductible of \$100,000.00 except for the following perils which shall be subject to possible higher maximum deductibles as shown:

Water Damage/Sewer Backup	\$250,000.00 each claim
DE5/LEG3 (if applicable):	\$250,000.00 each claim
Flood:	\$250,000.00 each claim
Testing & commissioning:	\$100,000.00 each claim
Earthquake:	3% of the value of the property insured at the time of loss subject to a minimum deductible of \$100,000.00 each claim.

Formal applicable policy deductibles to be confirmed upon binding of coverage.

This policy shall be maintained continuously from commencement of the *Work* until the *Project* is registered as a condominium corporation.

The policy shall provide that, in the case of a loss or damage, payment shall be made solely to the *Owner* and/or the *Owner's* mortgagee and the *Construction Manager* as their interests may appear. The *Owner* shall act on behalf of the named insureds for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, and there has been a release by the insurers, the *Owner*, *Construction Manager* and *Trader Contractors* shall proceed to restore the *Work*, except in the event of total destruction, in which case the *Owner* shall determine the next steps to be taken in consultation with the insurers. Loss or damage shall not affect the rights and obligations of either party under the *Contract*.

.2 Equipment Breakdown Insurance

This policy shall cover all boilers, pressure vessels, refrigerating or air conditioning equipment, and any mechanical or electrical machine or electrical apparatus used for the generation, transmission or utilization of mechanical or electrical power forming part of the *Project*.

The policy shall provide broad comprehensive coverage on all insured objects on a blanket basis, subject to customary exclusions. It shall be written in the joint names of the *Owner*, *Construction Manager*, *Trade Contractors* of any tier, architects, engineers, consultants, and subconsultants (except for professional liability errors or omissions in professional services) engaged on the *Project*, excluding any such entities whose only function is to supply and/or transport materials, machinery or supplies to the *Place of the Project* and who do not perform any installation or construction work at the *Place of the Project*.

The policy shall provide for a Limit of coverage not less than the estimated final completed value of the *Project*, with certain sublimits usual to this type of insurance. The policy shall contain a waiver of the insurer's subrogation rights against all insureds and their directors, officers, employees, servants, and agents, with the exception of architects, engineers, manufacturers and consultants for their professional liability errors or omissions in professional services.

This policy shall be maintained continuously from commencement of use or operation of the equipment breakdown objects insured by the policy until the *Project* is registered as a condominium corporation.

The policy shall provide that, in the case of a loss or damage, payment shall be made solely to the *Owner* and/or the *Owner's* mortgagee and the *Construction Manager* as their interests may appear. The *Owner* shall act on behalf of the named insureds for the purpose of adjusting the amount of such loss or damage payment with the insurers. When the extent of the loss or damage is determined, and there has been a release by the insurers, the *Owner*, *Construction Manager* and *Trade Contractors* shall proceed to restore the *Work*, except in the event of total destruction, in which case the *Owner* shall determine the next steps to be taken in consultation with the insurers. Loss or damage shall not affect the rights and obligations of either party under the *Contract*.

This coverage can be included within the required insurance outlined in 8.1.2.1 - "All Risk" Builders Risk Insurance.

.3 Wrap-Up Liability Policy

This policy shall cover the risks of liability for bodily injury, including death and for third party property damage arising from the activities at the *Place of the Project*, subject to customary exclusions. It shall be written in the joint names of the *Owner*, *Construction Manager*, *Trade Contractors* of any tier, architects, engineers, consultants, and subconsultants (except for professional liability errors or omissions in professional services) engaged on the *Project*, excluding any such entities whose only function is to supply and/or transport materials, machinery or supplies to the *Place of the Project* and who do not perform any installation or construction work at the *Place of the Project*. It shall provide for a limit of liability not less than \$50,000,000.00 inclusive per occurrence for bodily injury, death, and damage to property including loss of use thereof, and a deductible of not more than \$100,000.00 per occurrence.

This policy shall include the following coverage features:

- a. Products and Completed Operations;
- b. Blanket Contractual Liability;
- c. Cross Liability and Severability of Interests Clause;
- d. Employers Liability;
- e. Contingent Employer's Liability;
- f. Personal Injury Liability;
- g. "Occurrence" basis coverage for Bodily Injury and Property Damage;

- h. Coverage for shoring, blasting, excavating, underpinning, pile driving, caisson work, grading, tunneling, and all work below ground surface (as required);
- i. Non-Owned Automobile Liability insurance, including third party liability arising from use and operation of hired vehicles.

This insurance shall be maintained continuously from commencement of the *Work* until the *Project* is registered as a condominium corporation. The completed operations coverage shall be maintained for a minimum of 24 months after the expiration of the policy.

.4 Project Specific Contractors' Pollution Liability

This policy shall be written in the joint names of the *Owner*, *Construction Manager* and *Trade Contractors* of any tier engaged on the *Project* with a limit of \$10,000,000.00 per claim and \$10,000,000.00 in the aggregate covering third party bodily injury, property damage, consequential loss or damage, including clean-up and restoration costs, both at the *Place of the Project* and off-site as required. This insurance shall be maintained continuously from commencement of the *Work* until the *Project* is registered as a condominium corporation. The Completed Operations coverage shall be maintained for a minimum of 24 months after the expiration of the policy.

.5 Deductible Amounts under Project-Specific Policies

The parties shall pay their share of the deductible amounts in direct proportion to their responsibility in regards to any loss for which the above policies are required to pay, except where such amounts may be excluded by the terms of this *Contract*.

.6 Project-Specific Insurance Premiums to be excluded from Contract

In consideration of the fact that the *Owner* shall provide and pay for the project-specific insurance policies described in this Article 8.1.2, the *Owner* shall require the *Construction Manager* to confirm that their *Contract Price* does not include any allowance for insurance premiums, in respect of risks covered by such insurance policies provided by the *Owner*.

For greater clarity, such premium deductions should be made for the following types of insurance normally carried by the *Construction Manager*:

- (a) Commercial General Liability insurance covering all operations (except for the cost of off-site and post completed operations coverage);
- (b) Builder's Risk insurance and/or Installation Floater insurance covering all projects on a blanket basis or on a project-specific basis; and
- (c) Project Specific Contractors' Pollution Liability.

.7 Cancellation Provisions

All project specific insurance policies shall, to the extent available, be non-cancellable, except for fraud or non-payment of premium. In the event there are cancellation provisions, then the cancellation has to take effect 60 days after notice of such cancellation.

.8 Evidence of Project-Specific Policies to be provided

The *Owner*, through the *Construction Manager*, shall promptly provide a certificate of insurance and copies of the insurance policies to any insured party upon request as evidence of the project-specific policies effected by the *Owner*.

.9 Supplementary Insurance

The *Owner* does not represent that the project-specific insurance policies described in this Article 8.1.2 will be sufficient to protect the *Construction Manager* or any other insured parties against all of their responsibilities under this *Contract*. The *Construction Manager* and any other insured parties may obtain such additional insurance as they may consider necessary at their own expense.

.10 Administration and Co-operation

The *Construction Manager* shall co-operate with the *Owner* in the administration of the project-specific insurance policies described in this Article 8.1.2, including promptly notifying the *Owner* of any claim or event or circumstance that may result in a claim.

8.1.3 Other Insurance

The *Construction Manager* shall purchase and maintain the following types of insurance with insurers licensed to underwrite insurance in the jurisdiction of the *Place of the Project*.

Unless specified otherwise, the duration of each such insurance policy shall be from the date of commencement of the Work until the *Project In-Use Date*.

.1 Automobile Insurance

This policy shall cover all licensed vehicles owned, operated or leased by the *Construction Manager*. It shall provide for third party liability limits not less than \$5,000,000.00 inclusive for bodily injury and property damage plus statutory accident benefits.

.2 Contractors' Equipment Insurance

This policy shall cover all tools and equipment including cranes and hoists if applicable, while in transit and/or while used at the project site by, or on behalf of, the *Construction Manager* against "All Risks" of direct physical loss or damage, including equipment breakdown and the perils of earthquake and flood, subject to customary exclusions. The contractors' equipment insurance policies shall contain a waiver of subrogation against the *Owner* and shall provide for 30 days prior written notice of cancellation to be given by the insurers to the *Owner*.

.3 Commercial General Liability Insurance (Off-site & Completed Operations)

This policy shall cover the risks of liability for bodily injury and property damage arising from the operations and activities away from the *Place of the Project* by the *Construction Manager*. This policy shall be subject to limits of liability not less than \$10,000,000.00. It shall include all of the coverage features listed in items (a) to (i) of Article 8.1.2.3 of this *Contract*, as well as *Owners'* and contractors' protective and broad form completed operations. This policy shall not contain any exclusions for work performed under project specific wrap up liability.

This insurance shall be maintained continuously from commencement of the *Work* to the expiry of the statute of repose in the Province or Territory of the *Place of the Project*.

Such policies shall be endorsed to add the *Owner*, and any other entity that the *Owner* may require, as an additional insured and provide for 30 days prior written notice of cancellation to be given by the insurers to the *Owner*.

.4 Professional Liability/Errors and Omissions Insurance

The *Construction Manager* shall provide, maintain and pay for professional liability insurance to cover the risks of errors, omissions or negligent acts in the performance of professional services for the *Project*.

This policy shall provide for a limit of liability not less than \$3,000,000.00 each claim and aggregate. It shall be written on a "Claims-Made" form and shall be maintained from commencement of the *Work* until 36 months after the *Project In-Use Date*. The policy shall provide for 30 days prior written notice of cancellation to be given by the insurers to the *Owner*.

.5 Aircraft and Watercraft Liability Insurance (if applicable to operations of the Construction Manager)

If the *Work* at the *Place of the Project* involves the use of owned or non-owned aircraft, drones or watercraft directly or indirectly in the performance of the *Work*, appropriate Aircraft Liability and/or Watercraft Liability insurance must be purchased and maintained for the duration of such operations by the party responsible for such operations. This policy shall provide limits of liability not less than \$10,000,000.00 per occurrence insuring against claims for bodily injury, including death and for property damage arising out of the use of such aircraft, drones or watercraft.

Such policies shall be endorsed to include the *Owner* as additional insureds and this policy shall apply as primary insurance and shall not call into contribution any other insurance available to the *Owner*.

Such policies shall provide for 30 days prior written notice of cancellation to be given by the insurers to the *Owner*.

.6 Marine Cargo Insurance (if applicable to operations of the Construction Manager)

If any property forming part of the *Project*, including goods and materials to be incorporated into the *Project*, is required to be transported by vessels as ocean marine cargo, appropriate ocean marine cargo insurance must be purchased to cover such cargo for full replacement value subject to the conditions of the Institute Cargo Clauses (All Risks), including war and strikes extensions, and including transits and storage where applicable, and losses suffered by the *Owner* due to delay.

If an entire vessel is chartered for shipping equipment, then Charterer's Liability insurance must be purchased in amounts sufficient to protect and indemnify the *Owner* and *Construction Manager* for all liability arising out of the chartering of such vessel.

This insurance must be purchased and maintained for the duration of such operations by the party responsible for such operations. Such policies shall provide for 30 days prior written notice of cancellation to be given by the insurers to the *Owner*.

.7 Worker's Compensation

The *Construction Manager* shall maintain itself in good standing with the Workplace Safety and Insurance Board and shall provide a certificate of good standing to the *Owner* on execution of this *Contract* and thereafter as determined.

.8 Additional Insurance

The *Construction Manager* shall purchase and maintain at its sole cost and expense any additional insurance which it is required to carry by law or which it considers necessary to cover risks not otherwise covered by insurance specified in this section.

The *Construction Manager* shall also purchase and maintain, such other insurance, or amendments to the foregoing policies, as the *Owner* may reasonably require and direct.

.9 Evidence of Insurance to be Provided

Prior to commencement of the *Services* and upon the placement, renewal, amendment or extension of all or any part of the insurance policies described in this Article 8.1.3, the *Construction Manager* shall promptly provide the *Owner* with certificates of insurance.

.10 Failure to Purchase or Maintain Insurance

If the *Construction Manager* fails to provide evidence that insurance policies described in this Article 8.1.3 have been purchased or maintained, the *Owner* shall have the right, after 5 days written notice, but not the obligation, to purchase and maintain such insurance and the cost thereof, including expenses incurred, shall be paid by the defaulting party to the *Owner* on demand or the *Owner* may deduct the cost thereof from the amount which is due or may become due to the defaulting party.

8.1.4 Preservation of Insurance Coverage

The *Construction Manager* will not do or omit to do anything that would prejudice, or result in loss of coverage under any policy of insurance required to be placed or maintained by the *Owner* or the *Construction Manager*.

8.1.5 Waiver of Rights regarding property damage

The *Construction Manager* hereby waives all rights of recourse against the *Owner* in respect of loss or damage to their owned, leased or hired property.”

GC 9.1 Indemnification

9.1.2 DELETE paragraph 9.1.2.2 in its entirety and replace with the following:

.2 In respect of losses suffered by the *Owner* and/or the *Construction Manager* for which insurance is not required to be provided by either party in accordance with GC 8.1 - INSURANCE, the limit shall be \$10,000,000.00.

GC 9.2 Waiver of Claims

Change all instances of “Project-in-Use Date” to “Total Completion of the Project” throughout all of GC 9.2

PART 10 ADDITIONAL CONDITIONS

ADD a new PART 10 ADDITIONAL CONDITIONS as follows:

“PART 10 ADDITIONAL CONDITIONS

GC 10.1 TOXIC AND HAZARDOUS SUBSTANCES

10.1.1 If the *Construction Manager* becomes aware of toxic or hazardous substances or materials at or on the *Project* that exceed the levels prescribed by applicable legislation at the *Place of the Project*, the *Construction Manager* shall take all reasonable steps, including stopping work on the *Project*, to ensure that no person suffers Injury, sickness or death and that no property is injured or destroyed as a result of exposure to or the presence of the substances or materials. Upon such discovery the *Construction Manager* shall immediately report the circumstances to the *Owner* in writing and any reasonable and direct additional costs resulting therefrom shall be reimbursable, provided that the *Construction Manager* or its own forces or direct trades and/or suppliers were not responsible for bringing toxic and hazardous substances on to the *Place of the Project*.

GC 10.2 WORKERS’ COMPENSATION

10.2.1 The *Construction Manager* shall, from time to time as requested by the *Owner*, provide evidence to the *Owner* that the *Construction Manager* is complying with workers’ compensation legislation applicable to the *Place of the Project*.

GC 10.3 CONSTRUCTION LIENS

- 10.3.1 Provided that the *Owner* is not in default of its undisputed payment obligations under this *Contract*, upon the registration or preservation of a claim for lien and/or a certificate of action against title to the *Place of the Project* by any of the *Construction Manager's* consultants or by any person or entity providing materials, services or equipment to either the *Construction Manager* or any of the *Construction Manager's* consultants, the *Construction Manager*, its sole cost, shall take whatever steps are necessary to discharge, release or vacate the registration of such Lien or related certificate of action from the title to the *Place of the Project* within ten (10) *Working Days* of it coming to the notice of the *Construction Manager*, and the *Construction Manager* shall not be entitled to any additional compensation from the *Owner* in relation thereto.
- 10.3.2 In the event that the *Construction Manager* fails to vacate the registration of a lien or related certificate of action placed as per GC 10.3.1 above, within the time period provided herein, the *Owner* shall be at liberty to take whatever steps it deems necessary to see to the removal of the lien or related certificate of action, including posting security, and the *Owner* will then be entitled to set off against any amounts otherwise due to the *Construction Manager* by the *Owner* for any direct costs, including reasonable legal costs, incurred by the *Owner* in relation thereto, provided proper notice of non-payment has been given under the *Construction Act (Ontario)*.

GC 10.4 CONFIDENTIALITY

- 10.4.1 For the purpose of this *Contract*, confidential information shall mean any business or financial information about the *Owner*, including information about its customers, suppliers, finances, or the *Place of the Project*, but excluding:
1. information that the *Construction Manager* can show was in the *Construction Manager's* possession on a non-confidential basis prior to the *Construction Manager's* receipt or acquisition thereof from the *Owner*;
 2. information which, after the *Construction Manager's* receipt or acquisition thereof from the *Owner* as aforesaid, becomes part of the public domain through no act of the *Construction Manager* or of any third party under an obligation of confidence with respect to such information, but only after such information becomes *part* of the public domain;
 3. information which, after receipt or acquisition thereof from the *Owner* as aforesaid, is lawfully obtained by the *Construction Manager* from a third party, but only after such information is so received or acquired, and provided such third party is under no obligation of confidence with respect to such information; and
 4. information about the *Place of the Project* reasonably required by persons submitting tenders for work on the *Project*, including without limitation existing condition surveys, hazardous materials assessments and geotechnical reports.
- 10.4.2 The *Construction Manager* and its directors, officers, agents and employees shall during the term of the *Contract* and for seven (7) years following *the Project In-Use*

Date, keep all of the *Owner's* confidential information in confidence and not disclose same without the prior written approval of the *Owner* or as permitted by this GC 10.4.

- 10.4.3 The *Construction Manager* and its directors, officers, agents and employees shall not directly or indirectly disclose or use any confidential information or material belonging to the *Owner* pursuant to this *Contract*, without first obtaining the written consent of the *Owner* to such disclosure or use, except that the *Owner's* prior written consent shall not be required for the disclosure of such information or materials to (a) governmental authorities to the extent required to be disclosed in accordance with requirements of applicable law, (b) professional advisors, (c) persons submitting tenders for work on the *Project* or (d) the *Construction Manager's* consultants to the extent necessary to permit such persons to perform the *Services*, as applicable, or tender work on the *Project*.
- 10.4.4 Before granting access to any confidential information to any third party and not without *Owner's* consent other than the persons referenced in paragraph 10.4.3 or the *Construction Manager's* directors, officers, employees, or professional advisors, the *Construction Manager* undertakes to have such third party sign an agreement causing them to be bound by terms substantially the same as those in this present paragraph.

GC 10.5 SAFETY

- 10.5.1 The *Construction Manager* shall assume overall responsibility for, and shall be solely responsible for, construction health and safety at the *Project* and the *Place of the Work* (including for the *Work* and any other *Work* or other activities conducted or performed at the *Project* or *Place of the Work* by any person whatsoever including the *Construction Manager*, *Trade Contractors*, *Suppliers*, subcontractors, *Owner's* own forces, other contractors, or any other person employed by any of them, and each of their respective employees, directors, officers, agents, and invitees, and whether or not any contractual relationship exists between the *Construction Manager* and such person (collectively the "*Project Work*") and for compliance with the rules, regulations, and practices required by, and other requirements of, the OHSA. Without limiting the generality of the foregoing:
- .1 the *Construction Manager* acknowledges and agrees that the *Construction Manager* is the Constructor in respect of the *Project*, the *Project Work*, and the *Place of the Work* and shall carry out and fulfill the duties and responsibilities of the *Constructor* and "*Employer*" (within the meaning of OHSA) and those set out in paragraph 10.5.1 from the date of commencement of the *Work* until the date of Total Performance of the *Work*; and
 - .2 the *Construction Manager's* duties, obligations, and responsibilities shall also include carrying out and fulfilling the *Owner's* duties and responsibilities as an *Employer* in relation to *Workplace* safety in respect of the *Project*, the *Project Work*, and the *Place of the Work*.
- 10.5.2 The *Owner* and the *Construction Manager* acknowledge and agree that the *Construction Manager* was selected by the *Owner* based on a number of key factors including: (i) the *Construction Manager's* skill, knowledge, experience (including health and safety

policies, WSIB and safety records), health and safety policies, and expertise relating to *Workplace safety*; and (ii) *Construction Manager's* record of convictions, and violations issued by the Ontario Ministry of Labour, Immigration, Training and Skills Development. The *Construction Manager* shall exercise reasonable diligence in accordance with the standard of care set out in Article A-1.4 in the pre-selection process with respect to any *Trade Contractors*.

10.5.3 The *Construction Manager* represents and warrants that the *Construction Manager* and any *Trade Contractors* have not received any charges or violations issued by the Ontario Ministry of Labour, Immigration, Training and Skills Development and have not been convicted of any such charges or violations, in the current year and in the prior 5 years.

10.5.4 Without limiting the generality of paragraph 10.5.1:

- .1 the *Construction Manager* acknowledges and agrees that the *Construction Manager* has provided and will continue to provide the appropriate health and construction safety instruction and training to the *Construction Manager's* employees, *Trade Contractors* and *Suppliers* attending at the *Place of the Work*;
- .2 the *Construction Manager* shall be responsible for establishing, initiating, maintaining, and supervising all safety precautions and programs with respect to the *Project*, the *Project Work*, and the *Place of the Work* and for compliance with such precautions and programs (including by the *Trade Contractors*, *Suppliers* and subcontractors); and
- .3 the *Construction Manager* shall incorporate into all safety precautions and programs any reasonable comments of the *Owner's* insurance company providing insurance for the *Project*. Such review and comments shall not limit or reduce any of the *Construction Manager's* obligations or responsibilities as Constructor.

10.5.5 The *Construction Manager* represents and warrants and shall provide evidence to the *Owner* upon request that the *Construction Manager* and its *Trade Contractors* and *Suppliers* have in place safety programs, and that all employees of the *Construction Manager*, its *Suppliers* and its *Trade Contractors* have received training in occupational safety, all in compliance with the requirements of the OHSAA, and are effectively enforcing the applicable safety programs.

10.5.6 *Construction Manager* shall promptly report to the *Owner* any accident or emergency that relates to the *Work*. The *Construction Manager* shall cooperate fully with the *Owner* with respect to dealing with any claim resulting from an accident or emergency. In the event of an accident or emergency threatening health, life or property, the *Construction Manager*, without instruction or authorization from the Consultant or *Owner*, shall take such action as may be necessary to save lives and protect persons from injury, and, this being done, to protect and preserve property.

10.5.7 Without limiting the generality of any other provision in the Contract, the *Construction Manager* shall indemnify, defend and hold harmless the Indemnitees from and against all actual, threatened or potential claims, demands, proceedings, complaints, grievances, actions, adjudications, litigation, applications, suits, causes of action, orders, charges,

arbitrations or other similar process, of whatsoever kind or nature (whether civil, administrative, regulatory, arbitral or otherwise), or losses, debts, expenses, liabilities, damages, obligations, payments, fines and costs suffered, sustained, or incurred by the Indemnitees which may be directly or indirectly attributable to, or arising or alleged to arise out of any failure or alleged failure by the *Construction Manager*, or others for whom the *Construction Manager* is responsible, to comply with the health and safety requirements at the *Project*, for the *Project Work*, and at the *Place of the Work*.

GC 10.6 MISCELLANEOUS

10.6.1 Any provision of this *Contract* which by its nature extends beyond the completion of the *Project* or the termination of this *Contract* or which is required to ensure that the parties may fully exercise their rights and perform their obligations hereunder shall survive the completion of the *Project* and the termination of this *Contract* for any reason whatsoever.

10.6.2 All remedies of the parties hereunder, under any other documents or agreements executed pursuant to or in connection with this *Contract* or otherwise available to parties shall be cumulative.

GC 10.7 WAIVER OF CONSEQUENTIAL DAMAGES

10.7.1 Neither the *Owner* nor the *Construction Manager* shall be liable to each other for *Consequential Damages*, regardless of how caused, even in the event of fault, breach of contract, tortious conduct, including negligence, except where the loss or damages are the result of willful misconduct or fraud. Nothing herein prevents recourse to an applicable insurance policy by either of the parties or otherwise releases the *Owner* of its obligation to make payment to the *Construction Manager* of amounts that are properly due and owing under the *Contract*.”

GC 10.8 CONCEALED OR UNKNOWN CONDITIONS

10.8.1 If the *Owner* or the *Construction Manager* discover conditions at the *Place of the Work* which are:

- .1 subsurface or otherwise concealed physical conditions which existed before the commencement of the *Work* which differ materially from those indicated in the *Contract Documents*; or
- .2 physical conditions, other than conditions due to weather, that are of a nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the *Contract Documents*,

then the observing party shall give Notice in Writing to the other party of such conditions before they are disturbed and in no event later than 5 Working Days after first observance of the conditions.

GC 10.9 PROTECTION OF WORK AND PROPERTY

- 10.9.1 The *Construction Manager* shall protect the *Work* and the *Owner's* property and property adjacent to the *Place of the Project* from damage which may arise as the result of the *Construction Manager's* operations under this *Contract*, and shall be responsible for such damage, except damage which occurs as the result of:
- .1 errors in the *Contract Documents*;
 - .2 acts or omissions by the *Owner*, the *Consultant*, other contractors, or their respective agents and employees.
- 10.9.2 Before commencing any work, the *Construction Manager* shall locate on site all underground utilities and structures that are indicated in the *Contract Documents* or information provided by the *Owner*, or that are reasonably apparent in an inspection of the *Place of the Project*.
- 10.9.3 Should the *Construction Manager* in the performance of the Contract damage the *Work*, the *Owner's* property or property adjacent to the *Place of the Project*, the *Construction Manager* shall be responsible for making good such damage at the *Construction Manager's* expense.
- 10.9.4 Should damage occur to the *Work* or *Owner's* property for which the *Construction Manager* is not responsible, as provided in paragraph 10.9.1, the *Construction Manager* shall make good such damage to the *Work* and, if the *Owner* so directs, to the *Owner's* property. The *Construction Manager's* fee and the *Contract Time* shall be adjusted as provided in GC 5.1 – CHANGES TO THE PROJECT.

GC 10.10 WARRANTY

- 10.10.1 Except for extended warranties as described in paragraph 10.10.7, the warranty period under this *Contract* is two years from the date of *Substantial Performance of the Work*.
- 10.10.2 The *Construction Manager* shall be responsible for directing *Trade Contractors* in the proper performance of the *Work* to the extent that the design and *Contract Documents* permit such performance.
- 10.10.3 The *Owner*, through the *Consultant*, shall promptly give the *Construction Manager Notice in Writing* of observed defects and deficiencies which occur during the warranty period.
- 10.10.4 The *Construction Manager* shall enforce the warranty obligations of the *Trade Contractors* and *Suppliers* which shall include the following provisions:
- .1 the *Trade Contractors* or the *Supplier* shall correct promptly at its expense defects or deficiencies in the work which appear prior to and during the warranty periods specified in the *Contract Documents*; and
 - .2 the *Trade Contractors* or the *Supplier* shall correct or pay for damage resulting from corrections made under the requirements of paragraph 10.10.4.
- 10.10.5 Any extended warranties required beyond the warranty period as described in paragraph 10.10.1 shall be as specified in the *Contract Documents*. Extended warranties shall be

issued by the warrantor to the benefit of the *Owner*. The *Construction Manager's* responsibility with respect to extended warranties shall be limited to obtaining any such extended warranties from the warrantor. The obligations under such extended warranties are solely the responsibilities of the warrantor.”

ADD a new PART 11 PERFORMANCE OF THE SERVICES AND EXECUTION OF THE WORK:

“PART 11 PERFORMANCE OF THE SERVICES AND EXECUTION OF THE WORK

GC 11.1 CONTROL OF THE WORK

11.1.1 The *Construction Manager* shall have total control of the *Work* and shall effectively direct and supervise the *Work* so as to ensure conformity with the *Contract Documents*.

11.1.2 The *Construction Manager* shall be solely responsible for construction means, methods, techniques, sequences, and procedures and for co-ordinating the various parts of the *Work* under the *Contract*.

GC 11.2 TEMPORARY WORK

11.2.1 The *Construction Manager* shall have the sole responsibility for the design, erection, operation, maintenance, and removal of *Temporary Work*.

11.2.2 The *Construction Manager* shall engage and pay for registered professional engineering personnel skilled in the appropriate disciplines to perform those functions referred to in paragraph 11.1.1 where required by law or by the *Contract Documents* and in all cases where such *Temporary Work* is of such a nature that professional engineering skill is required to produce safe and satisfactory results.

11.2.3 Notwithstanding the provisions of GC 11.1 – CONTROL OF THE WORK, paragraph 11.2.1 and paragraph 11.2.1 or provisions to the contrary elsewhere in the *Contract Documents* where such *Contract Documents* include designs for *Temporary Work* or specify a method of construction in whole or in part, such designs or methods of construction shall be considered to be part of the design of the *Work* and the *Construction Manager* shall not be held responsible for that part of the design or the specified method of construction. The *Construction Manager* shall, however, be responsible for the execution of such design or specified method of construction in the same manner as for the execution of the *Work*.

GC 11.3 REVIEW OF DRAWINGS, SPECIFICATIONS AND MATERIAL AND FINISH SCHEDULES

11.3.1 The *Construction Manager* shall review the drawings, specifications and material and finish schedules and shall report promptly to the *Consultant* any error, inconsistency or omission the *Construction Manager* may discover. If the *Construction Manager* does discover any error, inconsistency or omission in the drawings, specifications and material and finish schedules, the *Construction Manager* shall not proceed with the work affected until the *Construction Manager* has received corrected or missing information from the *Consultant*.

11.3.2 The review of drawings, specifications and material and finish schedules under paragraph 11.3.1 shall be to the best of the *Construction Manager's* knowledge, information and belief. In making such review the *Construction Manager* assumes no responsibility for the accuracy of the review. The *Construction Manager* shall not be liable for any damage or costs resulting from errors, inconsistencies or omissions, which the *Construction Manager* did not discover.

GC 11.4 SUPERVISION

11.4.1 The *Construction Manager* shall provide all necessary supervision and appoint a competent representative who shall be in attendance at the *Place of the Project* while work is being performed. The *Construction Manager* may appoint a new representative for a valid reason and to whom the *Owner* makes no reasonable objection.

11.4.2 The appointed representative shall represent the *Construction Manager* at the *Place of the Project*. Information and instructions provided by the *Consultant* to the *Construction Manager's* appointed representative shall be deemed to have been received by the *Construction Manager*, except with respect to Article A-7 of the Agreement – RECEIPT OF AND ADDRESSES FOR NOTICES IN WRITING.

GC 11.5 SHOP DRAWINGS

11.5.1 The *Construction Manager* shall provide shop drawings as required in the *Construction Documents*.

11.5.2 The *Construction Manager* shall provide shop drawings to the *Consultant* to review in orderly sequence and sufficiently in advance so as to cause no delay in the *Work* or in the work of other contractors.

11.5.3 Upon request of the *Construction Manager* or the *Consultant*, they shall jointly prepare a schedule of the dates for provision, review and return of shop drawings.

11.5.4 The *Construction Manager* shall provide shop drawings in the form specified, or if not specified, as directed by the *Consultant*.

11.5.5 Shop drawings provided by the *Construction Manager* to the *Consultant* shall indicate by stamp, date and signature of the person responsible for the review that the *Construction Manager* has reviewed each one of them.

11.6.6 The *Consultant's* review is for conformity to the design concept and for general arrangement only.

11.5.7 shop drawings which require approval of any legally constituted authority having jurisdiction shall be provided to such authority by the *Construction Manager* for approval.

11.5.8 The *Construction Manager* shall review all shop drawings before providing them to the *Consultant*. The *Construction Manager* represents by this review that:

- .1 the *Construction Manager* has determined and verified all applicable field measurements, field construction conditions, *Product* requirements, catalogue numbers and similar data, or will do so, and
- .2 the *Construction Manager* has checked and co-ordinated each *Shop Drawing* with the requirements of the *Work* and of the *Construction Documents*.

11.5.9 At the time of providing shop drawings, the *Construction Manager* shall expressly advise the *Consultant* in writing of any deviations in a shop drawing from the requirements of the *Construction Documents*. The *Consultant* shall indicate the acceptance or rejection of such deviation expressly in writing.

11.5.10 The *Construction Manager* shall provide revised shop drawings to correct those which the *Consultant* rejects as inconsistent with the *Construction Documents*, unless otherwise directed by the *Consultant*. The *Construction Manager* shall notify the *Consultant* in writing of any revisions to the shop drawings other than those requested by the *Consultant*.

11.5.11 The *Consultant* will review and return shop drawings in accordance with the schedule agreed upon, or, in the absence of such schedule, with reasonable promptness so as to cause no delay in the performance of the *Work*.

GC 11.6 CUTTING AND REMEDIAL WORK

11.6.1 As required, the *Construction Manager* shall perform the cutting and remedial work required to make the affected parts of the *Work* come together properly.

11.6.2 The *Construction Manager* shall co-ordinate the *Work* to ensure that the cutting and remedial work is kept to a minimum.

11.6.3 Should the *Owner*, the *Consultant*, other contractors or anyone employed by them be responsible for poorly timed work necessitating cutting or remedial work to be performed, the cost of such cutting or remedial work shall be valued as provided in Part 5 – CHANGES.

11.6.4 Cutting and remedial work shall be performed by specialists familiar with the products affected and shall be performed in a manner to neither damage nor endanger the *Work*.

GC 11.7 CLEANUP

11.7.1 The *Construction Manager* shall maintain the *Work* in a safe and tidy condition and free from the accumulation of waste products and debris, other than that caused by the *Owner*, other contractors or their employees.

11.7.2 Prior to the *Project In-Use Date*, the *Construction Manager* shall remove waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees, and shall leave the *Place of the Project* clean and suitable for use or occupancy by the *Owner*. The *Construction Manager* shall remove products, tools, equipment, and *Temporary Work* not required for the performance of the remaining work.

11.7.3 Prior to application for the final payment, the *Construction Manager* shall remove any remaining products, tools, equipment, and *Temporary Work*, and waste products and debris, other than that resulting from the work of the *Owner*, other contractors or their employees.”

Division 1 Cost Estimate

Title: Division 1 cost estimate
 Project: Heartlake (Jordan), Brampton
 date: September 13, 2024
 printed: 2024-09-13, 11:39 AM

Description	Amount
Survey & Layout (site set up purposes only)	\$ 15,000.00
Temp. Hoarding & Safety	\$ 12,000.00
Protective Enclosures	\$ 40,000.00
Safety Fences	\$ 220,000.00
Temporary Offices	\$ 35,000.00
Office Supplies & Drwg. Printing	\$ 40,000.00
Temporary Communication	\$ 10,000.00
Temporary Hydro	\$ 300,000.00
Temporary Heat & Propane	\$ 300,000.00
Temporary Hoist/ Crane	not applicable
Temporary Garbage Chute(s)	\$ 100,000.00
Sanitation	\$ 75,000.00
Cleaning & Garbage Removal	\$ 245,000.00
Site Signage	\$ 5,000.00
Temp. Access & Roads	\$ 20,000.00
Final Cleaning	\$ 245,000.00
Site Security	\$ 150,000.00
Pest Control	\$ 20,000.00
Small Tools Purchase	\$ 25,000.00
Equipment Rental	\$ 150,000.00
Miscellaneous Materials	\$ 75,000.00
Machine Rental & Operator	\$ 150,000.00
Site Superintendent	\$ 750,000.00
Assistant Super	\$ 400,000.00
Finishing Super	\$ 400,000.00
Labour	\$ 1,400,000.00
Line Painting (site set up purposes only)	\$ 10,000.00
Snow & Ice Removal	\$ 100,000.00
Total	\$ 5,292,000.00

Hard Costs

- a. Estimated Site Servicing costs of \$12,606,611
- b. Vertical Construction / Hard costs for the townhouses and stacked townhouses of \$50,411,755

Major Milestones/Timelines

- Site Plan Application: September 2024
- Review Design / Value Engineering: [tbd]
- Servicing start date: Prior to November 1, 2024
- Lock in Development Charges rates: Prior to December 1, 2024
- Completion of Issued for Construction Drawings: Prior to January 1, 2025
- Construction Start Date: Prior to April 1, 2025
- Final Unit Closings: Target of December 2026 and no later than April 2027

Appendix “C”

Receivership of Vandyk - Heart Lake Limited
Interim Statement of Receipts and Disbursements
For the Period December 21, 2023 to October 4, 2024
(\$; unaudited)

Description	Note	Amount
<i>Receipts</i>		
Funding from KingSett		235,574
Transfers from other Vandyk entities		5,085
Interest		188
		<hr/>
		240,847
 <i>Disbursements</i>		
Consulting and professional fees		149,357
Repairs & maintenance		57,223
HST		6,783
Property taxes		1,937
Equipment rentals		1,621
Filing Fees		75
Bank charges		31
		<hr/>
		217,027
		<hr/>
Balance in Receiver's account, before accrued liabilities		23,820

Appendix “D”



October 7, 2024

KSV Restructuring Inc.
220 Bay Street, 13th Floor
Toronto, Ontario, M5J 2W3

Attention: Noah Goldstein

Re: First priority construction financing of 10194 Heart Lake Road

A. LOAN TERMS

The Lender is pleased to offer a first priority non-revolving construction loan (the "**Loan**") in connection with the above noted matter, subject to the terms and conditions as described herein and within the Schedules attached hereto (the "**Commitment Letter**").

1. **Project:** 22.39-acre site with 9.67-acres of developable area to be developed with 200 traditional, stacked, and back-to-back townhomes in fifteen blocks located at 10194 Heart Lake Road, Brampton, Ontario (the "**Project**").
2. **Lender:** KingSett Mortgage Corporation (the "**Lender**").
3. **Borrower:** KSV Restructuring Inc., solely in its capacity as court appointed receiver and manager of the Property (as defined in the Appointment Order, defined below) of Vandyk – Heart Lake Limited (the "**Debtor**") pursuant to the Appointment Order granted by the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on November 14, 2023 (as amended, restated or supplemented from time to time, the "**Appointment Order**"), and not in its personal or any other capacity (the "**Borrower**").
4. **Loan Amount:**

Facility 1	\$110,325,000 construction loan facility
Facility 2	\$5,000,000 overrun facility

(Collectively, the "**Loan Amount**").
5. **Interest Rate:** Prime Rate + 5.00% per annum, calculated on the daily outstanding balance, compounded and payable monthly, not in advance, both before and after maturity, default and/or judgment with respect to the Loan for each and every month of the Term (as such Term may be extended in accordance with this Commitment Letter), (as applicable, the "**Interest Rate**"), provided that "**Prime Rate**" shall mean, for any day, the rate of interest per annum established and published from time to time by Royal Bank of Canada as the reference rate of interest for the determination of interest rates charged to its customers of varying degrees of creditworthiness in Canada for Canadian Dollar demand loans in Toronto, Ontario.

Scotia Plaza, 40 King Street West, Suite 3700, Toronto ON, M5H 3Y2
(416) 687-6700 | www.kingsettcapital.com

6. **Letters of Credit:** \$5,000,000 Letter of Credit Facility (the "**Letters of Credit**") shall be available for the Project (all costs are duplicative in nature). In the event any Letter of Credit is called upon, the called amount will be converted to direct borrowings under Facility 1.
7. **Letter of Credit Fee:** 2.25% per annum payable annually in advance, subject to a minimum fee of \$500 annually per Letter of Credit. Any amendments to the Letter of Credit will be subject to a minimum fee of \$500 per amendment.
8. **Term:** In this Commitment Letter, "**Maturity Date**" means the date that is 24 months (the "**Term**") after the first calendar day of the month next following the date of the initial advance of the Loan (the "**Interest Adjustment Date**"), unless the advance of the Loan is made on the first day of the month in which case the Interest Adjustment Date shall be the date of the advance, as may be extended in accordance with this Commitment Letter. The principal balance of the Loan outstanding together with all accrued and unpaid interest thereon and all other costs secured by the Security is repayable in full on the Maturity Date together with all accrued and unpaid interest, costs, fees and any other amount secured by the Security.
9. **Extension Option:** Provided that no Event of Default (as defined in Schedule D) has occurred which is continuing and subject to the consent of the Lender, in its sole, absolute and unfettered discretion, the Lender shall permit an extension of the Term by two extensions of three months each to the Maturity Date (each an "**Extension Option**"). The exercise of each Extension Option is subject to delivery of a written request from the Borrower to the Lender at least 30 days prior to the Maturity Date.
10. **Monthly Interest:** Interest at the Interest Rate shall accrue monthly to the outstanding principal balance of the Loan together with all accrued and unpaid interest thereon (the "**Monthly Interest**"). Monthly Interest shall be calculated on the first calendar day of every month commencing on the Interest Adjustment Date until the principal balance of the Loan outstanding together with all accrued and unpaid interest thereon and all other costs secured by the Security is repaid in full.
11. **Sources and Uses:**

Sources	\$	Uses	\$
Current Indebtedness	\$34,000,000	Land Costs	\$34,150,000
Subject Loan	110,325,000	Hard Costs	62,846,724
Purchaser Deposits	9,525,891	Soft Costs	32,642,734
		Financing Costs	18,095,250
		Contingency	6,116,183
TOTAL	\$153,850,891	TOTAL	\$153,850,891

12. **Project Budget:** See Schedule G (the "**Project Budget**"). For greater certainty, the Lender approved Project Budget shall be no greater than \$153,850,891. The Project Budget may be amended or modified from time to time subject to the prior written consent of the Lender. Consent to increase the Project Budget may be unreasonably withheld, delayed and/or conditioned by the Lender. The Lender has provided Facility 2 for the purpose of funding any cost overruns, up to \$5,000,000, as applicable.

13. **Project Monitor**: An independent project monitor acceptable to the Lender shall have been engaged to act on behalf of the Lender throughout the duration of the Project at the Borrower's expense. The Lender's project monitor shall be Glynn Group (the "**Project Monitor**"). The scope of the Project Monitor's mandate is outlined in Schedule C). The Lender shall have the right to expand or vary the scope of the Project Monitor or to replace the Project Monitor at any time, in its discretion, acting reasonably.
14. **Prepayment**: The Loan is open for prepayment at any time without bonus or penalty subject to at least ten days prior written notice.
15. **Mortgage Discharge**: The Lender shall charge a one-time administrative fee of \$1,000 for ongoing administration of the Loan including, but not limited to, providing a full discharge of the Security which administration fee is earned by the Lender upon the Borrower's execution of this Commitment Letter and payable by the Borrower to the Lender on the Maturity Date as may be extended from time to time in accordance with the terms of this Agreement. The Borrower's legal counsel shall prepare all documentation reasonably required to discharge the Security for review by the Lender and its legal counsel. Discharge statements will be provided to the Borrower within three business days after receipt of a written request for same.
16. **No Further Encumbrances**: Additional financing (prior or subsequent) of the Project, secured or unsecured, or the registration of any other encumbrance save and except for any encumbrances registered as of the day of the initial advance or construction liens is not permitted in connection with the Project without the prior written consent of the Lender, which consent may be arbitrarily withheld, delayed and/or conditioned by the Lender.
17. **Costs and Expenses**: The Borrower shall bear all costs and expenses incurred by the Lender from time to time in connection with the Loan regardless of whether or not all or any portion of the Loan Amount is ever advanced and, such costs may include, but shall not be limited to, legal fees, payment of property taxes as a protective disbursement, environmental site assessment reports, appraisal reports, building condition reports, insurance consulting reviews, reliance letters, title insurance, Project Monitor mandates, out-of-pocket expenses for property inspections and any applicable sales tax related to all such costs and expenses.

B. SECURITY

The Loan shall be secured by the security set forth below which, prior to any advance under the Loan, shall be delivered by the Borrower to the extent party thereto, to the Lender in form, scope and substance satisfactory to the Lender and its legal counsel in its sole, absolute and unfettered discretion (collectively, the "**Security**" and together with this Commitment Letter and all other documentation delivered in connection with this Commitment Letter and the Security, collectively, the "**Loan Documents**"):

1. **Receiver's Borrowings Charge**: A \$120,325,000 first priority charge on the Debtor's Property as provided by the Court Order as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts (including, without limitation deemed trusts), liens, charges and encumbrances statutory or otherwise, in favour of any Person but subordinate in priority to the Receiver's Charge (as defined in the Appointment Order) (the "**Receiver's Borrowings Charge**").
2. **Other**: Such other Security over the Debtor's Property as the Lender and/or its legal counsel may reasonably require.

C. CONDITIONS PRECEDENT TO INITIAL ADVANCE

The obligation of the Lender to make available initial advance(s) of the Loan up to the amount of \$10,000,000 shall be subject to the pre-funding conditions below (collectively, the "**Initial Conditions Precedent**") which shall be satisfied or waived by the Lender in its sole, absolute and unfettered discretion at least two business days prior to the initial advance of the Loan.

1. **Delivery of Loan Documents**: The Lender shall have received the following:
 - (a) the Loan Documents duly executed by the parties thereto; and
 - (b) a request for borrowing delivered in accordance with the provisions of Section E.1. which shall include, without limitation, certification that all proceeds of the advance of the Loan are being used solely to pay all accounts payable of the Project approved by the Lender and for no other purpose whatsoever;
2. **Financing Approval Order**: The Borrower shall have obtained an Order from the Court substantially in the form attached as E.26 hereto.

D. CONDITIONS PRECEDENT TO SUBSEQUENT ADVANCE

The obligation of the Lender to make available any subsequent advance of the Loan, shall be subject to the pre-funding conditions below (collectively, the "**Subsequent Conditions Precedent**" together with the Initial Conditions Precedent, collectively, the "**Conditions Precedent**") which Subsequent Conditions Precedent shall be satisfied or waived by the Lender in its sole, absolute and unfettered discretion at least two business days prior to any subsequent advance of the Loan.

1. **Initial Conditions Precedent**: The Initial Conditions Precedent shall have been satisfied or waived by the Lender.
2. **No Default**: No Event of Default shall exist, nor shall the advance of the Loan result in the occurrence of an Event of Default.
3. **Representations Correct**: The representations and warranties contained in the Loan Documents shall be true and correct in all material respects on the date of each subsequent advance as if made on that date, except where any representation or warranty relates to a specified date, in which case that representation or warranty shall be made as of the date to which it relates.
4. **Request for Borrowing**: The Lender shall have received a request for borrowing delivered in accordance with the provisions of Section E.2 which shall include, without limitation, certification that all proceeds of the advance of the Loan are being used solely to pay all accounts payable of the Project approved by the Lender and for no other purpose whatsoever.
5. **Project Reports**: The Lender shall have received and reviewed a progress draw report on the Project prepared by the Project Monitor in accordance with Schedule C.

E. FUNDING

Each advance of the Loan shall, in addition to being subject to the applicable Conditions Precedent, be completed in accordance with the following:

1. **Initial Advance:** An initial advance of the Loan will be determined by the Borrower, with input from the Project Monitor.
2. **Subsequent Advances:** Subsequent advances under the Loan shall be permitted not more frequently than once per month and in minimum monthly increments of \$250,000 for the purpose of funding Project costs in accordance with the Project Budget or as otherwise approved by the Lender with such advances to be made on a cost-in-place basis subject to the Lender's cost-to-complete formula. This dollar amount limit shall not apply to monthly advances of the Interest Reserve.
3. **Margin Calculation:** Accumulated advances under the Loan shall at no time exceed the cost of cost-in-place less the aggregate of (i) holdbacks required by the Project Monitor, (ii) any purchaser deposits used as source of funds within the Project Budget, (iii) any advances made under the existing debt, if applicable and (iv) any deferred costs used as a source of funds within the Project Budget; provided, however, that such deferred costs have been approved by the Lender.
4. **Advances to Subtrades:** The Lender reserves the right to make advances of the Loan directly to the Project Monitor or trades (sub-trades or otherwise) and/or suppliers if an Event of Default has occurred which is continuing.
5. **Advance Fee:** All advances of the Loan, save and except for advances under the Interest Reserve alone, shall be subject to a \$500 advance fee payable by the Borrower to the Lender which amount shall be deducted from the applicable advance of the Loan by the Lender.

F. SPECIAL CONDITIONS

The Loan shall be subject to the following special conditions which shall each have been received, reviewed and/or met, as the context implies, to the satisfaction of the Lender in its sole, absolute, and unfettered discretion prior to any advance of the Loan:

1. **Construction Manager:** Borrower may not terminate the Construction Manager (ELM Developments) without the prior consent of the Lender.
2. **Loan Syndication:** Subject in all respects to Section 7 of Schedule B, the Lender may, at its sole and absolute discretion, syndicate a portion or all of the Loan to alternative lenders. This is not a condition to the Loan.

G. NATURE OF LIABILITY AND OBLIGATIONS

1. Nothing in this Commitment Letter or otherwise shall or shall be interpreted to require the Borrower to do any act or thing that would result in a breach or default by the Borrower of any duty or obligation of the Borrower as provided in or by the Appointment Order, any amendment thereof or any other order of the Court, or of any applicable law.
2. Notwithstanding any other provision hereof, the Lender agrees and acknowledges that the obligations of the Borrower to the Lender hereunder, including all interest, fees, legal and other costs, charges and expenses relating thereto, shall have recourse only to the assets, property and undertaking of the Debtor that are subject to the receivership in respect of the Debtor created pursuant to the Appointment Order (the "Receivership") and are entirely non-recourse against KSV Restructuring Inc. and any of its affiliates and any of their respective shareholders, directors, officers or employees. For the avoidance of doubt, KSV Restructuring Inc. shall have no personal

or corporate liability for the obligations of the Borrower to the Lender hereunder or otherwise have any other liability under or in connection with this Commitment Letter or any other Loan Document, or any agreement or document entered into pursuant to this Commitment Letter or such other Loan Document (including for a breach or other non-compliance with any covenant in this Commitment Letter or any other Loan Document).

3. Wherever in this Commitment Letter or any other Loan Document there is a reference to the Borrower's responsibility for costs, expenses, interest, fees, reimbursements, other amounts payable or the performance of any other obligations by the Borrower, including in respect of or owing to third parties, such obligations shall be satisfied or funded solely and exclusively from funding to the Borrower under the Loan (or, in each case to the extent available to the Borrower at the applicable time, from revenue from the Project or the proceeds of any realization against the Property), and in no event shall KSV Restructuring Inc. be required to expend its own funds in respect thereof. In the event that the Borrower is required pursuant to this Commitment Letter or any other Loan Document, or in the performance of its obligations hereunder or as court appointed receiver and manager of the Property, to incur a liability, including any contingent liability, the Borrower shall not be required to incur such liability (or enter into any agreement or document in respect thereof) until it has been funded in respect thereof under the Loan or unless and until it has received such other security or assurance in respect thereof as it may require in its sole discretion. Where the Lender has advanced funds to the Borrower hereunder, the Lender acknowledges that, notwithstanding the occurrence of an Event of Default, the Borrower shall be entitled to use such funds to satisfy obligations incurred by the Borrower in its capacity as court appointed receiver of the Property as contemplated by the terms hereof, the Appointment Order or any other order of the Court, and the Lender shall have no right to the return or recovery of any such funds held by the Borrower unless and until all such obligations have been satisfied.

H. COUNSEL

Counsel for the Lender and the Borrower with respect to the Loan is as follows:

1. **Lender's Counsel:**

Bennett Jones LLP (Attention: John van Gent)
3400 One First Canadian Place
Toronto, ON
M5X 1A4

Phone: (416) 777-6522
Fax: (416) 863-1716
Email: vanGentJ@bennettjones.com

2. **Borrower's Counsel:**

Osler, Hoskin & Harcourt LLP (Attention: Marc Wasserman & Dave Rosenblat)
First Canadian Place
100 King St. W Suite 6200
Toronto, ON
M5X 1B8

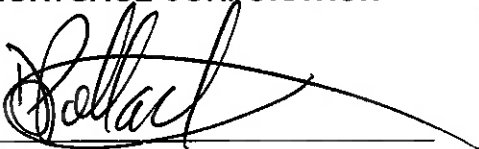
Phone: (416) 862-4908 / (416) 862-5673
Fax: (416) 862-6666


Email: mwasserman@osler.com / drosenblat@osler.com

If you are in agreement with the foregoing terms and conditions, please indicate this by signing and returning this Commitment Letter to the Lender by October 8, 2024, failing which this letter shall, at the Lender's option, be deemed null and void.

Yours truly,

KINGSETT MORTGAGE CORPORATION

Per: 
Daniel Pollack
Executive Director, Mortgage
Investments

Per: 
Scott Coates
President, KingSett Mortgage
Corporation

ACKNOWLEDGEMENT

I/We hereby accept the terms and conditions of this Commitment Letter and any accompanying Schedules and each person executing this Commitment Letter on behalf of any Borrower or any Guarantor represents and warrants that he/she has the power and authority to bind such entity.

Accepted and agreed as of the _____ day of _____, 20____.

BORROWER:

KSV Restructuring Inc. in its capacity as a court appointed receiver and manager of the Property of Vandyk – Heart Lake Limited, and not in its personal or any other capacity

Per: _____
Name:
Title:

SCHEDULE A
CONSTRUCTION INSURANCE REQUIREMENTS CHECKLIST

1. All insurance policies/certificates must be forwarded to the insurance consultant for review. The cost of such review shall be for the account of the Borrower.
2. All insurance policies shall be in form and with insurers reasonably acceptable to the Lender and contain the original signatures of the insurers (which may include being signed by certified electronic signature).
3. KingSett Mortgage Corporation must be shown as 1st Mortgagee and 1st Loss Payee under the Builder's Risk and, where applicable, Boiler and Machinery Insurance policies.
4. KingSett Mortgage Corporation must be shown as Additional Insured under all Liability Insurance policies covering the subject Project (or "Property" as defined herein) with respect to claims arising out of the operations of the named insured.
5. The Borrower/Registered Owner must be shown as a Named Insured or Additional Named Insured under all policies of insurance in force with respect to the subject Project.
6. The insurers, policy numbers, policy limits, policy term, applicable reasonable deductibles and the location of the Property as an insured location must be shown on the insurance policies and certificates of insurance.
7. The Builder's Risk and, where applicable, Boiler and Machinery policies shall contain a standard mortgage clause in favour of KingSett Mortgage Corporation.
8. All policies of insurance must provide KingSett Mortgage Corporation with at least 30 days' prior written notice of any adverse material change i.e. Misrepresentation, Fraud or Cancellation, except for the non-payment of premium, in which case the Statutory Conditions may apply.
9. There needs to be evidence of Builders Risk insurance written on an All Risk or Broad Form basis and may or may not be subject to the latest CCDC policy wording.
10. The builders risk insurance needs to insure 100% of the projected Hard Costs of the Project and not less than 25% of all Project soft costs plus 100% of all Finance and Interest charges, or 100% of recurring Project Soft Costs.
11. There must be evidence of full By-Laws extensions, Blanket By-Laws coverage with:
 - (a) 100% of replacement cost or policy limit for Loss of Undamaged portion of the building(s);
 - (b) 10% of the replacement cost or policy limit for Demolition Costs;
 - (c) 10% of the replacement cost or policy limit for Increased Cost of Construction; and
 - (d) Resultant Loss of Income.
12. There needs to be evidence of Earthquake insurance.
13. There needs to be evidence of Flood insurance.
14. There needs to be evidence of Sewer Back-Up insurance.

15. The Builders Risk policy needs to include a "permission to occupy" clause.
16. The Builders Risk policy needs to include (where applicable) Delayed Start Up (DSU) insurance to cover 100% of the anticipated loss of revenue for a minimum of one year, which may be incurred in the event of an insured loss, during construction. The Builders Risk policy will provide coverage for the installation, testing and commissioning of machinery and equipment.
17. There must be evidence of comprehensive Boiler and Machinery insurance covering all central HVAC and miscellaneous electrical equipment (and production machinery where applicable) for explosion, electrical, electronic, and mechanical breakdown.
18. The Builders Risk policy will provide Debris Removal, Extra Expense and Expediting Expense, Property in Transit and Property Off Site.
19. The Builders Risk policy (where applicable) must contain a minimum DE4/LEG2 amended workmanship, design or materials exclusion wording and confirmation of resulting damage is covered.
20. Confirmation of builder's risk warranties.

Owners Liability:

21. There must be evidence of Owner's Liability Insurance, with a minimum limit of **\$5,000,000** per occurrence and in the aggregate or such other limit as may be agreed to by the Lender or insurance consultant unless a Wrap Up Liability policy has been purchased. Coverage should include but not be limited to Cross Liability, Severability of Interest, Contractual Liability and Sudden & Accidental Pollution extension. KingSett Mortgage Corporation is added as an Additional Insured.

Contractors Liability:

22. There must be evidence of Contractors Liability insurance, with a minimum limit of **\$5,000,000** per occurrence and in the aggregate or such other limit as may be agreed to by the Lender or insurance consultant unless a Wrap Up Liability policy has been purchased. Coverage should include but not be limited to Cross Liability, Severability of Interest, Contractual Liability, Non-Owned Auto, and Sudden & Accidental Pollution extension.
23. The Borrower/Registered Owner/KingSett Mortgage Corporation must be added as an Additional Insured under any Contractor's Liability insurance, but only with respects to claims arising out of the operations of the named insured and indicating the Project location.
24. When evidence is provided in the form of the Borrower's Liability insurance program and General Contractor's Liability insurance program, confirmation that the Borrower or the General Contractor are responsible for administration for effectiveness and compliance of all trades and subtrades liability certificates prior to starting work on the Project.

Wrap-up Liability:

25. There must be evidence of Wrap-Up Liability insurance, with a minimum limit of **\$5,000,000** per occurrence and in the aggregate or such other limit as may be agreed to by KingSett Mortgage Corporation or insurance consultant and provide 12/24/36 months completed operations period,

Cross Liability, Severability of Interest, Contractual Liability, and Sudden & Accidental Pollution extension.

26. The Borrower/Registered Owner must be added as an Additional Named Insured under the Wrap Up Liability insurance, but only with respects to claims arising out of the operations of the named insured. The Borrower/Registered Owner and all Contractors, Sub-Contractors, Trades and Consultants must be Named Insureds with respect to the work or operations at the Project, excluding professional liability.
27. KingSett Mortgage Corporation and its insurance consultant shall receive copies of all policy "Warranties" that apply.

Other:

28. KingSett Mortgage Corporation will not accept evidence of insurance on a CSIO form, or an ACORD Form #25 (or their equivalents), due to the limitation in the wording as to its efficacy, and the restrictive cancellation provisions, unless accompanied with an additional remarks schedule/comments ACORD 101 or CSIO equivalent.
29. Evidence of Professional Liability (Errors & Omission) insurance is required for the architect and the engineer of the Project for a minimum limit of \$1,000,000 per occurrence.
30. KingSett Mortgage Corporation and its insurance consultant shall receive copies of all policy "Warranties" that apply, on any of the construction insurance programs.
31. Such other insurance as KingSett Mortgage Corporation and/or its insurance consultant may reasonably require given the nature of the security and that which a prudent owner of similar security would purchase and maintain or cause to be purchased and maintained.

There must be full, original, certified, endorsed copies of the insurance policies provided to the KingSett Mortgage Corporation as soon as available from the insurers. (The certified policy copies should be available within 60 to 90 days). Signed Certificates or Binders of Insurance addressing the above will suffice as insurance evidence for closing purposes.

In the instance that any portion of the property insurance coverage described above has expired or cancelled and evidence of adequate and satisfactory insurance coverage has not been provided to KingSett Mortgage Corporation immediately (with the certified policy copies provided within 90 days) upon the expiration or cancellation date, KingSett Mortgage Corporation will have the option, without obligation, to place adequate and satisfactory insurance (at the Lender's sole, absolute and unfettered discretion) for the Project at the Borrower's expense.

Certificates or Binders of Insurance are not acceptable if they contain the words, "*This certificate is issued as a matter of information only and confers no rights upon the certificate holder*" and the words "*will endeavour to*" and "*but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives*" under the cancellation clause.

-- Insurance broker contact information and release follows on next page --

SCHEDULE B OTHER CONDITIONS

1. **Prohibition on Sale of Project:** Prior to repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security in full on the Maturity Date or as otherwise contemplated in the Commitment Letter, the Borrower may not sell the Project, in whole or in part, save for Unit closings pursuant to Court Order(s), without the Lender's prior written consent, which consent may be arbitrarily withheld, delayed and/or conditioned by the Lender. The assumption of the Loan by a purchaser of the Project, or part thereof, shall be subject to the prior written approval of the Lender, which approval may be arbitrarily withheld, delayed and/or conditioned by the Lender.
2. **Change of Ownership:** A direct or indirect change in ownership of the Borrower shall not be permitted without the Lender's prior written consent, which consent may be arbitrarily withheld, delayed and/or conditioned by the Lender.
3. **Amalgamation:** Any amalgamation of the Borrower shall not be permitted without the Lender's prior written consent, which consent may be arbitrarily withheld, delayed and/or conditioned by the Lender.
4. **Payment of Property Taxes:** The Borrower shall pay when due to the taxing authority or authorities having jurisdiction all property taxes, local improvement rates and charges with respect to the Project.
5. **Indemnity:** The Borrower shall indemnify and save harmless the Lender and its officers, agents, trustees, employees, contractors, licensees or invitees from and against any and all losses, damages, injuries, expenses, suits, actions, claims and demands of every nature whatsoever arising out of the provisions of the Loan Documents, any letters of credit or letters of guarantee issued or indemnified, sale or lease of the Project and/or the use or occupation of the Project including, without limitation, those arising from the right to enter the Project from time to time and to carry out the various tests, inspections and other activities permitted by the Loan Documents.
6. **Environmental Liability:** In addition to any liability imposed on the Borrower under any of the Loan Documents, the Borrower shall be jointly and severally liable for any and all of the Lender's costs, expenses, damages or liabilities, including, without limitation, all reasonable legal fees, directly or indirectly arising out of or attributable to the use, generation, storage, release, threatened release, discharge, disposal or presence on, under or about the Project of any hazardous or noxious substances; provided that notwithstanding the foregoing the Borrower shall not have personal liabilities with respect to this subparagraph. For greater certainty, recourse by the Lender under this subparagraph shall be limited solely to the property of the Borrower.
7. **Assignability:** The Loan Documents may not be assigned, transferred or otherwise disposed of by the Borrower without the Lender's prior written consent, which consent may be arbitrarily withheld, delayed and/or conditioned by the Lender. The Loan, any of the Loan Documents or any interest in the Loan or the Loan Documents may be assigned or participated by the Lender (and its successors and assigns), in whole or in part, without the consent of the Borrower, provided that any assignee must have sufficient financial wherewithal to comply with the terms of this Commitment Letter. Except as hereinafter provided, the Borrower consents to the disclosure by the Lender to any such prospective assignee or participant of all information and documents regarding the Loan, the Loan Documents, the Project and the Borrower within the possession or control of the Lender.

8. **Information:** For purposes of this Commitment Letter, "**Information**" means all information relating to the Borrower and its affiliates or any of their respective businesses, other than any such information that is available to the Lender on a non-confidential basis prior to such receipt. Any person required to maintain the confidentiality of Information in accordance with this Commitment Letter shall be considered to have complied with its obligation to do so if such person has exercised the same degree of care to maintain the confidentiality of such Information as such person would accord to its own confidential information. In addition, from time to time the Lender publishes advertisements or announcements of completed transactions which advertisements or announcements include, but are not limited to, press releases, paid advertisements, internally displayed tombstones, social media, investor brochures or information displayed on the internet or on the Lender's intranet. The Borrower consents to the publication of an advertisement or announcement of the Loan and agrees to allow the Lender to photograph or utilize existing photographs or artistic renderings (for unfinished projects) of the Project for possible use in internal or external marketing programs.
9. **Confidentiality of Information:** The Lender agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to it, its affiliates and its and its affiliates' respective partners, directors, officers, employees, agents, advisors and representatives to the extent necessary to administer or enforce any of the Loan Documents, it being understood that the persons to whom such disclosure is made will be informed of the confidential nature of such Information and will be bound and instructed to keep such Information confidential, (b) to the extent requested by any regulatory authority having jurisdiction over it (including any self-regulatory authority), (c) to the extent required by any applicable law or other legal process, (d) to any other party hereto, (e) to the extent reasonable, in connection with the exercise of any remedies under any of the Loan Documents or any action or proceeding relating to any of the Loan Documents or the enforcement of rights thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to any assignee of or participant in, or any prospective assignee of or participant in, any of its rights or obligations under the Loan or any of the Loan Documents, (g) with the consent of the Borrower, or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section, or (ii) becomes available to the Lender on a non-confidential basis from a source other than the Borrower or its affiliates and provided such source has not, to the knowledge of the Lender, breached a duty or obligation of confidentiality owed to the Borrower or its affiliates, or the Lender. If the Lender is requested or required to disclose any Information pursuant to or as required by any applicable law or by an subpoena or similar legal process, the Lender shall use its reasonable commercial efforts to provide the Borrower with notice of such requests or obligation in sufficient time so that the Borrower may seek an appropriate protective order or waive the Lender's compliance with the provisions of this Section, and the Lender shall co-operate with the Borrower in obtaining any such protective order.
10. **Use of Information:** The Lender shall be entitled to use any Information to assess the ability of the Borrower to obtain the Loan and to evaluate the ability of the Borrower to meet its financial obligations which includes, without limitation, disclosing and exchanging Information on an on-going basis with credit bureaus, credit reporting agencies and financial institutions or their agents, or to service providers, in order to determine and verify, on an on-going basis, the continuing eligibility of the Borrower for the Loan and the continuing ability of the Borrower to meet its financial obligations. This use, disclosure and exchange of Information will continue until the principal balance of the Loan outstanding together with all accrued and unpaid interest thereon and all other costs secured by the Security is repaid in full and will help protect the Borrower from fraud and will also protect the integrity of the credit-granting system.

11. **Changes and Alterations:** Any major changes, additions, and/or alterations contemplated to the Property, including major changes in use of the Property or any proposed use of the Property as a hotel, short term stay of less than 60 days, or similar type of accommodation, must receive the Lender's prior written consent, in the Lender's sole discretion, prior to the commencement of the changes, additions and/or alterations. If the Borrower changes or alters the Property or its use, without the prior written consent of the Lender being obtained, then the Lender may, in its sole discretion, declare forthwith due and payable the entire outstanding Loan Amount together with all accrued and unpaid interest due thereon. The Borrower will provide reasonable notice to the Lender of any anticipated or impending transaction which would require the consent of the Lender under this section, together with such reasonable information as the Lender may require to determine whether or not to grant its consent thereto.
12. **Right to Inspect:** The Borrower acknowledges that the Lender may inspect the Project at any time at the expense of the Borrower.
13. **Demand and Default:** If any Event of Default has occurred which is continuing, , then the Borrower shall, at the option of the Lender, be in default of its obligations to the Lender, the Lender may, at its option on notice to the Borrower, demand repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security in full, cease or delay further funding, and/or may exercise any and/or all remedies available to it under the Security, at law and/or in equity.

Misappropriation of funds as determined by the Lender or Project Monitor, in its sole and absolute discretion, is deemed an Event of Default under the Loan and the Lender retains its right to demand repayment of the Loan in full.
14. **Remedies Cumulative:** No extension, postponement, forbearance, delay, or failure on the part of the Lender in the exercise of any power, right or remedy under any of the Loan Documents, at law or in equity shall operate as a waiver thereof, nor shall a single or partial exercise of any power, right or remedy preclude other or further exercise thereof or the exercise of any other power, right or remedy. Neither the acceptance of any payment nor the making of any concession by the Lender at any time during the existence of a default shall be construed as a waiver of any continuing default or of any of the Lender's rights or remedies. All of the powers, rights and remedies of the Lender shall be cumulative and may be exercised simultaneously or from time to time in such order or manner as the Lender may elect. No waiver of any condition or covenant of the Borrower or of the breach of any such covenant or condition shall be deemed to constitute a waiver of any other covenant or condition or of any subsequent breach of such covenant or condition or justify or constitute a consent to or approval by the Lender of any violation, failure or default by the Borrower of the same or any other covenant or condition contained under any of the Loan Documents.
15. **Severability:** The Borrower agrees that if any one or more of the provisions contained in this Commitment Letter shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any or all other provisions of this Commitment Letter and this Commitment Letter shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
16. **Time of the Essence:** Time is of the essence in this Commitment Letter.
17. **Non-Merger:** The representations, warranties, covenants and obligations herein set out in any of the Loan Documents shall not merge or be extinguished by the execution or registration of the

Security but shall survive until the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other amounts secured by the Security are repaid in full.

18. **Interim Occupancy Fees and Revenues:** Interim occupancy fees/revenue must be used exclusively towards Project costs or to reduce the outstanding balance of the Loan. Save and except as set forth in this Section, interim occupancy fees may not be used by the Borrower for any other purpose nor may they be removed from the Project as a fee, equity repatriation, dividend, interest, premium or any other form of distribution.
19. **Payment of Sales Taxes:** The Project Budget shall include a net difference of \$Nil for applicable sales tax paid less applicable sales tax recovered and shall also include a ceiling of \$750,000 at any point in time, prior to repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security in full, with respect to the permitted difference between applicable sales tax included in work-in-place less applicable sales tax recovered by the Borrower from government authorities.
20. **Lender's Sign:** The Lender shall have the right, but shall not be obligated, at the Lender's cost, to place a sign on the Project at any time after execution of this Commitment Letter by the Borrower but prior to repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security in full, which sign shall state that the Lender has assisted with the financing of the Project. The Lender, at the Lender's cost, shall be permitted to take down the sign at any time prior to repayment of the principal balance of the Loan outstanding together with all accrued and unpaid interest and all other costs secured by the Security in full, after which time the Borrower shall be permitted to take down such sign at any time at the Borrower's cost.
21. **Governing Law:** The Loan and the Loan Documents shall be governed by and construed under laws of the Province of Ontario and the federal laws of Canada as applicable therein.
22. **Modification:** No term or requirement of any of the Loan Documents may be waived or varied orally or by any course of conduct of the Borrower or anyone acting on his behalf or by any officer, employee or agent of the Lender. Any alteration or amendment to any of the Loan Documents must be in writing and signed by a duly authorized officer of the Lender and accepted by a duly authorized officer of the Borrower.
23. **Language:** Any word importing the singular or plural shall include the plural and singular respectively. If any party is comprised of more than one entity, the obligations of each of such entities shall be joint and several. Any word importing persons of either gender or firms or corporations shall include persons of the other gender and firms or corporations were the context so requires.
24. **Headings:** The headings and section numbers appearing in any of the Loan Documents are included only for convenience of reference and in no way define, limit, construe or describe the scope or intent of any provision of any of the Loan Documents.
25. **Counterparts:** Any of the Loan Documents may be executed in several counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument.
26. **Electronic Execution:** The words "execution," "execute", "signed," "signature," and words of like import in or related to any Loan Documents to be signed in connection with the Loan shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which

shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided Parts 2 and 3 of the *Personal Information Protection and Electronic Documents Act* (Canada) and the *Electronic Commerce Act, 2000* (Ontario), or any other similar laws based on the *Uniform Electronic Commerce Act* of the Uniform Law Conference of Canada.

27. **Calculations:** All interest calculated under this Commitment Letter shall be computed based on the actual number of days elapsed in a year consisting of 365 days.
28. **Paramountcy:** In the event of any inconsistency or conflict between any of the provisions of the Commitment Letter and any provision or provisions of the Security, the provisions of the Commitment Letter will prevail.
29. **Disclosure:** KingSett Mortgage Corporation acted on behalf of 12 lenders in the previous fiscal year.

**SCHEDULE C
PROJECT MONITOR MANDATE / REPORTING**

LOW RISE CONSTRUCTION

GENERALLY ON THE ROLE OF THE PROJECT MONITOR:

The below aims to set out what is expected by KingSett from the Project Monitor. While the below lists our minimum requirements, we anticipate the Quantity Surveying professional will use their best judgment and provide additional information as needed to alert KingSett of any material issues as they emerge on site / during the life of the project.

PRELIMINARY REPORT PRIOR TO INITIAL FUNDING:

The Project Monitor is to prepare a preliminary report inclusive of the following information:

Project Description:

1. The Preliminary report should include a brief description of the project. The description should outline major points such as:
 - (a) Overall GFA of the proposed project
 - (b) Whether the project consists of purpose built rental units or for sale housing units.
 - (c) The number of houses / townhomes etc being built; and if there are several blocks each should be summarized.
 - (d) If there are multiple phases - the number of phases included in the project, with a brief description of each phase.
 - (e) The type of construction, with a brief description of:
 - (i) Foundation system (eg Concrete footings)
 - (ii) Structure (eg Timber framed)
 - (iii) Envelope (eg Brick veneer & vinyl siding with punch windows)
 - (iv) Roofing system (eg Asphalt shingles)
 - (v) Finishes (eg. Interior walls with drywall finishes, tiling finishes in the washrooms, laminate flooring throughout, unfinished basement etc)
 - (vi) Services, including a brief description of the HVAC system being installed
 - (vii) Landscaping scope
 - (viii) Deferred scope – if there are items shown on the drawings which are being deferred / not included in the sources of funding, these should be identified.

Budget & Schedule Commentary:

1. Quantity Surveyor to review the drawing packages included and comment on whether or not the drawings are adequate for pricing. Commentary should clarify whether the drawings are approximately at:
 - (a) Class B stage / Detailed Design
 - (b) Class A stage – commentary should clarify if the drawings are 'Issued for Construction' or 'Issued for Tender'
 - (c) Drawings are to be made available upon request
2. review the Borrower's proposed detailed Project Budget as revised and approved by the Lender, further to the Project Monitor's recommendations. The review of the soft costs should confirm
 - (a) Comment on the allowance for the Development Management fee and whether it is reasonable
 - (b) Review the development charges, building permits allowances and levies and confirm they are in line with the local city charges
3. review all material cost-items, contracts and change orders with trades; the review must include commentary with regards to the documentation included in the major trade contracts and any exclusions / qualifications. Requirements are further outlined in the section on Contracts below.
4. Request / confirm quantum of any contemplated trade contract change orders or extras not yet approved with the Borrower and / or Construction Manager.
5. confirm all funding sources including without limitation, equity, purchaser deposits, deferrals, mezzanine financing and construction loan, as applicable;
6. confirm that Minimum Project Equity has been injected into the Project on the agreed-upon land valuation contained in the Commitment Letter and costs incurred to date;
7. confirm that the Borrower has continually maintained the Minimum Project Equity at all times;
8. confirm the adequacy of the interest expense carried in the Project Budget including, without limitation, the preparation of independent Project cash flows.
9. confirm the adequacy of the contingency allowances carried in terms of construction risk and other soft costs;
10. confirm the costs incurred to date through a review of all invoices, the Borrower's trial balance, aged payables listing, cancelled cheques, etc. (backup to costs to be made available on request);
11. confirm applicable development charges and levies relating to the Project including, without limitation, parkland deduction, regional and municipal, education, Section 37 and any other applicable municipal fees;
12. confirm the expected timing of payments and prepare a cash flow;

13. Provide commentary on relative experience of major trade contractors and the construction manager, and any requirement for bonding. Commentary should briefly comment on the trade's capacity to complete low rise projects of this scale, and confirm whether they are arm's length / non arm's length.
14. review the Project construction time schedule (the "**Project Schedule**") to confirm overall reasonableness. The commentary must confirm whether the schedule is suitably detailed with all key activities listed and has a clear critical path that the Quantity Surveyor can track. Key milestones to be summarized and incorporated in the report.
15. review allowance for appropriate HST and whether this is to be funded by the Lender or the Borrower and, where the Project includes residential rental units, validate the amount of self-assessed HST included in the Project Budget.
16. Confirm the approach being taken with regards to Holdback. If the Borrower is not taking a 10% Holdback in line with the requirements of the lien act this must be noted in the report and discussed with the KingSett team.
17. If the project includes any deferred items, these must be noted in the report.

Management Contract & Trade contracts:

1. Confirm whether the project is being self performed with the Borrower acting as the Construction manager; or whether a 3rd party Construction manager is being hired.
2. Confirm the Borrower's approach to procurement, clarifying whether the Borrower has a standard form of contract that they use with trades, inclusive of a detailed scope of work; or whether post award trade work proceeds on the basis of quotes received (without a contract being in place).
3. Review the development management agreement to confirm the requirements and any other material agreements against the Project Budget;
4. Review the budget as follows:
 - (a) all costs reported as committed should be reviewed in terms of reasonableness, conformity to the latest design documents, Project Schedule and for front end loading;
 - (b) confirmation of committed costs identifying contracts, awards, letters of intent and trade quotations together with a summary of major contracts still to be awarded and tendering schedule for all un-awarded scopes of work. Commentary must also advise of the approximate timeline to turn the Letters of Intent into firm contracts;
 - (c) Time sensitive LOIs / Quotes / Contracts should be identified. For example, if a quote is received for Lumber supply which is contingent on work commencing by certain dates, this should be noted.
 - (d) Any quotes / contracts / LOIs that do not cover the entire scope should be identified. For example, if there are 30 Blocks, and the lumber supply quote only covers the first 10 Blocks, this should be noted.
 - (e) for all costs noted as being uncommitted, an estimate should be completed (QS to confirm the reasonableness of the budget amounts);
 - (f) All information reviewed, including Bid Levelling, must be made available to the Lender upon request;

5. Please list all contracts / LOIs / Quotes using a format similar to the table below (examples given for reference purposes only)

Trade / Supplier	Sub-Contractor / Supplier	Drawings included	Status	Amount
Excavation	Trade A	Eg. Issued for Permit	Quote	\$500,000.00
Concrete Work	Trade B	Eg. Issued for Permit	Contract	\$1,000,000.00
Lumber Supply	Trade C	Eg. Issued for Construction	Unit rate contract	\$2,225,000.00
Carpentry - Framing	Trade D	Eg. Issued for Permit	LOI	\$3,000,000.00
Roofing	Trade E	Eg. Issued for Construction	Quote	\$600,000.00

Presales:

1. Review the Borrower's schedule of presales and provide a summary of sold and unsold Units (including without limitation parking Units and locker Units) in terms of both Units and revenue;
2. Review all agreements of purchase and sale to confirm presale requirements have been met in terms of sales;
3. Review contracted deposits and the Borrower's ledger of deposits to confirm deposits as a source of funds have been met; and
4. Review mortgage pre-approvals for qualified presales.

Permits and Approvals: Provide a list of all the permits and approvals required for the project, as well as the expected timing of receipt of the approvals and permits. Review all of the development agreements, site plan agreement, subdivision agreement, building permits, and other municipal / regional agreements and, in the case where not all permits are available, identify which permits have been received and any that have been applied for and anticipated timing of receipt.

Letters of Credit: confirm the amounts of any required letters of credit and whether any or all of the letters of credit are duplicates of Project costs included within the Project Budget.

Insurance: review the insurance provided in terms of period of coverage, insured parties, loss payable and the sum insured.

Other Conditions:

1. review all loan agreements and commitment letters including, without limitation, any deposit insurance agreement and amendments for the financing of the Project;
2. confirm the purchase price for the lands upon which the Project is to be constructed by reviewing the purchase and sale agreement and supporting documents;
3. review all available architectural and engineering plans and specifications for conformity with the Project Budget, along with all awarded contracts, letters of intent or tendered quotations;

4. review all environmental site assessments reports, geotechnical reports and hydrogeology reports, as applicable, and confirm that all recommendations are included within the Project Budget; any major risks / unknowns are to be highlighted.
5. review all design consultant contracts in conjunction with a review of costs incurred to date to confirm the adequacy of applicable budgets. The commentary should confirm whether are adequate funds left in the cost to complete for the contract administration phase of the project of the design team; and
6. review all sales, legal and marketing agreements in conjunction with a review of costs incurred to date to confirm the adequacy of applicable budgets and the timing of commission payments with respect thereto.
7. If there are any off site storage items being claimed by the Borrower, the associated documentation should be enclosed, including the Bill of Sale and insurance documents. Please note that for off site amounts in excess of \$50,000 the QS needs to visit the site where the offsite storage materials are being retained.

Other:

1. identify any potential issues that may affect the completion of the Project in accordance with the Project Budget and the Project Schedule;
2. provide any additional recommendations as they become apparent during the Project Monitor's review and discussions with the Borrower and the Lender.
3. **List any outstanding documents that have been requested but not received.** For example, if backup to invoices have been requested but not received, this should be noted.

Appendices required in the Preliminary report:

The following are a list of the Appendices required in the Preliminary report

- (a) Borrower's cost ledger / Borrower's job cost report
- (b) Quantity Surveyor's Capital Cost Summary (CCS)
- (c) A reconciliation between the Quantity Surveyor's CCS and the Borrower's ledger
- (d) A construction cost report (CCR). [CCR must show Holdback on a trade by trade basis]
- (e) Draft Margin Calculation
- (f) A current project schedule
- (g) Cash flow
- (h) A site plan marked up showing what has been completed to date (example included as a separate attachment for reference)
- (i) Borrower's sales report
- (j) Deposit Trust summary

- (k) The Construction Manager's invoice / Contractor's invoice. If applicable, executed copies of change orders should be included [Full backup must be made available on request]
- (l) Consultant reports / Consultant Sign off / Municipal sign off (as available / applicable)
- (m) Site Photographs (minimum of 6 photos per Block once framing has commenced)
- (n) Project statistics, showing the GFA on a floor by floor basis
- (o) Project Monitor's Certificate for Payment
- (p) Project Monitor Certificate / Payment certifier's certificate (as available / applicable)
- (q) Statutory Declaration and WSIB / Worksafe statement
- (r) Off site Storage Agreements (if off site storage has been claimed, please enclose in a separate appendix)
- (s) Building Permits & Development agreements
- (t) Contracts / Backup to costs being reported as committed
- (u) Insurance Certificates
- (v) Legal Survey

PROGRESS DRAW REPORTS PRIOR TO SUBSEQUENT ADVANCES FOR WORK-IN-PLACE:

During construction of the Project the Project Monitor is to prepare monthly progress draw reports inclusive of the following information.

Outstanding documents:

1. Every monthly report should have a list of outstanding documents and / or a list of documents that have been requested but not received. Examples of items we need flagged:
 - a. Statutory Declaration has not been received for the last payment
 - b. Insurance certificates are out of date
 - c. WSIB out of date
 - d. Invoice backup to Borrower's cost ledger requested but not received
 - e. Off site storage agreements are not available or inadequate.
 - f. Any other material items

Site Visit:

1. conduct monthly site inspections prior to every draw request, including photographs and commentary on all work-in-place and the status of the Project;
2. confirm if there are any materials stored off-site and ensure that appropriate bill of sales and off-site material documentation is provided, including a thorough review of the documents to ensure the addresses, the names of the parties and the dollar amounts are correct and in line with contractual arrangements. Please note that for off site amounts in excess of \$50,000 the QS needs to visit the site where the offsite storage materials are being retained and;
3. provide commentary on the status of physical progress on-site and whether it is progressing in accordance with the Project Schedule. Commentary should:
 - (a) Provide an overall summary of the progress on site
 - (b) Outline what has been completed since the last report was issued
 - (c) Compare actual progress to the schedule, noting how progress compares to the critical path. If the schedule is slipping, QS is to clarify how the Borrower & Construction team are addressing this.
 - (d) The report should include a table with clear milestones, and the milestones should be no more than 6 months apart. **Milestone dates not to be changed without prior discussions with KingSett Capital.**
 - (e) Provide an updated progress matrix (sample one will be provided)

Project Budget, Cost-to-Date and Cost-to-Complete:

1. review the Borrower's draw request based on a Project cost report, invoices and aged payables listing, and update and confirm the cost of work completed to date including holdbacks;
2. Further to the above, the QS must do a review of all the hard cost invoices to ensure amounts claimed are in line with progress on site, including all costs tied to general requirements and trade invoices (full backup of hard costs to be made available on request).
3. update the Project Budget and comment on any amendments to the Project Budget based on a review of the latest information and discussions with the Borrower;
4. review and update the Project cash flow projections and advise on any necessary revisions. Cash flow should include a reasonable forecast of the construction hard costs, and all key milestones in the project per the baseline schedule should be shown in the legend;
5. comment on the adequacy of the remaining contingency allowances;
6. review cancelled cheques to confirm that all material costs claimed in the Borrower's last draw request have been paid; and
7. receive and review a standard Statutory Declaration of Progress Payment Distribution and WSIB certificate. The QS should check that the Statutory Declaration has been signed, stamped by the commissioner and is up to date. If the statutory Declaration isn't up to date this should be flagged in the executive summary of the report.

Construction:

1. review and comment on any changes to the scope of the Project or the Project Budget, including without limitation, any revised drawings if applicable;
2. identify and comment on any amendments to the construction budget to reflect approved change orders, requested change orders under review, and the impact of same on contingencies. With regards to contemplated change orders, the Quantity Surveyor should request updates on a monthly basis;
3. review any additional contracts received since the last draw report for completeness of scope, construction budget, and Project Schedule;
4. confirm committed costs identifying awarded contracts, letters of intent and trade quotations and provide an updated summary of major contracts still to be awarded, and a tendering schedule for such remaining un-awarded scopes of work.
5. provide commentary on the relative experience of any new major trade contractors and any requirement for bonding; and
6. review and comment on any additional new change orders over \$100,000, explaining what has caused the increase to the budget.

Loan Calculation/Monthly Draw:

1. prepare a Loan advance calculation outlining work completed to date, work-in-place, holdback amounts, value of change orders, estimate of cost-to-complete, and recommended source of funding breakdown; and

2. reconcile any deposit use with deposits received to date.

Sales and Deposits:

1. review and analyze the Borrower's updated presale and/or deposit schedule and provide comments on any material changes from the last draw report; and
2. where deposits are held in trust, obtain an updated confirmation from the trustee as to the amounts held.

Permits and Approvals:

1. The QS report should note which agreements and permits have been received and, in the case where not all permits are available, identify which permits have been applied for together with the anticipated timing of receipt and the impact on construction progress, if any; and
2. confirm the amounts of any required letters of credit and whether any or all of these are duplicates of Project costs included within the Project Budget.

Insurance: review insurance provided in terms of period of coverage, insured parties, loss payable and the sum insured. If any insurance documents are out of date this should be noted in the Executive summary of the report.

Other:

1. identify any potential issues that may affect the completion of the Project in accordance with the Project Budget and the Project Schedule;
2. provide any additional recommendations as they become apparent during the Project Monitor's review and discussions with the Borrower and the Lender;
3. All Monitoring reports should include the following Appendices:
 - (a) Borrower's cost ledger / Borrower's job cost report
 - (b) Quantity Surveyor's Capital Cost Summary (CCS)
 - (c) A reconciliation between the Quantity Surveyor's CCS and the Borrower's ledger
 - (d) A construction cost report (CCR)
 - (e) Draft Margin Calculation
 - (f) A current project schedule
 - (g) Cash flow (must be kept up to date)
 - (h) A site plan marked up showing what has been completed to date (example included as a separate attachment for reference)
 - (i) Borrower's sales report
 - (j) Deposit Trust summary

- (k) The Construction Manager's invoice / Contractor's invoice. If applicable, executed copies of change orders should be included
- (l) Consultant reports (including structural, mechanical, electrical, geotechnical reports as available)
- (m) Site Photographs. Location at which site photos were taken to be clearly identified (minimum of 6 photos per phase once framing has started)
- (n) Project Monitor's Certificate for Payment
- (o) Project Monitor Certificate / Payment Certifier's Certificate (as applicable)
- (p) Statutory Declaration and WSIB / Worksafe statement
- (q) Off site Storage Agreements (if off site storage has been claimed, please enclose in a separate appendix)
- (r) Building Permits & Development agreements (as they are received)
- (s) Contracts / Backup to costs being reported as committed (as they are received)
- (t) Insurance certificates (when updated / renewed)

SCHEDULE D EVENTS OF DEFAULT

The occurrence of any one or more of the following events will constitute an “**Event of Default**” under the Commitment Letter:

1. if an order is entered or granted that: (i) dismisses the Appointment Order or vacates, stays or otherwise causes the Appointment Order to be ineffective; (ii) lifts the stay provided for in the Appointment Order or otherwise modifies the Appointment Order in a manner not acceptable to the Lender acting reasonably; or (iii) grants any claim of super priority status or a lien equal or superior to that granted to the Lender in the Appointment Order, other than the Receiver’s Charge;
2. the filing by the Borrower of any motion or proceeding which (i) is not consistent with any provision of the Commitment Letter or the Receiver’s Borrowings Charge; (ii) could reasonably be expected to materially adversely affect the interests of the Lender; (iii) seeks an order which affects the interests of the Lender that is not acceptable to the Lender, acting reasonably; or (iv) seeks to continue the Receivership under the jurisdiction of a court other than the Court, unless in the case of any of the foregoing, the Lender has consented thereto in writing, or the granting of any order in the Receivership that is not in form and substance satisfactory to the Lender, acting reasonably;
3. if the Borrower fails to pay any amount of principal of the Loan when due;
4. if the Borrower fails to pay any interest, fees or other obligations of the Borrower to the Lender hereunder (other than any principal amount of the Loan) when due and such default continues for three business days after notice of such default has been given by the Lender to the Borrower;
5. if the Borrower materially breaches any of the covenants hereunder and, where such covenant can be remedied, such breach is not remedied within 15 days of becoming aware of such breach;
6. except to the extent stayed by the Appointment Order, if proceedings are commenced for the dissolution, liquidation or voluntary winding-up of the Debtor, or for the suspension of the operations of the Debtor unless such proceedings are being actively and diligently contested in good faith;
7. if construction on the Project ceases for a single period of 20 days or more, except as the result of force majeure;
8. if any change occurs that: (i) has a material adverse effect on the Property, including the related liabilities, operations, construction, development, expected revenues, results of operations or condition of the Property; (ii) has an adverse effect on the legality, validity or enforceability of any of the Loan Documents which could reasonably be considered material having regard to any Loan Document, including the validity, enforceability, perfection or priority of any encumbrance created under any of the Security which could reasonably be considered material having regard to the Security considered as a whole; or (iii) has an adverse effect on the right, entitlement or ability of the Lender to enforce its rights or remedies under any of the Loan Documents which could reasonably be considered material (each, a “**Material Adverse Change**”); provided that the pendency of the Receivership shall not constitute a “**Material Adverse Change**”; or
9. if any delay in construction on a Project of 120 days or more occurs as a result of strikes of employees, contractors or subcontractors.

SCHEDULE E REPORTING

The Borrower shall provide the Lender with copies of the following regarding the Borrower and the Project:

1. any and all insurance policy renewals and/or amendments immediately upon the issuance thereof. The Lender may, in its unfettered discretion, require its insurance consultant to conduct an insurance review at the Borrower's expense;
2. ongoing Project information including, but not limited to, strata plan documentation, working and final architects' / engineers' drawings, construction budgets, artist's renderings, and floor plans for the proposed Units;
3. annually or as otherwise requested from time to time by the Lender evidence of the payment of all property taxes, local improvement rates and charges with respect to the Project;
4. on a monthly basis, Project sales list updates and all newly executed firm and binding purchase and sale agreements with respect to the sale of Units; and
5. at the Lender's request from time to time, the Borrower shall provide the Lender with any other relevant updates regarding the Project.

**SCHEDULE F
NOTICE TO PROPERTY TAX AUTHORITY**

Re: **Borrower:** _____
 Project: _____
 Loan No.: _____

To Whom It May Concern:

Approval is being given to release any information verbally or in writing as requested by our lender, KingSett Mortgage Corporation, regarding all matters related to taxes for the above-noted property. This is including but not limited to taxes outstanding, status of tax account, payments received and/or outstanding or copies of tax statements.

This approval will remain in full force and effect until the mortgage is paid in full.

Dated this _____ day of _____, 20_____.

BORROWER:

KSV Restructuring Inc. in its capacity as court appointed receiver and manager of the Property of Vandyk – Heart Lake Limited, and not in its personal or any other capacity

Name:
Title:

**SCHEDULE G
PROJECT BUDGET & SOURCES OF FUNDS**

The total Project Budget has been represented by the Borrower to be \$153,850,891 as set out below:

Uses of Funds	Total
Land Costs	\$ 34,150,000
Hard Costs - Servicing	13,996,611
Hard Costs - Construction	48,850,113
Total Hard Costs	\$ 62,846,724
Development	24,299,639
Consultants	1,410,198
Admin & Marketing	6,932,898
Total Soft Costs	\$ 32,642,734
Finance Costs	\$ 18,095,250
Contingency	\$ 6,116,183
Total Budget	\$ 153,850,891

Sources of Funds	Total
Subject Loan	\$ 110,325,000
Current Indebtedness	34,000,000
Deposits (Base)	9,525,891
Total Budget	\$ 153,850,891

SCHEDULE E.26

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

THE HONOURABLE) TUESDAY, THE 15TH
JUSTICE BLACK) DAY OF OCTOBER, 2024

BETWEEN:

KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION

Applicants

- and -

**VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE LIMITED, 2402871
ONTARIO INC., VANDYK – THE RAVINE LIMITED, VANDYK – LAKEVIEW- DXE-
WEST LIMITED AND VANDYK – LAKEVIEW-DXE EAST LIMITED**

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, c. B-3, AS AMENDED, AND
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**THIRD AMENDED & RESTATED ORDER
(Amending the Order Appointing Receiver)**

THIS APPLICATION made by KingSett Mortgage Corporation and Dorr Capital Corporation (together, the "**Applicants**") for an Order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") without security, of the real property legally described in Schedule "A" to this Order (the "**Real Property**") and all present and future assets, undertakings and personal property of Vandyk – Lakeview-DXE-

West Limited ("**Lakeview**"), Vandyk – Heart Lake Limited ("**Heart Lake**"), 2402871 Ontario Inc. ("**240**"), Vandyk – The Ravine Limited ("**Ravine**") and Vandyk – Uptowns Limited ("**Uptowns**" and collectively with Lakeview, Heart Lake, 240 and Ravine, the "**Debtors**" and each a "**Debtor**"), located at, related to, used in connection with or arising from or out of the Real Property or which is necessary to the use and operation of the Real Property, including all proceeds therefrom, together with all agreements of purchase and sale executed by Vandyk – Lakeview-DXE-East Limited ("**Lakeview 2**") related to any of the Real Property (collectively with the Real Property, the "**Property**") was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Daniel Pollack sworn November 7, 2023 and the Exhibits thereto (the "**Pollack Affidavit**"), the affidavit of Richard Ma affirmed November 12, 2023 and the Exhibits thereto, the affidavit of Daniel Pollack sworn January 8, 2024 and the Exhibits thereto, the Third Report of the Receiver dated June 6, 2024 (the "**Third Report**"), the Fourth Report of the Receiver dated September 18, 2024 (the "**Fourth Report**"), and the Fifth Report of the Receiver dated October 7, 2024 (the "**Fifth Report**"), on hearing the submissions of counsel for the Applicants, the Respondents, the Receiver and such other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the affidavit of service sworn and filed, on being advised that the Respondents consent to the issuance of this Order, and on reading the consent of KSV to act as the Receiver.

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that all terms not otherwise defined herein shall have the meaning ascribed to them in the Pollack Affidavit.

APPOINTMENT

3. THIS COURT ORDERS that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property.

RECEIVER'S POWERS

4. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) 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 the 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;
- (c) to manage, operate, and carry on the business of the Debtors, or any of them, in connection with the Property, including the powers to enter into any agreements or incur any obligations in the ordinary course of business in connection with the Property, cease to carry on all or any part of the business of the Debtors in connection

with the Property, or any of them, or cease to perform or disclaim any contracts of any of the Debtors or Lakeview 2 in respect of the Property, provided that the Receiver shall not disclaim any agreement of purchase and sale related to the Real Property without further Order of this Court on notice to the service list in these proceedings;

- (d) to engage construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other Persons (as defined below) from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;
- (e) to undertake any construction at the Property in connection with the exercise of the Receiver's powers and duties conferred pursuant to this Order, including, without limitation, paragraph 4(b), as contemplated by the Commitment Letters or the Construction Management Contracts (each as defined below), and/or as necessary to bring the property into compliance with applicable laws and building codes;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any of them, in connection with the Property or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to any of the Debtors or Lakeview 2 in connection with the Property (including, without limitation, any rent payments in respect of the Real Property) and to exercise all

remedies of any of the Debtors or Lakeview 2 in collecting such monies and accounts, including, without limitation, to enforce any security held by any of the Debtors;

- (h) to settle, extend or compromise any indebtedness owing to any of the Debtors or Lakeview 2 in connection with the Property;
- (i) to deal with any lien claims, trust claims, and trust funds that have been or may be registered (as the case may be) or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Debtors or to or on behalf of any beneficiaries of such trust funds pursuant to section 85 of the *Construction Act*, R.S.O. 1990, c. C.30;
- (j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of any of the Debtors or Lakeview 2, for any purpose pursuant to this Order;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to any of the Debtors or Lakeview 2 (as such proceedings relate to the Property or any portion thereof), the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or

applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (l) to investigate, and report to this Court on, intercompany payments, transactions and other arrangements between any of the Debtors and other Persons, including, without limitation, other companies and entities that are affiliates of any of the Debtors, that appear to the Receiver to be out of the ordinary course of business. All Persons shall be required to provide any and all information and documents related to the Debtors requested by the Receiver in connection with such investigations;
- (m) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtors thereon;
- (n) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion, and with the Applicants' consent, may deem appropriate;
- (o) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and

(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act* as the case may be, shall not be required;

(p) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;

(q) to report to, meet with and discuss with such affected Persons as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

(r) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

(s) to apply for any permits, licences, 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 Receiver, in the name of any of the Debtors and to meet with and discuss with such governmental authority and execute any agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);

- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Debtors;
- (u) to undertake any investigations deemed appropriate by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (v) to exercise any shareholder, partnership, joint venture or other rights which any of the Debtors may have; and
- (w) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors or Lakeview 2,

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 each of the Debtors and Lakeview 2, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

5. THIS COURT ORDERS that (i) each of the Debtors and Lakeview 2, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, (iii) all construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants and service providers, and all other persons acting on their instructions or behalf, and (iv) 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 to the Receiver upon the Receiver's request.

6. THIS COURT ORDERS that 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, information and cloud-based data of any kind related to the business or affairs of any of the Debtors, Lakeview 2 or the Property, and any computer programs, computer tapes, computer disks, cloud 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, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 6 or in paragraph 7 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 due to statutory provisions prohibiting such disclosure.

7. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer, in a cloud 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 7, 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, cloud or other system and providing the Receiver with any and all access codes, account names, account numbers and account creating credentials that may be required to gain access to the information.

8. THIS COURT ORDERS that, without limiting the generality of paragraphs 5-7 of this Order, all Persons, including, without limitation, any affiliates of any of the Debtors (collectively, the "**Vandyk Group**"), and each of them, shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any of them, Lakeview 2 and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, the Vandyk Group, or any of them, shall be required to do the following: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents relevant to any of the Debtors and/or the Property: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days' notice of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required or requested with respect to the exercise of the Receiver's authority hereunder.

NO PROCEEDINGS AGAINST THE RECEIVER

9. THIS COURT ORDERS that 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 DEBTORS OR THE PROPERTY

10. THIS COURT ORDERS that no Proceeding, including for greater certainty the Proceedings in the Ontario Superior Court of Justice bearing Court File No. CV-22-00689146-0000 and Court File No. CV-22-00686376-0000, against or in respect of any of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of any of the Debtors or the Property are hereby stayed and suspended pending further Order of this Court. Notwithstanding the foregoing, the Plaintiffs in the Ontario Superior Court of Justice actions bearing Court File No. CV-22-00689146-0000 and Court File No. CV-22-00686376-0000 may continue with their motion for contempt against Exquisite Bay Development Inc., Bay Homes Inc., Bay International Inc., 2474229 Ontario Inc., 2468924 Ontario Inc., Ahmed Raza Yousuf, and Muhammad Yousuf returnable on December 19, 2023, before Justice Centa, and may take such further or other steps required to conclude the contempt motion and enforce compliance with any penalties imposed or remedies granted in the contempt motion.

NO EXERCISE OF RIGHTS OR REMEDIES

11. THIS COURT ORDERS that all rights and remedies against the Debtors, Lakeview 2, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or 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 paragraph 11 shall (i) empower the Receiver or any of the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or any of the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

12. THIS COURT ORDERS that no Person shall 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 any of the Debtors, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

13. THIS COURT ORDERS that all Persons having oral or written agreements with any of the Debtors or Lakeview 2 or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, accounting services, centralized banking services, payroll services, insurance, transportation services, utility or other services to any of the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of any of the Debtors' current 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 date of this Order are paid by the Receiver in accordance with normal payment

practices of each of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

14. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from any of the Debtors to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

RECEIVER TO HOLD FUNDS

15. THIS COURT ORDERS that 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

16. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the applicable Debtor until such time as the Receiver, on the applicable 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 subsection

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 subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

17. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, 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 each of the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

18. THIS COURT ORDERS that nothing herein contained shall require the Receiver 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, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver'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.

LIMITATION ON THE RECEIVER'S LIABILITY

19. THIS COURT ORDERS that the Receiver shall incur no liability or obligation (including, without limitation, any personal liability or obligation under or in connection with (i) the Commitment Letters or the Construction Management Contracts; (ii) the performance, actions, errors, omissions or negligence by or of any construction manager, project manager, developer, contractor, subcontractor or other service provider, and all other persons acting on their behalf, or (iii) as a result of its appointment or the carrying out of the provisions of this Order), save and except for liability arising from any gross negligence or wilful misconduct on its part, as determined pursuant to a final order of this Court that is not subject to appeal or other review and all rights to seek any such appeal or other review shall have expired, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

20. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

21. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

22. THIS COURT ORDERS that 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 legal fees and disbursements, incurred at the standard 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

23. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow, pursuant to the Commitment Letter dated as of June 6, 2024 among the Receiver and KingSett Mortgage Corporation (the "**Lender**") (with such minor amendments that are not

inconsistent with this Order, as the Lender and the Receiver may agree to, the "**Lakeview Commitment Letter**"), such monies from time to time as it may consider necessary or desirable on the terms contained in the Lakeview Commitment Letter, provided that draws made under the Lakeview Commitment Letter do not exceed the aggregate principal amount of \$255,250,000, plus interest, fees and charges.

24. THIS COURT ORDERS that the Receiver is hereby authorized and empowered to execute and deliver such other definitive documents (collectively, the "**Lakeview Definitive Documents**"), as are contemplated by the Lakeview Commitment Letter or as may be reasonably required by the Lender pursuant to the terms thereof, and the Receiver is hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the Lender under and pursuant to the Lakeview Commitment Letter and the Lakeview Definitive Documents as and when the same become due and are to be performed, subject to the terms of the Lakeview Commitment Letter and paragraph 19.

25. THIS COURT ORDERS that the whole of the Property of Lakeview and Lakeview 2 shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Lakeview Borrowings Charge**") as security for the payment of the monies borrowed pursuant to the Lakeview Commitment Letter, together with interest, fees and charges thereon, as set forth in the Lakeview Commitment Letter and the Lakeview Definitive Documents, and all other amounts Lakeview is responsible for pursuant to the Lakeview Commitment Letter or any of the Lakeview Definitive Documents, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, except: (i) the Receiver's General Borrowings Charge, with which it shall rank *pari passu*, (ii) the Receiver's Uptowns Borrowings Charge, with which it shall rank *pari passu*, (iii) the Receiver's

Heart Lake Borrowings Charge, with which it shall rank *pari passu*, and (iv) the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA, to which it shall be subordinate in priority.

26. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the Receiver and the Lender may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Receiver's Lakeview Borrowings Charge or any of the Lakeview Definitive Documents;
- (b) upon the occurrence of an event of default under the Lakeview Commitment Letter, any of the Lakeview Definitive Documents or the Receiver's Lakeview Borrowings Charge, the Lender, subject to paragraph 36 of this Order, may exercise any and all of its rights and remedies against Lakeview or the Property of Lakeview and/or Lakeview 2 under or pursuant to the Lakeview Commitment Letter, any of the Lakeview Definitive Documents and the Receiver's Lakeview Borrowings Charge, including, without limitation, to immediately cease making advances to the Receiver and set off and/or consolidate any amounts owing by the Lender to the Receiver against the obligations of the Receiver to the Lender under the Lakeview Commitment Letter, any of the Lakeview Definitive Documents or the Receiver's Lakeview Borrowings Charge, make demand, accelerate payment and give other notices, or to apply to this Court for a bankruptcy order against Lakeview and for the appointment of a trustee in bankruptcy of Lakeview; and
- (c) the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy of Lakeview or the Property of Lakeview and/or Lakeview 2.

27. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow, pursuant to the Commitment Letter dated as of September 18, 2024 among the Receiver and the Lender (with such minor amendments that are not inconsistent with this Order, as the Lender and the Receiver may agree to, the "**Uptowns Commitment Letter**"), such monies from time to time as it may consider necessary or desirable on the terms contained in the Uptowns Commitment Letter, provided that draws made under the Uptowns Commitment Letter do not exceed the aggregate principal amount of \$60,000,000, plus interest, fees and charges.

28. THIS COURT ORDERS that the Receiver is hereby authorized and empowered to execute and deliver such other definitive documents (collectively, the "**Uptowns Definitive Documents**"), as are contemplated by the Uptowns Commitment Letter or as may be reasonably required by the Lender pursuant to the terms thereof, and the Receiver is hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the Lender under and pursuant to the Uptowns Commitment Letter and the Uptowns Definitive Documents as and when the same become due and are to be performed, subject to the terms of the Uptowns Commitment Letter and paragraph 19.

29. THIS COURT ORDERS that the whole of the Property of Uptowns shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Uptowns Borrowings Charge**") as security for the payment of the monies borrowed pursuant to the Uptowns Commitment Letter, together with interest, fees and charges thereon, as set forth in the Uptowns Commitment Letter and the Uptowns Definitive Documents, and all other amounts Uptowns is responsible for pursuant to the Uptowns Commitment Letter or any of the Uptowns Definitive Documents, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, except: (i) the Receiver's General

Borrowings Charge, with which it shall rank *pari passu*, (ii) the Receiver's Lakeview Borrowings Charge, with which it shall rank *pari passu*, (iii) the Receiver's Heart Lake Borrowings Charge, with which it shall rank *pari passu*, and (iv) the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA, to which it shall be subordinate in priority.

30. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the Receiver and the Lender may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Receiver's Uptowns Borrowings Charge or any of the Uptowns Definitive Documents;
- (b) upon the occurrence of an event of default under the Uptowns Commitment Letter, any of the Uptowns Definitive Documents or the Receiver's Uptowns Borrowings Charge, the Lender, subject to paragraph 36 of this Order, may exercise any and all of its rights and remedies against Uptowns or the Property of Uptowns under or pursuant to the Uptowns Commitment Letter, any of the Uptowns Definitive Documents and the Receiver's Uptowns Borrowings Charge, including, without limitation, to immediately cease making advances to the Receiver and set off and/or consolidate any amounts owing by the Lender to the Receiver against the obligations of the Receiver to the Lender under the Uptowns Commitment Letter, any of the Uptowns Definitive Documents or the Receiver's Uptowns Borrowings Charge, make demand, accelerate payment and give other notices, or to apply to this Court for a bankruptcy order against Uptowns and for the appointment of a trustee in bankruptcy of Uptowns; and

- (c) the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy of Uptowns or the Property of Uptowns.

31. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow, pursuant to the Commitment Letter dated as of October 7, 2024 among the Receiver and the Lender (with such minor amendments that are not inconsistent with this Order, as the Lender and the Receiver may agree to, the "**Heart Lake Commitment Letter**", and together with the Lakeview Commitment Letter and Uptowns Commitment Letter, the "**Commitment Letters**"), such monies from time to time as it may consider necessary or desirable on the terms contained in the Heart Lake Commitment Letter, provided that draws made under the Heart Lake Commitment Letter do not exceed the aggregate principal amount of \$120,325,000, plus interest, fees and charges.

32. THIS COURT ORDERS that the Receiver is hereby authorized and empowered to execute and deliver such other definitive documents (collectively, the "**Heart Lake Definitive Documents**"), as are contemplated by the Heart Lake Commitment Letter or as may be reasonably required by the Lender pursuant to the terms thereof, and the Receiver is hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the Lender under and pursuant to the Heart Lake Commitment Letter and the Heart Lake Definitive Documents as and when the same become due and are to be performed, subject to the terms of the Heart Lake Commitment Letter and paragraph 19.

33. THIS COURT ORDERS that the whole of the Property of Heart Lake shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Heart Lake Borrowings Charge**") as security for the payment of the monies borrowed pursuant to the Heart Lake Commitment Letter, together with interest, fees and charges thereon, as set forth in the Heart Lake Commitment Letter

and the Heart Lake Definitive Documents, and all other amounts Heart Lake is responsible for pursuant to the Heart Lake Commitment Letter or any of the Heart Lake Definitive Documents, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, except: (i) the Receiver's General Borrowings Charge, with which it shall rank *pari passu*, (ii) the Receiver's Lakeview Borrowings Charge, with which it shall rank *pari passu*, (iii) the Receiver's Uptowns Borrowings Charge, with which it shall rank *pari passu*, and (iv) the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA, to which it shall be subordinate in priority.

34. THIS COURT ORDERS that, notwithstanding any other provision of this Order:

- (a) the Receiver and the Lender may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Receiver's Heart Lake Borrowings Charge or any of the Heart Lake Definitive Documents;
- (b) upon the occurrence of an event of default under the Heart Lake Commitment Letter, any of the Heart Lake Definitive Documents or the Receiver's Heart Lake Borrowings Charge, the Lender, subject to paragraph 36 of this Order, may exercise any and all of its rights and remedies against Heart Lake or the Property of Heart Lake under or pursuant to the Heart Lake Commitment Letter, any of the Heart Lake Definitive Documents and the Receiver's Heart Lake Borrowings Charge, including, without limitation, to immediately cease making advances to the Receiver and set off and/or consolidate any amounts owing by the Lender to the Receiver against the obligations of the Receiver to the Lender under the Heart Lake Commitment Letter, any of the Heart Lake Definitive Documents or the Receiver's

Heart Lake Borrowings Charge, make demand, accelerate payment and give other notices, or to apply to this Court for a bankruptcy order against Heart Lake and for the appointment of a trustee in bankruptcy of Heart Lake; and

- (c) the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy of Heart Lake or the Property of Heart Lake.

35. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from the Lender by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$8,000,000 (which is separate and apart from any and all draws made under the Commitment Letters) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's General Borrowings Charge**") and, together with the Receiver's Lakeview Borrowings Charge, the Receiver's Uptowns Borrowings Charge and the Receiver's Heart Lake Borrowings Charge, the "**Receiver's Borrowings Charges**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, except: (i) the Receiver's Lakeview Borrowings Charge, which shall rank *pari passu* with the Receiver's General Borrowings Charge, (ii) the Receiver's Uptowns Borrowings Charge, which shall rank *pari passu* with the Receiver's General Borrowings Charge, (iii) the Receiver's Heart Lake Borrowings Charge, which shall rank *pari passu* with the Receiver's

General Borrowings Charge, and (iv) the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA, to which it shall be subordinate.

36. THIS COURT ORDERS that neither the Receiver's Borrowings Charges nor any other security granted by the Receiver in connection with its borrowings under this Order or the Commitment Letters shall be enforced without leave of this Court; provided, however, that nothing in this paragraph 36 shall prohibit the Lender from ceasing to make advances to the Receiver pursuant to the Commitment Letters upon an event of default thereunder.

37. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to paragraph 35 of this Order.

38. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to the Commitment Letters or this Order or any further order of this Court and any and all of the Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the Lender.

SERVICE AND NOTICE

39. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance

with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.ksvadvisory.com/experience/case/vandyk>.

40. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Receiver is at liberty to serve or distribute 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 facsimile transmission to any of the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile 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.

41. THIS COURT ORDERS that the Applicants, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

DEPOSITS

42. THIS COURT ORDERS that notwithstanding anything else contained herein, the "Property" as defined in the preamble of this Order shall not include any current or future funds related to deposits held in trust by any law firm or credit union acting on behalf of a Debtor with

respect to the purchase of a residential unit located on any of the Real Property, including, without limitation, the deposits held by Schneider Ruggiero Spencer Milburn LLP in trust pursuant to deposit trust agreements related to Uptowns', Lakeview's and Lakeview 2's respective projects.

CONSTRUCTION MANAGEMENT CONTRACTS

43. THIS COURT ORDERS that the CCDC 5A Construction Management Contract – for Services (2010) contract between Lakeview and PCL Constructors Canada Inc. ("**PCL**") dated June 13, 2023, as amended pursuant to the First Amending Agreement between the Receiver and PCL dated May 27, 2024, in the form attached as Appendix "B" to the Third Report (the "**Lakeview CM Contract**"), be and is hereby approved.

44. THIS COURT ORDERS that the CCDC contract between Uptowns and O&L LP dated August 27, 2024, in the form attached as Appendix "B" to the Fourth Report (the "**Uptowns CM Contract**"), be and is hereby approved.

45. THIS COURT ORDERS that the CCDC contract between Heart Lake and O&L LP dated October 7, 2024, in the form attached as Appendix "B" to the Fifth Report (the "**Heart Lake CM Contract**" and together with the Lakeview CM Contract and the Uptowns CM Contract, the "**Construction Management Contracts**"), be and is hereby approved.

46. THIS COURT ORDERS that the parties to the Construction Management Contracts are authorized and directed to comply with the terms of the respective Construction Management Contracts, and the Receiver is authorized to take such steps and execute such additional documentation as may be necessary or desirable to give effect to the Construction Management Contracts.

CRITICAL PAYMENTS

47. THIS COURT ORDERS that the Receiver may, with the prior written consent of the Applicants, make payments owing by any of the Debtors to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to November 14, 2023 that are reasonably required for the preservation of the Property.

GENERAL

48. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

49. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Debtors.

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

51. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered 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 that the Receiver 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.

52. THIS COURT ORDERS that the Applicants shall have their costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicants' security or, if not so provided by the Applicants' security, then on a substantial indemnity basis to be paid by the Receiver from the net realizations from the Property with such priority and at such time as this Court may determine.

53. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (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.

54. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.

SCHEDULE "A"
REAL PROPERTY

Vandyk – Heart Lake Limited (f/k/a 2366885 Ontario Inc.) and Vandyk – Uptowns Limited

PIN 14227-1291 (LT)

PT LOT 12, CONCESSION 2, EHS DES PT 1, PL 43R33117; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1, 43R35581 AS IN PR2508870; SUBJECT TO AN EASEMENT IN GROSS AS IN PR3253482; SUBJECT TO AN EASEMENT IN GROSS AS IN PR3770466; SUBJECT TO AN EASEMENT AS IN PR3853334; CITY OF BRAMPTON

PIN 14227-1266 (LT)

PT LT 11 CON 2 EHS CHING DES PT 1 PL 43R-19750, SAVE AND EXCEPT PT 7 PL 43R-31217; BRAMPTON

PIN 14227-1264 (LT)

PT LT 11 CON 2 EHS CHING AS IN CH21799, SAVE AND EXCEPT BL 696, PTS 1, 2, 3, 4, 5 PL 43R-31098, LYING NORTH EAST OF PT 1 PL 43R-31217 AND PTS1, 2 PL43R-31192; BRAMPTON; T/W ROW OVER PT LT 11 CON 2 EHS CHING DESPTS 1, 2, 3, 4, 5 PL 43R-31098, AS IN PR1167589

PIN 14227-1262 (LT)

PT LT 11 CON 2 EHS CHING DES PTS 1, 2 PL 43R-31192; BRAMPTON; T/W ROW OVER PT LT 11 CON 2 EHS CHING DES PTS 1, 2, 3, 4, 5 PL 43R-31098, AS IN PR1167589

2402871 Ontario Inc.

PIN 07617-0889 (LT)

LOTS 159, 160 & 161 PLAN 164 EXCEPT PART LOTS 160 & 161 PLAN 164, PART 2 66R28185; ETOBICOKE; TOGETHER WITH AN EASEMENT OVER PART LOTS 160 & 160 PLAN 164, PART 2 66R28185 AS IN AT4215394; SUBJECT TO AN EASEMENT IN GROSS AS IN AT4264438; SUBJECT TO AN EASEMENT IN GROSS AS IN AT4274323; SUBJECT TO AN EASEMENT AS IN AT3989173; CITY OF TORONTO

Vandyk – Lakeview – DXE – West Limited

PIN 13482 - 0071 (LT)

LTS 1, 2, 3, 22, 23 & 24, PL H23 ; EXCEPT PT 1 43R16245 & PT 1 43R21276; MISSISSAUGA

Vandyk – The Ravine Limited

PIN 13214-0871 (LT)

LOT 1, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0872 (LT)

LOT 2, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0873 (LT)

LOT 3, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0874 (LT)

LOT 4, PLAN 43M2113; SUBJECT TO AN EASEMENT IN GROSS OVER PART 4, 43R40043
AS IN PR3908805; CITY OF MISSISSAUGA

PIN 13214-0875 (LT)

LOT 5, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0876 (LT)

LOT 6, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0877 (LT)

LOT 7, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0878 (LT)

LOT 8, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0879 (LT)

LOT 9, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0880 (LT)

LOT 10, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0881 (LT)

LOT 11, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0882 (LT)

LOT 12, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0883 (LT)

LOT 13, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0884 (LT)

LOT 14, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0885 (LT)

LOT 15, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0886 (LT)

LOT 16, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0887 (LT)

LOT 17, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0888 (LT)

LOT 18, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0889 (LT)

LOT 19, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0890 (LT)

LOT 20, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0891 (LT)

LOT 21, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0892 (LT)

LOT 22, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0893 (LT)

LOT 23, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0894 (LT)

LOT 24, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0895 (LT)

LOT 25, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0896 (LT)

LOT 26, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0897 (LT)

LOT 27, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0898 (LT)

LOT 28, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0899 (LT)

LOT 29, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0900 (LT)

LOT 30, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0901 (LT)

LOT 31, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0902 (LT)

LOT 32, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0903 (LT)

LOT 33, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0904 (LT)

LOT 34, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0905 (LT)

LOT 35, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0906 (LT)

LOT 36, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0907 (LT)

LOT 37, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0908 (LT)

LOT 38, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0909 (LT)

LOT 39, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0910 (LT)

LOT 40, PLAN 43M2113; CITY OF MISSISSAUGA

PIN 13214-0911 (LT)

LOT 41, PLAN 43M2113; CITY OF MISSISSAUGA

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") without security, of the real property legally described in Schedule "A" (the "**Real Property**") to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") as amended and restated on October 15, 2024 (the "**Order**") and all present and future assets, undertakings and personal property of Vandyk – Uptowns Limited, Vandyk – Heart Lake Limited, 2402871 Ontario Inc., Vandyk – The Ravine Limited, and Vandyk – Lakeview-DXE-West Limited (collectively, the "**Debtors**"), located at, related to, used in connection with or arising from or out the Real Property or which is necessary to the use and operation of the Real Property, including all proceeds therefrom, together with all agreements of purchase and sale executed by Vandyk – Lakeview-DXE-East Limited related to the Real Property (collectively with the Real Property, the "**Property**"), appointed by the Order made in an application having Court File Number CV-23-00709180-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$_____, being part of the total principal sum of \$___ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of ___ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the __ day of _____, 2024.

KSV Restructuring Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per:

Name:

Title:

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**KINGSETT MORTGAGE CORPORATION AND
DORR CAPITAL CORPORATION**

**and VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE
LIMITED, 2402871 ONTARIO INC., VANDYK – THE RAVINE
LIMITED, VANDYK – LAKEVIEW-DXE-WEST LIMITED AND
VANDYK-LAKEVIEW-DXE EAST LIMITED**

Applicants

Respondents

Court File No.: CV-23-00709180-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

**THIRD AMENDED & RESTATED APPOINTING
ORDER**

BENNETT JONES LLP

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Lawyers for the Applicants

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, AND SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**KINGSETT MORTGAGE CORPORATION AND
DORR CAPITAL CORPORATION**

**and VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE
LIMITED, 2402871 ONTARIO INC., VANDYK – THE RAVINE
LIMITED, VANDYK – LAKEVIEW-DXE-WEST LIMITED AND
VANDYK-LAKEVIEW-DXE EAST LIMITED**

Applicants

Respondents

Court File No.: CV-23-00709180-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceedings commenced in Toronto

FIFTH REPORT OF THE RECEIVER

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