



**Second Report to Court of  
KSV Restructuring Inc.  
as Receiver and Manager of certain assets,  
property and undertakings of  
Vandyk – Backyard Kings Mill Limited and  
Vandyk-Backyard Humberside Limited**

October 8, 2024

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COURT FILE NUMBER: CV-23-00710267-00CL

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

**B E T W E E N:**

**MCAP FINANCIAL CORPORATION**

**APPLICANT**

**- AND -**

**VANDYK-BACKYARD KINGS MILL LIMITED AND VANDYK-BACKYARD HUMBERSIDE  
LIMITED**

**RESPONDENTS**

**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;  
AND SECTION 68 OF THE CONSTRUCTION ACT, R.S.O. 1990, C. C.30**

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

**OCTOBER 8, 2024**

## **1.0 Introduction**

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on December 11, 2023 (the “Receivership Order”), which became effective on January 8, 2024, KSV Restructuring Inc. (“KSV”) was appointed receiver and manager pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3 (“BIA”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.30 (“CJA”), without security, and Construction Lien Trustee, pursuant to section 68 of the *Construction Act*, R.S.O. 1990, c. C.30 (in such capacities, the “VBKM Receiver”), without security, over all property, assets and undertakings of Vandyk-Backyard Kings Mill Limited (“Vandyk-Kings Mill”) acquired for or used in relation to Vandyk-Kings Mill’s business and the Project (defined below), including the proceeds therefrom (collectively, the “Property”). A copy of the Receivership Order is attached as Appendix “A”.

2. Pursuant to five additional orders granted by the Court on November 14, 2023, December 12, 2023, January 18, 2024<sup>1</sup> and January 23, 2024, KSV was also appointed receiver and manager of certain property of other companies within the Vandyk Group (as defined below).
3. On March 8, 2024, the Court issued an order approving a sale process for the Property and the property of certain other entities within the Vandyk Group.
4. Pursuant to an order of the Court dated July 15, 2024 (the “AVO”), the Court, among other things: (i) appointed KSV as receiver pursuant to section 243 of the BIA and section 101 of the CJA, without security, over Vandyk-Backyard Humberside Limited’s (“Vandyk Humberside” and, together with Vandyk-Kings Mill, the “Debtors”) beneficial title to, and interest in, the real property identified in Schedule B to the AVO of (in such capacity, together with its capacity as VBKM Receiver, the “Receiver”) which title to and interest in was Ordered to constitute “Property”; and (ii) approved an asset purchase agreement between the Receiver and PAD Investments Ltd., as assigned to 15 Neighbourhood Residences LP (the “Purchaser”), dated June 11, 2024, which contemplated a sale of the Purchased Assets (as defined therein) to the Purchaser (the “Transaction”). The Transaction closed on August 23, 2024.
5. Pursuant to an additional order of the Court dated July 15, 2024 (the “Distribution Order”), the Receiver was authorized to, among other things:
  - a) make a distribution to MCAP Financial Corporation (“MCAP”) in the amount of \$200,000 (plus applicable interest accrued to the date of such distribution), in full satisfaction of all amounts owing with respect to the Construction Receiver’s Borrowings Charge (as defined in the Receivership Order);
  - b) make a distribution to MCAP in the amount of \$36,680,929.96 (plus applicable interest accrued to the date of such distribution) in respect of secured loans owing from Vandyk-Kings Mill to MCAP; and
  - c) make an additional distribution to MCAP in the amount of \$1,993,600.91 in the event that the Lien Claimants (as defined below) did not provide evidence or a notice of intention to examine by July 19, 2024.
6. As no Lien Claimants provided evidence or a notice of intention to examine by July 19, 2024 as contemplated by the Distribution Order, on August 26, 2024, the Receiver made a distribution to MCAP in the amount of \$39,123,089<sup>2</sup>, in full satisfaction of all amounts owing with respect to the Construction Receiver’s Borrowings Charge (as defined in the Receivership Order) and MCAP’s secured loans.
7. This report (the “Report”) is filed by KSV in its capacity as Receiver and deals with the Receiver’s recommendation in respect of a Deposit Return Protocol (the “DRP”) to facilitate the return of deposits paid by home buyers pursuant to pre-sale condominium unit purchaser agreements for the Property (the “Units APSs”), and the claims process in respect of the Holdback Deficiency Priority Claims (as defined below).

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<sup>1</sup> The Court issued two receivership orders on January 18, 2024.

<sup>2</sup> Excludes letters of credit to be replaced pursuant to the Transaction.

8. Unless otherwise stated, all monetary amounts contained in this Report are expressed in Canadian dollars.

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about the Debtors and these receivership proceedings;
  - b) discuss the DRP;
  - c) discuss the need for a claims process with respect to the Holdback Deficiency Priority Claims amounts (the “Claims Process”); and
  - d) recommend that this Court issue the following Orders:
    - I. a Deposit Return Protocol Approval Order, among other things, approving of the DRP (the “DRP Order”); and
    - II. a Claims Process Order (the “CPO”), among other things, approving the Claims Process and authorizing the Receiver to carry out same in accordance with the terms therein.

## 1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon: (i) Vandyk-Kings Mill’s unaudited financial information; (ii) information provided by MCAP; (iii) discussions with various stakeholders in these proceedings (including their legal representatives); and (iv) 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 Vandyk-Kings Mill and the reasons for the appointment of the Receiver are provided in the application materials of MCAP. Copies of the Court materials filed to-date in these proceedings are available on the [Website](#).

## 2.0 Background

1. Vandyk-Kings Mill is part of a broader group of development companies (collectively, the “Vandyk Group”), which is 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. Vandyk-Kings Mill is a single-purpose real estate development company that owned the real property located at 15 Neighbourhood Lane, Etobicoke, Ontario (the “Real Property”), on which it was developing a residential condominium project consisting of approximately 234 units with a 3-storey underground parkade (the “Project”).
3. While Vandyk-Kings Mill was the registered owner of the Real Property, the Receiver understands that a related entity, Vandyk Humberside, was the beneficial owner of the Real Property.
4. The Receiver understands that approximately 213 of 234 units in the Project had been pre-sold, as at the date of the Receivership Order.
5. As noted above, on August 23, 2024, the Receiver completed the Transaction, pursuant to which substantially all of the Property of Vandyk-Kings Mill, including the Project, were sold to the Purchaser for aggregate cash proceeds of \$48,000,000.
6. The terms of the Transaction, and the Receiver’s recommendation of the same, were provided in the First Report of the Receiver dated June 27, 2024 (the “First Report”), and, accordingly, are not repeated herein. A copy of the First Report is available [here](#).

### **3.0 Deposit Return Protocol**

1. Pursuant to paragraph 7 of the AVO, upon the closing of the Transaction, the Receiver sent termination letters to all purchasers party to the Unit APSs.
2. The purchasers were advised that their deposits paid pursuant to the Unit APSs are fully insured under a Westmount Guarantee Services Inc. (“Westmount”) policy, and that the purchasers will be able to recover the full amount of their deposits. The Receiver advised of its intention to provide further information about the deposit return process in due course.
3. Since that time, the Receiver has been working with the applicable parties, including Westmount, Aviva Insurance Company of Canada (“Aviva”), being the insurer on risk under the Westmount deposit insurance policy, and Tarion Warranty Corporation (“Tarion”), to establish the DRP. The DRP is substantially the same as other deposit return protocols used in similar situations.
4. A copy of the DRP is attached as Appendix “B”. If approved by the Court, the Receiver intends to carry out the DRP imminently.

### **4.0 Construction Lien Claims**

#### **4.1 Construction Lien Claims**

1. According to searches of title to the Real Property conducted and reviewed by the Receiver’s counsel, Osler, Hoskin & Harcourt LLP (“Osler”), from the Land Registry Office #80 (Toronto), a total of 20 lien claimants (each a “Lien Claimant” and collectively, the “Lien Claimants”) have registered 21 construction liens on title to the Real Property.
2. A summary of such liens prepared by Osler is attached at Appendix “C”. The Receiver intends to serve this motion on all Lien Claimants (or their counsel).

3. The Receiver understands, and has confirmed with the Vandyk Group, that the Vandyk Group is not holding any funds for the statutory holdback that the Vandyk Group was required to retain pursuant to the *Construction Act*, from payments to parties that supplied services or materials to the Project.
4. Osler has advised the Receiver that where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, valid liens arising from the improvement may have priority over the mortgage to the extent of any deficiency in the holdbacks that the owner was required to have retained (each a “Holdback Deficiency Priority Claim”). In light of the foregoing priority afforded to Holdback Deficiency Priority Claims, the Receiver is seeking the CPO, among other things, approving the Claims Process, for the purposes of identifying and quantifying same, as well as making distributions with respect thereto.

#### **4.2 Claims Process**

1. The terms of the proposed Claims Process are summarized below. Interested parties are strongly encouraged to read the CPO in its entirety. To the extent there are any inconsistencies between this Report and the CPO, the CPO shall prevail. The full details of the Claims Process have not been reproduced in this Report.
2. The following is an overview of the proposed Claims Process. The Claims Process is intended to only solicit Holdback Deficiency Priority Claims.

#### **4.3 Proofs of Claim**

1. Any Lien Claimant who wishes to assert a Holdback Deficiency Priority Claim must deliver a completed proof of claim (“Proof of Claim”) by 5:00 p.m. (Toronto time) on November 15, 2024 (the “Claims Bar Date”).
2. Any Lien Claimant who does not file a Proof of Claim in accordance with this CPO with the Receiver by the Claims Bar Date shall be extinguished and forever barred from asserting a Holdback Deficiency Priority Claim.

#### **4.4 Determination of Claims**

1. The Receiver will review the Holdback Deficiency Priority Claims filed. If the Receiver disputes, revises or disallows any asserted Holdback Deficiency Priority Claim, in whole or in part, the Receiver will notify the applicable Lien Claimant of such revision or disallowance and the basis for same in writing (“Notice of Revision or Disallowance”).
2. If a Lien Claimant disputes a Notice of Revision or Disallowance, then such Lien Claimant shall deliver a notice of dispute to the Receiver (“Notice of Dispute”) by no later than 5:00 p.m. (Toronto time) on the business day which is seven (7) days after the delivery of the Notice of Revision or Disallowance or such later date as the Receiver may agree in writing.
3. Disputes identified in a Notice of Dispute will be resolved in accordance with the procedure set forth in the CPO.

4. If a Lien Claimant who received a Notice of Revision or Disallowance fails to file a Notice of Dispute with the Receiver within the prescribed time, the Holdback Deficiency Priority Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and such amount and status, if any, shall constitute such Lien Claimant's proven Holdback Deficiency Priority Claim.

#### **4.5 Recommendation re: Claims Process**

1. The Receiver believes the Claims Process is reasonable and appropriate for the following reasons:
  - a) the filing of Holdback Deficiency Priority Claims is a gating issue to the completion of these proceedings;
  - b) the proposed notices, dispute resolution provisions and timelines set out in the CPO are consistent with those commonly approved by Canadian courts and are sufficient to allow Lien Claimants to assert and establish Holdback Deficiency Priority Claims in these proceedings; and
  - c) in the Receiver's view, the Claims Bar Date, being approximately 30 days from the date scheduled for this application, is sufficient for Lien Claimants to file a Proof of Claim with the Receiver.

#### **5.0 Future Distributions**

1. During the motion for approval of the Distribution Order, counsel to certain Lien Claimants and counsel to Aviva indicated that they may have differing views as to who has priority over the remaining Transaction proceeds after MCAP's secured loans and the Holdback Deficiency Priority Claims are paid. To the extent that there are remaining Transaction proceeds after the Holdback Deficiency Priority Claims have been paid, the Receiver intends to seek a Court Order with respect to future distributions and entitlements thereto.

#### **6.0 Statement of Receipts and Disbursements**

1. Attached as Appendix "D" is the statement of receipts and disbursements (the "Interim R&D"), which reflects that the balance in the Receiver's account as of the date of this Report is \$7,556,736, before accrued costs and expenses.

#### **7.0 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) (d) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
SOLELY IN ITS CAPACITY AS RECEIVER (AS DEFINED HEREIN)  
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**



## **Appendix “A”**



Court File No. CV-23-00710267-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE

)

MONDAY THE 11<sup>TH</sup>

)

JUSTICE PENNY

)

DAY OF DECEMBER 2023

**MCAP FINANCIAL CORPORATION**

Applicant

- and -

**VANDYK-BACKYARD KINGS MILL LIMITED**

Respondent

APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED; SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED; AND SECTION 68 OF THE CONSTRUCTION ACT, R.S.O. 1990, c. C.30

**ORDER**

**(appointing Construction Receiver)**

THIS APPLICATION made by the Applicant for an Order appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager pursuant to section 243 of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 (the "**BIA**") and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43 (the "**CJA**") (in such capacity, the "**Receiver**") without security, and Construction Lien Trustee, pursuant to section 68 of the Construction Act, R.S.O. 1990, c. C.30 (the "**Construction Act**") (in such capacity, the "**Construction Lien Trustee**", collectively with the Receiver, the "**Construction Receiver**"), without security, over all property, assets and undertakings of Vandyk-Backyard Kings Mill Limited ("**Vandyk-Kings Mill**" or the "**Debtor**") acquired for or used in relation to the Debtor's business and the Project, including the proceeds thereof (collectively, the "**Property**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Michael Misener sworn November 24, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the Respondent, counsel for KSV, and those other parties listed on the counsel slip, no one else appearing although duly served as appears from the affidavit of service of

Heather Fisher sworn November 24, 2023 and on reading the consent of KSV to act as the Construction Receiver,

## **SERVICE**

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

## **APPOINTMENT OF RECEIVER AND CONSTRUCTION LIEN TRUSTEE**

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

3. THIS COURT ORDERS that pursuant to section 68 of the Construction Act, KSV is hereby appointed Construction Lien Trustee (collectively with the Receiver, the Construction Receiver), without security, of the Property of the Debtor.

4. THIS COURT ORDERS that, notwithstanding the issuance of this Order as of the date hereof, this Order shall only become effective (without any further order of this Court) on the earlier of:

- (a) January 8, 2024 (the “**Appointment Date**”), unless, in the case of the Debtor,
  - i. the Debtor’s indebtedness to the Applicant (the “**Indebtedness**”) has been repaid in full on or before the Appointment Date; or
  - ii. the Debtor (and/or another entity in the Vandyk Group, as defined below) has entered into (and provided the Applicant with a copy of) a binding agreement that is not conditional on financing or any uncompleted diligence, is accompanied by a cash deposit equal to at least 15% of the purchase price, and has a closing date of no later than January 31, 2024 (the “**Outside Date**”) that, if completed, will result in the repayment in full of the Indebtedness; or
- (b) February 1, 2024, if the Indebtedness is not indefeasibly repaid in full by the Outside Date.

5. THIS COURT ORDERS that, upon the delivery of an affidavit by the Applicant to the Service List in these proceedings attesting to the Debtor’s non-satisfaction of the conditions set out in paragraph 4 of this Order by the Appointment Date or the Outside Date, as applicable, this Order shall become effective immediately as against the Debtor and its Property in all respects as the Receiver shall be authorized and empowered to act in respect of the Debtor and its Property in accordance with the Terms of this Order, in each case without any further Order of this Court.

## **CONSTRUCTION RECEIVER'S POWERS**

6. THIS COURT ORDERS that the Construction 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 Construction Receiver is hereby expressly empowered and authorized to do any of the following where the Construction 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 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 Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtor 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 consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Construction Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to deal with any lien claims, trust claims, and trust funds that have been or may be registered or which arise in respect of the Property, including any part or parts thereof, and to make any required distribution(s) to any contractor or subcontractor of the Debtor or to or on behalf of any beneficiaries of any such trust funds pursuant to section 85 of the Construction Act;

- (i) 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 Construction Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
  - (j) 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 the Debtor, the Property or the Construction 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;
  - (k) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtor thereon;
  - (l) 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 Construction Receiver in its discretion may deem appropriate;
  - (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
    - iii. without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
    - iv. 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;
- (n) 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;
  - (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Construction 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 Construction Receiver deems advisable;
  - (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (q) 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 Construction Receiver, in the name the Debtor 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 (and for the avoidance of doubt, acting solely in its capacity as Receiver and not in its personal or corporate capacity);
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to undertake any investigations deemed appropriate by the Construction Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been Property;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (u) to exercise the powers provided by section 68(2) of the Construction Act; and
- (v) 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 the Debtor.

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

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

7. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, (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 Construction 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 Construction Receiver, and shall deliver all such Property to the Construction Receiver upon the Construction Receiver's request.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Construction Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Construction Receiver or permit the Construction Receiver to make, retain and take away copies thereof and grant to the Construction Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 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 Construction Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Construction Receiver for the purpose of allowing the Construction 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 Construction Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Construction Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Construction Receiver with all such assistance in gaining immediate access to the information in the Records as the Construction Receiver may in its discretion require including providing the Construction Receiver with instructions on the use of any computer or other system and providing the Construction Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

10. THIS COURT ORDERS that, without limiting the generality of paragraphs 7-9 of this Order, all Persons, including, without limitation, any affiliates of any of the Debtor (collectively, the "**Vandyk Group**"), and each of them, shall be required to cooperate, and share information, with the Construction Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtor, or any of them, 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 the Debtor and/or the Property: (1) maintain them in good standing and provide immediate notice and copies to the Construction Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Construction 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 Construction Receiver in obtaining any further permits and licenses

that may be required or requested with respect to the exercise of the Construction Receiver's authority hereunder.

11. THIS COURT ORDERS that the Construction Receiver shall provide each of the relevant landlords with notice of the Construction Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Construction Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Construction Receiver, or by further Order of this Court upon application by the Construction Receiver on at least two (2) days notice to such landlord and any such secured creditors.

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

12. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "Proceeding"), shall be commenced or continued against the Construction Receiver except with the written consent of the Construction Receiver or with leave of this Court.

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

13. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Construction Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

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

14. THIS COURT ORDERS that all rights and remedies against the Debtor, the Construction Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Construction 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 shall (i) empower the Construction Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Construction Receiver or the Debtor 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 CONSTRUCTION RECEIVER**

15. 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 the Debtor, without written consent of the Construction Receiver or leave of this Court



## **CONTINUATION OF SERVICES**

16. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Construction Receiver, and that the Construction Receiver shall be entitled to the continued use of the Debtor's 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 Construction Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Construction Receiver, or as may be ordered by this Court.

17. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from the Debtor to the Construction Receiver, or is otherwise established in the Construction 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.

## **CONSTRUCTION RECEIVER TO HOLD FUNDS**

18. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Construction 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 Construction Receiver in its capacity as Receiver (the "Post Receivership Accounts") and as Construction Lien Trustee (the "Post Construction Lien Trustee Accounts") and the monies standing to the credit of such Post Receivership Accounts and Post Construction Lien Trustee Accounts from time to time, net of any disbursements provided for herein, shall be held by the Construction Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

19. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Construction Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Construction Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Construction Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act.

## **PIPEDA**

20. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Construction 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 Construction Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Construction Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

21. THIS COURT ORDERS that nothing herein contained shall require the Construction 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*, 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 Construction Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Construction Receiver shall not, as a result of this Order or anything done in pursuance of the Construction 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 CONSTRUCTION RECEIVER'S LIABILITY**

22. THIS COURT ORDERS that the Construction Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Construction Receiver by section 14.06 of the BIA or by any other applicable legislation.

## **CONSTRUCTION RECEIVER'S ACCOUNTS**

23. THIS COURT ORDERS that the Construction Receiver and counsel to the Construction 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 Construction Receiver and counsel to the Construction Receiver shall be entitled to and are hereby granted a charge (the "Construction 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 Construction 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 sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.1

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

25. THIS COURT ORDERS that prior to the passing of its accounts, the Construction 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 Construction 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 & CONSTRUCTION LIEN TRUSTEESHIP**

26. THIS COURT ORDERS that the Construction Receiver be at liberty and it is hereby empowered to borrow 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 \$500,000 (or such greater amount as this Court may by further Order authorize) 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 Construction 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 "Construction Receiver's Borrowings Charge") 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 Construction Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

27. THIS COURT ORDERS that neither the Construction Receiver's Borrowings Charge nor any other security granted by the Construction Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

28. THIS COURT ORDERS that the Construction Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the

“Construction Receiver’s Certificates”) for any amount borrowed by it pursuant to this Order.

29. THIS COURT ORDERS that the monies from time to time borrowed by the Construction Receiver pursuant to this Order or any further order of this Court and any and all Construction Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Construction Receiver’s Certificates.

## **SERVICE AND NOTICE**

30. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (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 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<@>’.

31. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Construction 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 the Debtor’s creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

32. THIS THIS COURT ORDERS that the Applicants, the Construction 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 Debtor’s 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)

33. 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.

## GENERAL

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

35. THIS COURT ORDERS that nothing in this Order shall prevent the Construction Receiver from acting as a trustee in bankruptcy of the Debtor.

36. 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 Construction 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 Construction Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Construction Receiver and its agents in carrying out the terms of this Order.

37. THIS COURT ORDERS that the Construction 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 Construction 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.

38. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Construction Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

39. 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 Construction 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.



**SCHEDULE "A"**  
**CONSTRUCTION RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that KSV Restructuring Inc. ("KSV"), the receiver, manager and construction lien trustee (the "Construction Receiver") of the assets, undertakings and properties of Vandyk-Backyard Kings Mill Limited ("Vandyk-Kings Mill") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 11th day of December, 2023 (the "Order") made in an action having Court file number CV-23-00710267-00CL, has received as such Construction Receiver from the holder of this certificate (the "Lender") the principal sum of \$ ●, being part of the total principal sum of \$ ● which the Construction 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 Construction 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*, and the right of the Construction 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 Construction 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 Construction 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 Construction 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 ●, 20.

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

Per \_\_\_\_\_

Name: ●

Title: ●

MCAP Financial Corporation  
Applicant

-and- Vandyk-Backyard Kings Mill Limited  
Respondent

Court File No. CV-23-00710267-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

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**ORDER  
(Appointing Construction Receiver)**

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**GOWLING WLG (CANADA) LLP**

Barristers & Solicitors  
1 First Canadian Place  
100 King Street West, Suite 1600  
Toronto ON M5X 1G5

**C. Haddon Murray (61640P)**

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Tel: 416-369-7202

Lawyers for the Applicant

**File Number:** T1033750



## **Appendix “B”**

## **Deposit Return Protocol**

### **For The Kings Mill Project (the “Protocol”)**

- 1) Pursuant to paragraph 7 of the Approval and Vesting Order dated July 15, 2024 (the “**Court Order**”) issued in the receivership proceeding with respect to certain assets, property and undertakings of Vandyk-Backyard Kings Mill Limited (“**Vandyk Kings Mill**”), all of the Unit Purchase Agreements (“**Unit APSs**”) for the Kings Mill project known municipally as 15 Neighbourhood Land, Etobicoke, Ontario (the “**Kings Mill Project**”) have been terminated.
- 2) KSV Restructuring Inc. in its capacity as Receiver (as defined in the Court Order) shall send letters to the purchasers under the Unit APSs known to the Receiver (the “**Purchasers**”) notifying them that the Unit APSs have been terminated pursuant to the Court Order, notifying them that Aviva Insurance Company of Canada (“**Aviva**”), Tarion Warranty Corporation (“**Tarion**”), and the Receiver have agreed upon a protocol to refund the deposits (which deposit amounts include any amounts that would be a valid deposit claim under the *Ontario New Home Warranties Plan Act* and under Master Deposit Insurance Policy 192310074) that the Purchasers provided under the Unit APSs (the “**Deposits**”) and attaching the Release and Termination Agreement (attached as Schedule “A”). Aviva and Tarion shall be blind copied on, or provided with copies of, the Receiver’s letters to the Purchasers.
- 3) Aviva shall request that the Deposits, together with all accrued interest thereon, be transferred by Schneider Ruggiero Spencer Milburn LLP, in its capacity as escrow agent, to Aviva or its authorized agent to be held by Aviva or such authorized agent pursuant to the terms of this Protocol.
- 4) The Receiver will provide a Statutory Declaration, in the form attached as Schedule “B”, to Tarion.
- 5) Vandyk Kings Mill will be asked to provide the Statutory Declaration, in the form attached as Schedule “C”, to Tarion. Failure by Vandyk Kings Mill to provide the Statutory Declaration will not prevent the return of the Deposits to the Purchasers and is not a condition of such return. For the avoidance of doubt, the Receiver is not to be asked to provide such Statutory Declaration on behalf of Vandyk Kings Mill.
- 6) The Purchasers will upload their executed Release and Termination Agreement, with a copy of their photo ID, a mailing address for the return of their Deposits and a confirmation of the principal amount of the Deposits to the following website: [www.mnp.ca/avivadepositreturn](http://www.mnp.ca/avivadepositreturn). The Receiver may also provide such materials as provided by Purchasers to Aviva, its authorized agent or Tarion.

- 7) Aviva or its authorized agent will assemble an electronic brief (“**Brief**”) in respect of each of the Unit APSs for the Kings Mill Project, which Brief will include the following (to the extent available):
  - a) Executed Release and Termination Agreement;
  - b) Copy of Purchaser’s photo ID;
  - c) Copy of the first page of the applicable Unit APS; and
  - d) Copy of any assignment of the Unit APS.
- 8) Aviva or its authorized agent will send the completed Briefs to Tarion monthly.
- 9) On a monthly basis, upon Tarion confirming to Aviva or its authorized agent that the documentation in the applicable Briefs is complete and that Aviva’s liability to the relevant Purchasers for claims for the return of their respective Deposits will be extinguished once Aviva or its authorized agent releases such Deposits to such Purchasers, Aviva or its authorized agent will release the Deposits to the relevant Purchasers or as any Purchaser may otherwise direct in writing. This process will be carried out on a timely basis, such that Tarion will provide Aviva or its authorized agent with its confirmation within ten business days of receipt of a Brief.
- 10) Aviva or its authorized agent will then distribute, upon receipt of Tarion’s confirmation as noted above, the Deposit refund cheques in the names of the applicable Purchasers or as otherwise directed in writing, together with any interest accrued thereon which the Purchaser is entitled to receive pursuant to the provisions of the *Condominium Act, 1998 as amended*.
- 11) Upon the release of Deposits, Aviva or its authorized agent will provide to Tarion confirmation of the release of the Deposit refund cheques in respect of the applicable Unit APSs by providing a Statutory Declaration in the form attached as Schedule “D”.
- 12) Upon receipt of the confirmation referred to in paragraph 11 and being satisfied that its liability to the relevant Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will provide confirmation to Aviva or its authorized agent on a monthly basis that the Tarion bond (the “**Tarion Bond**”) is reduced by the relevant amount on a unit-by-unit basis.
- 13) Aviva or its authorized agent will provide Tarion with a monthly deposit report of the Deposits released and Deposits not released.
- 14) Once all of the Deposits have been returned to the Purchasers and upon being satisfied that its liability to the relevant Purchasers for claims in respect of their respective Deposits has been extinguished, Tarion will correspondingly reduce the amount of the Tarion Bond; provided, however, that Tarion shall at all times be entitled to retain a sufficient portion of the Tarion Bond to cover Tarion’s liabilities in respect of amounts secured by the Tarion Bond that have not been extinguished at the time of any reduction. Upon being satisfied that

its liability in respect of amounts secured by the Tarion Bond has been extinguished, Tarion will return the Tarion Bond to Aviva for cancellation within 30 calendar days.

SCHEDULE "A" TO THE DEPOSIT RETURN PROTOCOL

FOR THE KINGS MILL PROJECT

**RELEASE AND TERMINATION AGREEMENT**

BETWEEN: **VANDYK-BACKYARD KINGS MILL LIMITED.**

(hereinafter called the "**Vendor**")

- and -

\_\_\_\_\_ (hereinafter collectively called the "**Purchaser**")

**WHEREAS** the Purchaser and the Vendor entered into an agreement of purchase and sale dated \_\_\_\_\_, (the "**Purchase Agreement**") pertaining to the Purchaser's acquisition from the Vendor of DWELLING UNIT \_\_\_\_ on LEVEL \_\_\_\_\_, \_\_\_\_\_ ( ) PARKING UNIT(S) and \_\_\_\_ ( ) LOCKER UNIT(S), together with an undivided interest in the common elements appurtenant to such units (all of which are hereinafter collectively defined as the "**Purchased Units**"), in accordance with the condominium plan documentation proposed to be registered against those lands and premises municipally located at 15 Neighbourhood Lane, Toronto, Ontario and legally described as PIN 07500-0082 (LT) and more particularly described in the Purchase Agreement (the "**Kings Mill Project**");

**AND WHEREAS** pursuant to an Order made by the Superior Court of Justice (Commercial List) for Ontario (the "**Court**") dated December 11, 2023 (the "**Receivership Order**"), KSV Restructuring Inc. was appointed as Receiver (as defined under the Receivership Order);

**AND WHEREAS** pursuant to an Order made by the Court dated July 15, 2024 (together with the Receivership Order, the "**Orders**"), the Purchase Agreement, along with all agreements of purchase and sale between the Vendor and the purchasers of residential dwellings within the Kings Mill Project, was terminated;

**AND WHEREAS** a protocol for the release of deposits back to the purchasers (the "**Protocol**") has been established upon the terms and provisions as set out herein;

**NOW THEREFORE THESE PRESENTS WITNESSETH** that in consideration of the mutual covenants and releases hereinafter set forth, and for other good and valuable consideration (the receipt and sufficiency of which is hereby expressly acknowledged), the parties hereto hereby confirm the accuracy and veracity of the foregoing recitals, and do hereby covenant and agree to the following, in each case subject to and without limiting or otherwise altering the terms of the Orders and applicable law:

1. The Vendor and Purchaser acknowledge that the Purchase Agreement, together with any and all addendums thereto or amendments thereof, has been terminated and is of no further force or effect.
2. In accordance with the Protocol, upon the execution of these presents by both parties hereto and delivery of same to Aviva Insurance Company of Canada or its authorized agent ("**Aviva**") and following review and approval of same by the Tarion Warranty Corporation ("**Tarion**") pursuant to the Protocol, the Vendor shall refund and remit to the Purchaser at the mailing address provided by the Purchaser the sum of \$\_\_ representing the aggregate of all deposit monies heretofore paid by the Purchaser to the Vendor on account of the purchase price for the Purchased Units (hereinafter collectively referred to as the "**Deposit Monies**"), together with any interest accruing thereon that the Purchaser is entitled to receive pursuant to the terms and provisions of the Purchase Agreement and/or the *Condominium Act, 1998*, S.O. 1998, c. 19, as amended. For clarity, such accrued interest is \_\_\_\_.
3. The parties hereto hereby mutually release each other, and each of their respective heirs, estate trustees, successors and assigns, from and against any and all costs, damages, actions, proceedings, demands and/or claims whatsoever which either of the parties hereto now has, or may hereafter have, against the other party hereto, by reason of, or in connection with, the Purchase Agreement (and any and all addendums thereto or amendments thereof) and/or the termination thereof pursuant to the provisions hereof.
4. Without restricting the generality of the foregoing, it is expressly understood and agreed that the Purchaser shall not make or pursue any claim(s) or proceeding(s) with respect to the Purchase Agreement, the Purchased Units, the Deposit Monies and/or the Kings Mill Project, against the Vendor, Tarion, Aviva or its authorized agent, or the Receiver, or any other surety company or companies that have issued one or more bonds to Tarion in connection with the Kings Mill Project, nor against any party acting as escrow agent or as a prescribed trustee with respect to purchasers' deposit monies, nor against any other person(s) or corporation(s) entitled to claim (or who might claim) contribution or indemnity from the Vendor in connection with the Purchase Agreement or the termination thereof pursuant to these presents, or in connection with the Kings Mill Project.
5. The Purchaser acknowledges and confirms that all of the estate, right, title and interest of the Purchaser in and to the Purchased Units and the Kings Mill Project (both at law and in equity, and whether in possession, expectancy or otherwise) have been released and quit-claimed to and in favour of the Vendor and its successors and assigns forever.
6. In the event that all or any portion of the Deposit Monies heretofore received by the Vendor were drawn on the bank account of a third party who is not the Purchaser (nor one of the individuals who collectively comprise the Purchaser), then the Purchaser shall indemnify and save the Vendor harmless, from and against all costs, claims, damages and/or liabilities which either or both of them may hereafter suffer or incur as a result of the Deposit Monies being refunded directly to the

Purchaser in accordance with these presents, rather than being payable and remitted directly to said third party.

- 7. The Purchaser agrees to furnish with the execution of this Agreement a clear scan or photocopy of government issued photo identification.
- 8. The Purchaser acknowledges and confirms having had the opportunity to receive independent legal advice from qualified counsel with respect to all matters herein and has received such advice or has expressly declined or waived the opportunity to do so.
- 9. This Agreement shall enure to the benefit of, and be correspondingly binding upon, the parties hereto and each of their respective heirs, estate trustees, successors and permitted assigns.
- 10. This Agreement shall be construed in accordance with (and the parties hereto shall be governed by) the laws of the Province of Ontario, and each of the parties hereto shall attorn to the jurisdiction of the courts of the Province of Ontario.
- 11. This Agreement shall be read and construed with all changes of gender and/or number required by the context, and if more than one individual comprises the Purchaser, then all of the foregoing covenants and agreements of the Purchaser shall be deemed and construed to be joint and several covenants and agreements thereof.
- 12. Each of the parties hereto further acknowledges and agrees that these presents may be executed via telefax transmission (and the execution of a telefaxed version hereof by any or all of the undersigned parties shall have the same force and effect as if same were originally executed), and that a photocopy, telefaxed copy or scanned e-mailed copy of this executed Mutual Release and Termination Agreement may be relied upon to the same extent as if it were an original executed version.

**IN WITNESS WHEREOF** each of the parties hereto has hereunto executed these presents effective this day of \_\_\_\_\_, 2024.

SIGNED, SEALED AND DELIVERED

in the presence of:

WITNESS SIGNATURE

PURCHASER SIGNATURE

\_\_\_\_\_

\_\_\_\_\_

**Witness Name:**

**Purchaser Name:**

**Address:**

**Address.:**

Phone No.:

Phone No.:

**VANDYK-BACKYARD KINGS MILL LIMITED., BY  
KSV RESTRUCTURING INC., SOLELY IN ITS  
CAPACITY AS RECEIVER AND NOT IN ITS  
PERSONAL, CORPORATE OR ANY OTHER  
CAPACITY**

Per: \_\_\_\_\_

Name:



SCHEDULE "B" TO THE DEPOSIT RETURN PROTOCOL FOR THE KINGS MILL PROJECT

**STATUTORY DECLARATION**

CANADA ) IN THE MATTER OF the proposed development of  
) a condominium project by Vandyk-Backyard Kings  
PROVINCE OF ONTARIO ) Mill Limited (the "Owner") situated in the City of  
) Toronto on those lands and premises previously  
) owned by the Owner located at the address known  
) municipally as 15 Neighbourhood Land, Etobicoke,  
) Ontario (the "Property")  
) TO WIT: )  
)

I, <\*>, of the City of <\*>, DO SOLEMNLY DECLARE THAT:

- 1. I am a <\*> of KSV Restructuring Inc., which was appointed as receiver, manager and construction lien trustee of certain property, assets and undertakings of the Owner pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) granted on December 11, 2023 (in such capacity, the "Receiver").
- 2. I am advised by Schneider Ruggiero Spencer Milburn LLP, in its capacity as escrow agent, that, to the best of its knowledge: (i) the Owner was party to \_\_\_\_ agreements of purchase and sale with respect to units in the Project as of \_\_\_\_\_(collectively, the "Condominium Sales Agreements"), listed on "Exhibit "A" hereto; and (ii) since \_\_\_\_\_, and aside from the agreement pursuant to which the Property was sold in the receivership proceedings, no other agreements of purchase and sale have been entered into by the Owner or the Receiver in respect of the Project or the Property.
- 3. Nothing has come to my attention that would suggest that sales of units in the Project were agreed to by the Owner after December 11, 2023.

AND I MAKE THIS solemn ) THE KSV RESTRUCTURING INC. solely in its  
declaration conscientiously ) capacity as Receiver, and not in its personal,  
believing it to be true and ) corporate or any other capacity  
knowing it is of the same force )  
and effect as if made under oath. )  
DECLARED BEFORE ME in )  
City of Toronto, in the Province )  
of Ontario, this <\*> day of )  
)

<\*>, 2024.

---

Name:

<\*>

Title: <\*>

---

A COMMISSIONER, ETC.

SCHEDULE "C" TO THE DEPOSIT RETURN PROTOCOL FOR THE KINGS MILL PROJECT

**STATUTORY DECLARATION**

CANADA )  
 )  
 )  
 PROVINCE OF ONTARIO )  
 )  
 )  
 )  
 )  
 )  
 )  
 TO WIT: )  
 )

IN THE MATTER OF the proposed development of a condominium project by Vandyk-Backyard Kings Mill Limited. (the "Owner") situated in the City of Toronto on those lands and premises previously owned by the Owner located at the address known municipally as 15 Neighbourhood Lane, Etobicoke, Ontario (the "Property")

I, <\*>, of the City of Toronto, DO SOLEMNLY DECLARE THAT:

- 1. I am the <\*> of the Owner, and as such have knowledge of the matters hereinafter declared.
- 2. To the best of my knowledge, the Owner is not proceeding with the Project known as "Kings Mill Project" that the Owner had proposed to construct on the Property (the "Project").
- 3. To the best of my knowledge, the Owner provided all deposits they received in respect of the sale of condominium units in the Project to Schneider Ruggiero Spencer Milburn LLP, the escrow agent for the Owner.
- 4. To the best of my knowledge, the Owner entered into only <\*> agreements of purchase and sale for condominium units in the Project and did not enter into any other agreements of purchase and sale for the condominium units in the Project.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

**DECLARED BEFORE ME** in )  
City of Toronto, in the Province of )  
Ontario, this <\*> day of )

<\*>, 2024. )  
)  
)

\_\_\_\_\_)  
A COMMISSIONER, ETC. )

\_\_\_\_\_

<\*>

SCHEDULE "D" TO THE DEPOSIT RETURN PROTOCOL FOR THE KINGS MILL PROJECT

**STATUTORY DECLARATION**

CANADA ) IN THE MATTER OF the proposed development of  
) a condominium project by Vandyk-Backyard Kings  
PROVINCE OF ONTARIO ) Mill Limited. (the "Owner") situated in the City of  
) Toronto on those lands and premises previously  
) owned by the Owner located at the address known  
) municipally as 15 Neighbourhood Lane, Ontario (the  
) "Property")  
) TO WIT: )  
)

I, <\*>, of the City of <\*>, DO SOLEMNLY DECLARE THAT:

- 1. I am a <\*> of Aviva Insurance Company of Canada ("Aviva"), the Surety for the Project known as "Backyard Kings Mill" that the Owner had proposed to construct on the Property (the "Project").
- 2. To the best of my knowledge, all deposits paid under agreements of purchase and sale in respect of the Project condominium units numbered <\*>, <\*> and <\*> have been refunded to the respective purchasers of such units by the Escrow Agent.

AND I MAKE THIS solemn declaration conscientiously believing it to be true and knowing it is of the same force and effect as if made under oath.

DECLARED BEFORE ME in ) AVIVA INSURANCE COMPANY OF  
) City of Toronto, in the Province of ) CANADA  
) Ontario, this <\*> day of )  
) <\*>, 2024. )  
) )  
)

\_\_\_\_\_) Name: <\*>  
) A COMMISSIONER, ETC. ) Title: <\*>

## **Appendix “C”**

**APPENDIX C<sup>1</sup>**

<b>Contractor/ Lien Claimant</b>	<b>Instrument No.</b>	<b>PINs</b>	<b>Supplied To</b>	<b>Amount of Lien</b>	<b>Contract Price</b>	<b>Description of Work</b>	<b>Date Registered</b>	<b>Start of Supply</b>	<b>End of Supply</b>	<b>Counsel/Clerk Name &amp; Firm Name</b>	<b>Certificate of Action Instrument No.</b>	<b>Date Certificate of Action Registered</b>	<b>Court File No.</b>
Dircam Electric Limited	AT6407063	07500-0082	Vandyk - Backyard Kings Mill Limited	\$743,323.04	\$3,751,600 (including HST)	Electrical services including material and labour as per contract	8/25/2023	10/1/2021	8/3/2023	Riccardo Del Veccio and Lori Goldberg, Miller Thomson LLP	AT6451921	11/1/2023	CV-23-00708800-0000
Dircam Electric Limited	AT6408162	07500-0082	Vandyk - Backyard Kings Mill Limited	\$103,508.00	\$3,751,600 (including HST)	Electrical services including material and labour as per contract	8/29/2023	10/1/2021	8/3/2023	Riccardo Del Veccio and Lori Goldberg, Miller Thomson LLP	AT6451921	11/1/2023	CV-23-00708800-0000
Kohn Partnership Architects Inc.	AT6423816	07500-0082	Vandyk - Backyard Humberside Limited; Vandyk - Backyard Kings Mill Limited; Vandyk Commercial Co. Limited	\$61,359.01	\$2,056,600.00	Supply of architectural services and drawings with respect to the redevelopment of the Stonegate Plaza Lands	9/20/2023	12/23/2013	8/30/2023	Justin M. Jakubiak, Fogler Rubinoff LLP	AT6464285	11/22/2023	CV-23-00710103-0000
Plycon Forming Ltd.	AT6424435	07500-0082	Vandyk - Backyard Kings Mill Limited	\$9,899,781.51	\$13,672,102.71	Formwork, placing of reinforcing steel, placing of concrete, and related work and services	9/20/2023	4/5/2022	9/20/2023	Fabio M. Socol, Socol Law	AT6458916	11/14/2023	CV-23-00709569-0000
Viola Ready Mix Inc.	AT6426188	07500-0082	Vandyk - Backyard Kings Mill Limited	\$558,195.17	\$2,223,880.21 (including HST)	Supplied ready mix concrete	9/22/2023	10/25/2022	9/11/2023	Paul Guaragna, Miller Thomson LLP	AT6453188	11/2/2023	CV-23-00708961-0000

<sup>1</sup> The information contained in this Appendix is taken from the registered claims for lien and certificates of action, as represented by the lien claimants. The Receiver is not able to independently verify the accuracy of this information.

Contractor/ Lien Claimant	Instrument No.	PINs	Supplied To	Amount of Lien	Contract Price	Description of Work	Date Registered	Start of Supply	End of Supply	Counsel/Clerk Name & Firm Name	Certificate of Action Instrument No.	Date Certificate of Action Registered	Court File No.
Myer Salit Limited	AT6427885	07500-0082	Vandyk - Backyard Kings Mill Limited	\$500,488.33	\$2,018,748.59 (excluding HST)	Supply of Reinforcing Steel (rebar)	9/26/2023	12/27/2022	8/15/2023	Daniel Fridmar, Fridmar Professional Corporation	AT6456905	11/9/2023	CV-23- 00709384- 0000
Automated Fire Protection Systems Inc.	AT6439372	07500-0082	Vandyk - Backyard Kings Mill Limited	\$240,354.96	\$980,000.00 (excluding HST)	Supplying fire protection services such as, installation of sprinkler and standpipe protection, installation of dry systems, installation of standpipe system, installation of hangers, supports, drains, test connections, sleeves, eschutehons, spare sprinkler heads, installation of garbage chute sprinkler, installation of tanks, vessels, and compressors	10/12/2023	7/20/2021	8/31/2023	Chris Tonks, Prouse Dash & Crouse LLP	AT6477629	12/12/2023	CV-23- 00710987- 0000
Dolvin Mechanical Contractors Limited	AT6440475	07500-0082	Vandyk - Backyard Kings Mill Limited	\$2,251,028.93	\$11,068,350.00 (inclusive of HST)	Plumbing and HVAC services	10/13/2023	5/26/2022	9/18/2023	Richard MacGregor, Miller Thomson LLP	AT6456920	11/9/2023	CV-23- 00709383- 0000
Stephenson's Rental Services Inc.	AT6445158	07500-0082	Vandyk - Backyard Kings Mill Limited	\$42,222.32	\$42,222.32	Supply of Rental Equipment	10/23/2023	2/18/2022	9/15/2023	Rob Moubarak, Sutherland Law	AT6448252	10/26/2023	CV-23- 00708488- 0000

Contractor/ Lien Claimant	Instrument No.	PINs	Supplied To	Amount of Lien	Contract Price	Description of Work	Date Registered	Start of Supply	End of Supply	Counsel/Clerk Name & Firm Name	Certificate of Action Instrument No.	Date Certificate of Action Registered	Court File No.
Read Jones Cristofferson Ltd.	AT6445871	07500-0082	Vandyk - Backyard Kings Mill Limited	\$6,215.00	Prevenient Arrangement	Consulting Structural Engineering Services	10/24/2023	4/1/2019	9/29/2023	Hayley Bianca Maria Morgan, Minden Gross LLP			
Lido Wall Systems Inc.	AT6456380	07500-0082	Vandyk - Backyard Kings Mill Limited	\$849,376.90	\$1,800,000.00 plus extras of \$290,074.16	To fabrication and installation of prefabricated exterior insulated finishingsystems	11/8/2023	7/26/2023	9/12/2023	Domenic C.S. Presta, Bianchi Presta LLP	AT6468348	11/29/2023	CV-23- 00710480- 0000
Venice Construction Inc.	AT6457030	07500-0082	Vandyk - Backyard Kings Mill Limited	\$260,581.41	\$620,130.63	Supplied masonry blocks, masonry block work and installation for the construction of a new building	11/9/2023	8/2/2023	9/14/2023	Rocco A. Ruso, RAR Litigation Lawyers	AT6512080	2/9/2024	CV-24- 00714544- 0000
Classic Tile Contractors Limited	AT6457231	07500-0082	Vandyk - Backyard Kings Mill Limited	\$359,360.40	\$1,697,260.00	Flooring services and materials	11/9/2023	8/11/2021	11/9/2023	Philip Horgan, Philip Horgan	AT6510590	2/7/2024	CV-24- 00714341- 0000
Summit Concrete & Drain Ltd.	AT6457806	07500-0082	Vandyk - Backyard Kings Mill Limited	\$61,302.50	\$250,000.00 (excluding HST)	Underground drains and site servicing	11/10/2023	6/9/2022	10/23/2023	Rob Moubarak, Sutherland Law	AT6460838	11/15/2023	CV-23- 00709733- 0000
2164705 Ontario Inc. o/a SiteScape	AT6459778	07500-0082	Vandyk - Backyard Kings Mill Limited	\$18,552.43	\$2,471,685.45 (excluding HST)	Landscape Services	11/15/2023	10/31/2022	11/13/2023	Paola Cristina Scarcello (Dye & Durham), Drudi Alexiou Kuchar LLP			
Primeline Windows & Doors Inc.	AT6461236	07500-0082	Vandyk - Backyard Kings Mill Limited	\$336,966.00	\$3,164,000.00 (including HST)	Supply and installation of Aluminum Windows and Doors	11/16/2023	6/19/2023	10/12/2023	Shael Evan Beckenstein, Marciano Beckenstein LLP			
Atlas Ironworks Inc.	AT6464018	07500-0082	Vandyk - Backyard Kings Mill Limited	\$86,438.21	\$446,350.00	Supply and delivery of miscellaneous metals	11/22/2023	10/13/2021	9/25/2023	James Botnick, Botnick & Botnick			



Contractor/ Lien Claimant	Instrument No.	PINs	Supplied To	Amount of Lien	Contract Price	Description of Work	Date Registered	Start of Supply	End of Supply	Counsel/Clerk Name & Firm Name	Certificate of Action Instrument No.	Date Certificate of Action Registered	Court File No.
Live Patrol Inc.	AT6464046	07500- 0079; 07500-0082	Vandyk - Backyard Kings Mill Limited	\$9,473.75	\$9,473.75	Provision of monitoring and related services	11/22/2023	8/11/2022	10/31/2023	Norman Ronski, Harris + Harris LLP	AT6519357	2/26/2024	CV-24- 00715249- 0000
Uniqspace Solutions Ltd.	AT6465303	07500-0082	Vandyk - Backyard Kings Mill Limited	\$117,938.10	\$470,532.00	Supply of eight accordion fire shutters for the parking garages at the project site	11/23/2023	5/30/2022	11/23/2023	Pavle Levkovic, Glaholt Bowles LLP	AT6475541	12/7/2023	CV-23- 00710940- 0000
Skyway Canada Limited	AT6501215	07500-0082	Vandyk - Backyard Kings Mill Limited	\$295,759.24	\$10,106.16 per month	FENCE 10'-1" L X 3'6"H / FENCE POST 9' - 10'6" AND SLAB EDGE POSTS	1/24/2024	7/1/2022	1/24/2024	Ken Eccleston, Eccleston LLP	AT6518460	2/23/2024	CV-24- 00715045- 0000
WJ Groundwater Canada Limited	AT6549536	07500-0082	Vandyk - Backyard Kings Mill Limited	\$51,301.79	\$145,749.44	Water Management Services	4/10/2024	3/4/2021	4/9/2024	Conor O'Neil, Stewart McKelvey			
<b>TOTAL VALUE OF LIENS REGISTERED:</b>				<b>\$16,853,527.00</b>									

## **Appendix “D”**

Receivership of Vandyk - Backyard Kings Mill Limited  
**Interim Statement of Receipts and Disbursements**  
For the Period January 8, 2024 to October 8, 2024  
(\$; unaudited)

Description	Note	Amount
<i>Receipts</i>		
Sale of assets		48,051,919
Funding from MCAP		200,000
Interest		76,016
		<u>48,327,935</u>
<i>Disbursements</i>		
Distribution to MCAP		39,123,089
Legal fees		452,561
Commission on sale of assets		355,200
Repairs and maintenance		202,907
Property taxes		192,528
HST		164,223
Receiver fees		114,677
Equipment rental		72,493
Security		43,715
Insurance		29,020
Utilities		15,601
Computer and software		3,935
Other		588
Bank charges		588
Filing fees		75
		<u>40,771,199</u>
Balance in Receiver's account, before accrued liabilities		<u><b>7,556,736</b></u>