

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

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

30 ROE INVESTMENTS CORP.

Respondent

**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**

MOTION RECORD

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Lawyers for the Respondent

TO: THE SERVICE LIST

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Court File No. CV-22-00674810-00CL

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SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

B E T W E E N:

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30 ROE INVESTMENTS CORP.

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**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**

NOTICE OF MOTION

(Motion by Lawyer for Removal as Lawyers of Record)

THE LAWYERS OF RECORD for the Respondent, 30 Roe Investments Corp., (the "30-Roe"), will make a motion to a Judge of the Commercial List on Tuesday, March 8, 2022, at 12:00 p.m. (noon) or at such later time as the court may on the day direct and the motion can be heard.

PROPOSED METHOD OF HEARING: The Motion is to be heard by video conference.

.THE MOTION IS FOR:

1. An order removing Paliare Roland Rosenberg Rothstein LLP ("Paliare Roland"),

as lawyers of record for the Respondent ("30-Roe");

2. An order, if necessary, validating the method of service, dispensing with further service, and abridging the time for filing of this motion, such that the motion is properly returnable on the date indicated above;
3. Costs of this motion; and
4. Such further relief as may be requested and this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. There has been an irreparable breakdown in trust and confidence in the lawyer-client relationship between 30-Roe and Paliare Roland;
2. No material prejudice to 30-Roe will result from the removal of Paliare Roland as lawyers of record;
3. Rule 15.04 of the *Rules of Civil Procedure*; and
4. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be relied upon at the hearing of this motion:

1. The Affidavit of Ken Rosenberg, sworn March 4, 2022; and
2. Such further and other documentary evidence as counsel may advise and this Honourable Court may permit.

March 4, 2022

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Lawyers for the Respondent

TO: Service List

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT,

Court File No. CV-22-00674810-00CL

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 30 ROE INVESTMENTS CORP.

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION

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Lawyers for the Respondent

Court File No. CV-22-00674810-00CL

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

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

30 ROE INVESTMENTS CORP.

Respondent

**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**

AFFIDAVIT OF KEN ROSENBERG

I, Ken Rosenberg, lawyer, of the City of Toronto, in the Province of Ontario, hereby AFFIRM as follows.

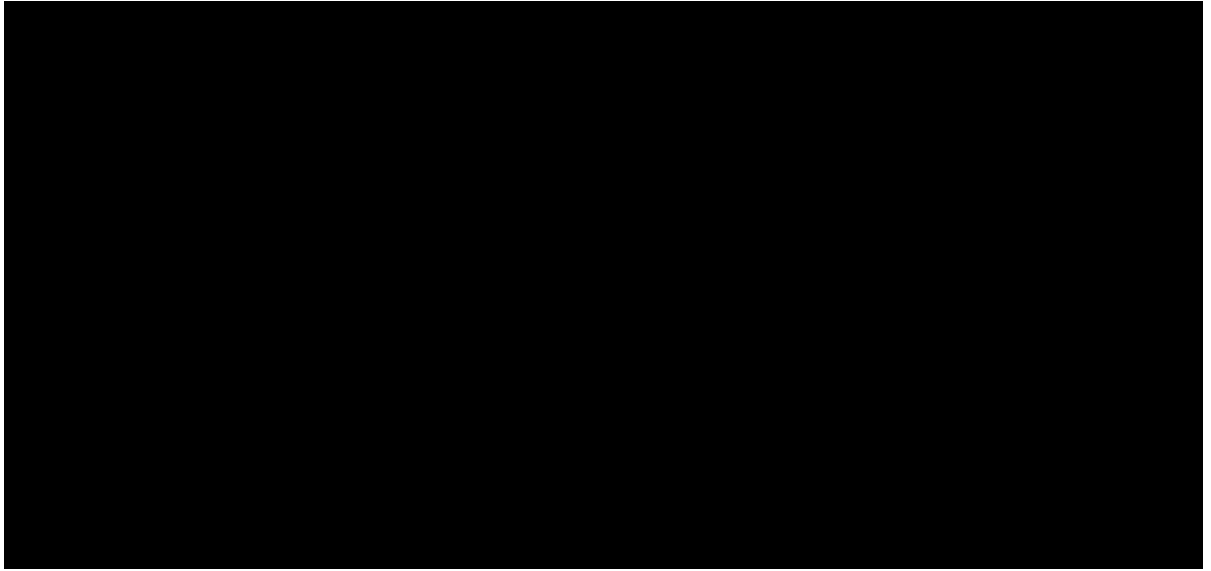
1. I am the lawyer for the Respondent, 30 Roe Investments Corp. ("**30-Roe**"), and as such I have knowledge of the matters referred to in this affidavit. Where my knowledge is based upon information provided to me by others, I have stated the source of that information and I believe it to be true.
2. I am swearing this affidavit in support of a request for an order removing Paliare Roland Rosenberg Rothstein LLP ("**PRRR**") as solicitor of record for the

Respondent, 30-Roe, on the basis of my belief that there has been an irreparable breakdown in trust and confidence in the lawyer-client relationship.

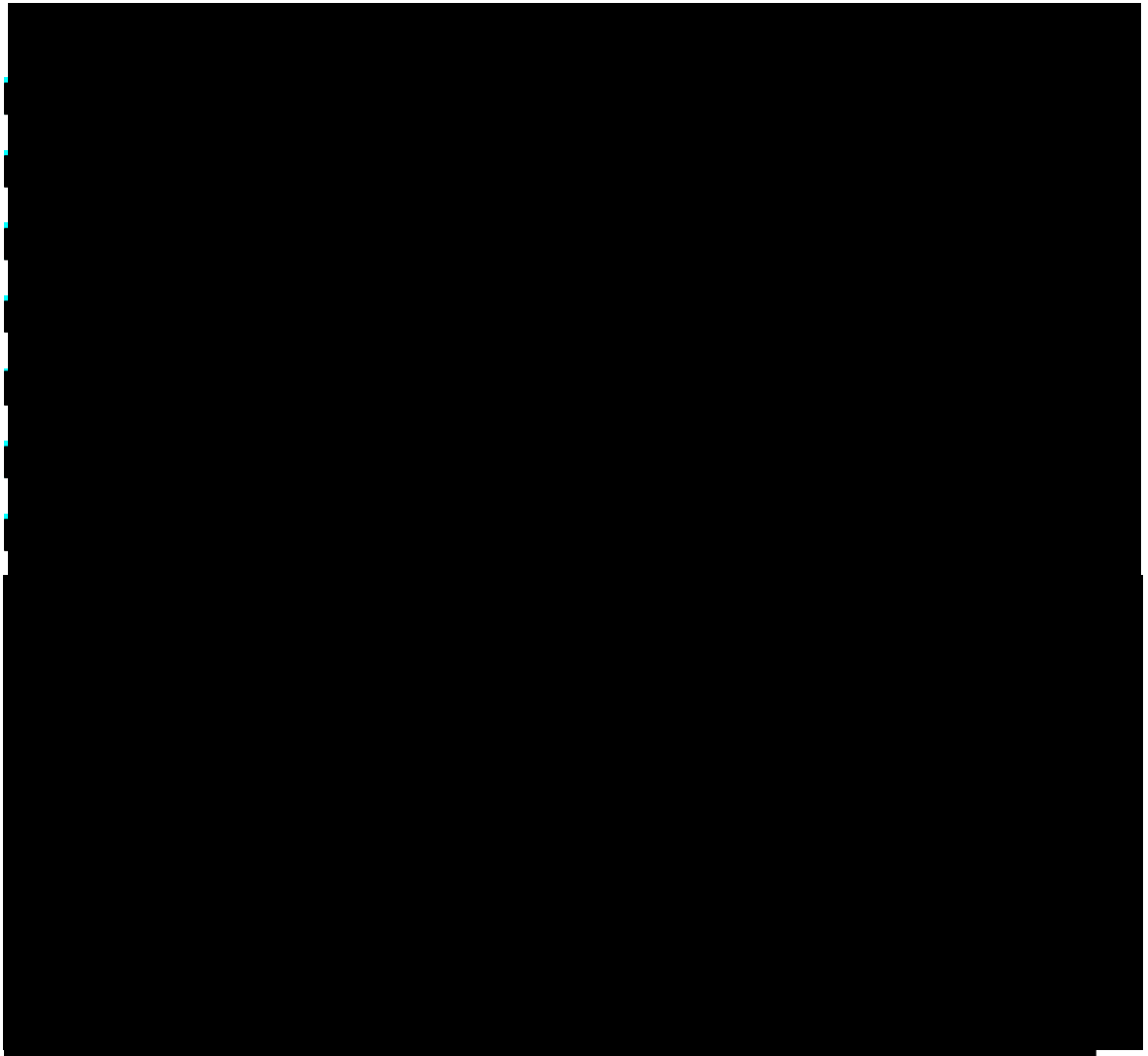
3. In accordance with the Rules of Civil Procedure, privileged information provided to me by 30-Roe in the context of my solicitor-client relationship and other potentially prejudicial information should be redacted for the purpose of the motion record that will be filed with the court. To avoid disagreement with our client and potential delay, we have redacted substantially all of this affidavit. For certainty and ease of reference by the court and by my client, the redacted evidence is [REDACTED] in the unredacted copy.

4. [REDACTED]
[REDACTED]
[REDACTED]

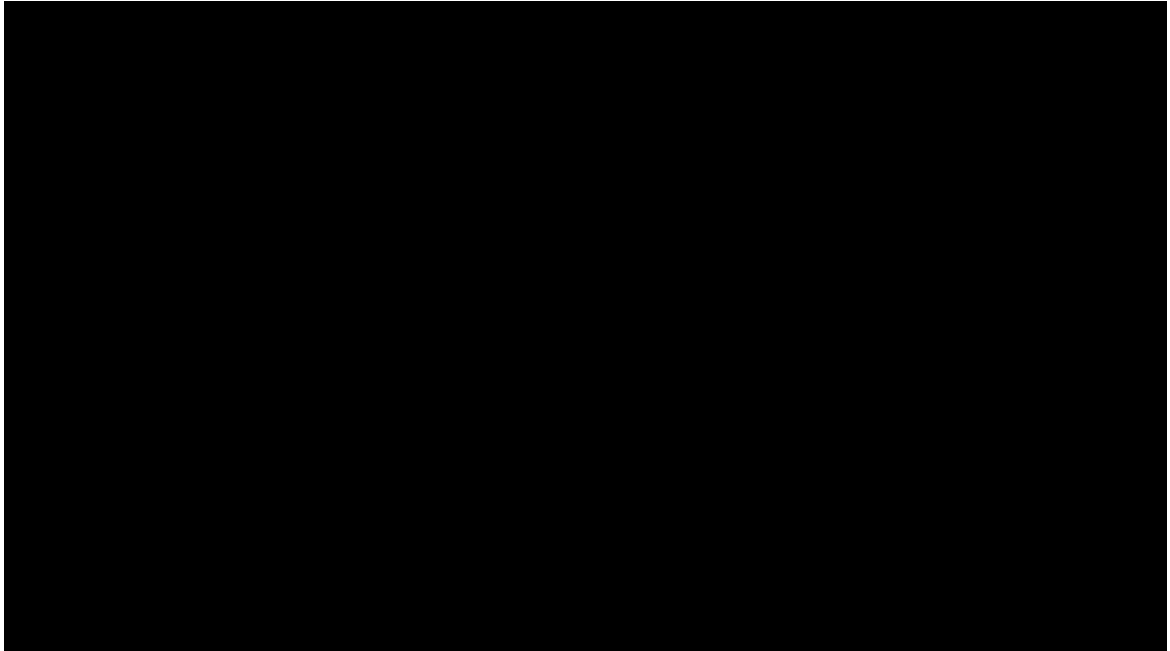
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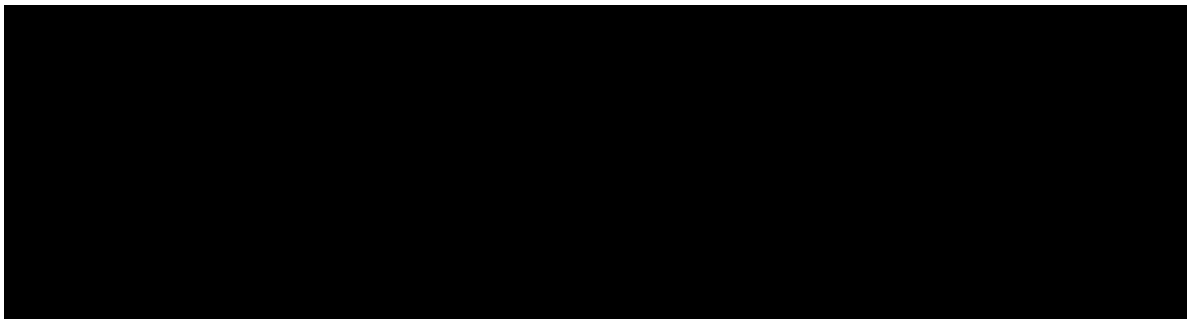


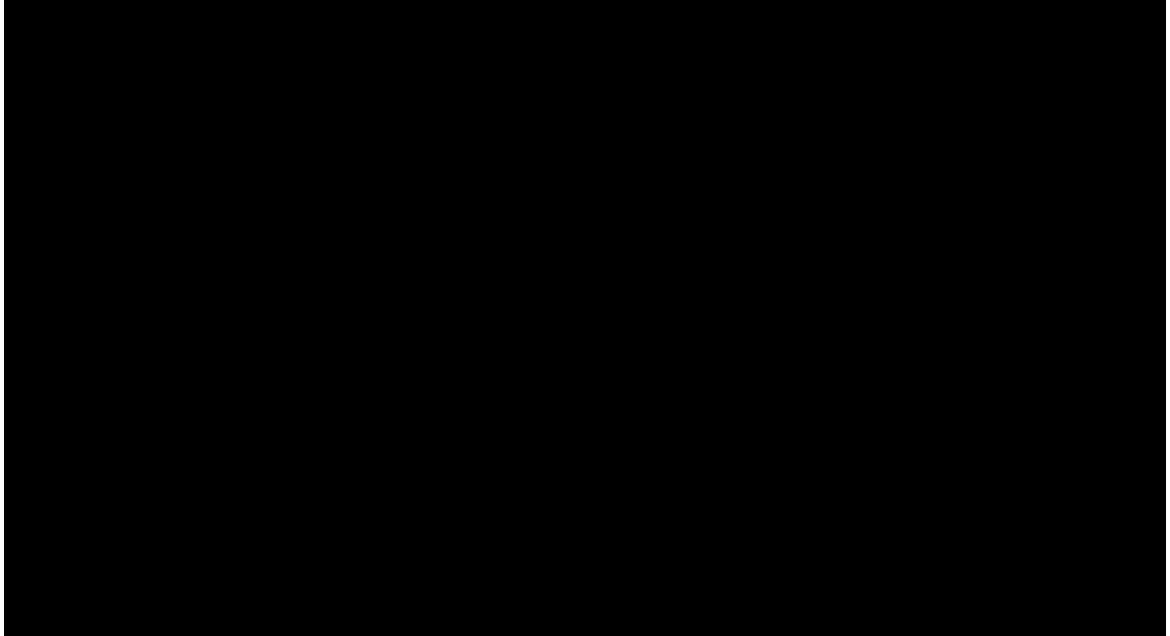
A. Background


8. The within application (the “**Application**”) seeks an order appointing a receiver over various condominium properties (the “**Properties**”) owned and operated by 30-Roe. The Applicant alleges that 30-Roe is indebted to it pursuant to a mortgage securing the Properties, and that the mortgage has matured and remains unpaid.

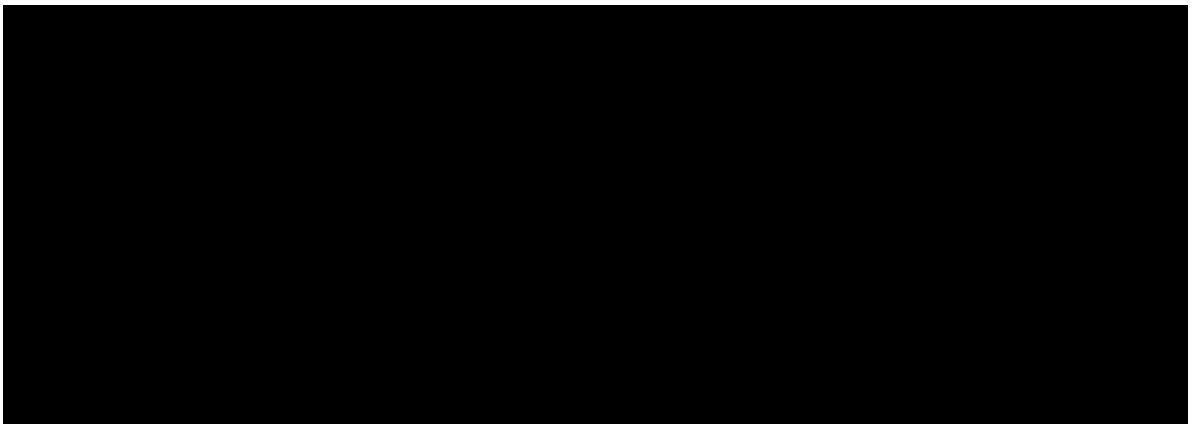
9. My understanding is that the Application first came before the court on January 17, 2022, and was adjourned to February 22, 2022, to permit 30-Roe to retain counsel.

10.





11. In an affidavit prepared and sworn on February 22nd, prior to the court hearing, in support of the requested adjournment, Mr. Zar, deposed, at paragraph 6 of his affidavit) that the Applicant had agreed to extend its mortgage (or at least forebear in its enforcement), until April 1, 2022. Mr. Zar also deposed that 30-Roe would like the opportunity to instruct counsel, tender comprehensive evidence in response to the Application, and, if necessary, cross-examine the Applicant's affiants. 



[REDACTED]. For ease of reference, a copy of Mr. Zar's affidavit sworn February 22, 2022, is marked at **Exhibit "A"** to this affidavit.

B. Tuesday, February 22, 2022

12. At the hearing on February 22, 2022, the court adjourned the application to March 28, 2022—only three days before the date to which 30-Roe asserts that the Mortgage was extended. The court directed counsel to agree to a timetable in respect of the Application. Mr. Zar was present at the hearing. A copy of the court's endorsement reflecting its decision is attached as **Exhibit "B"**.

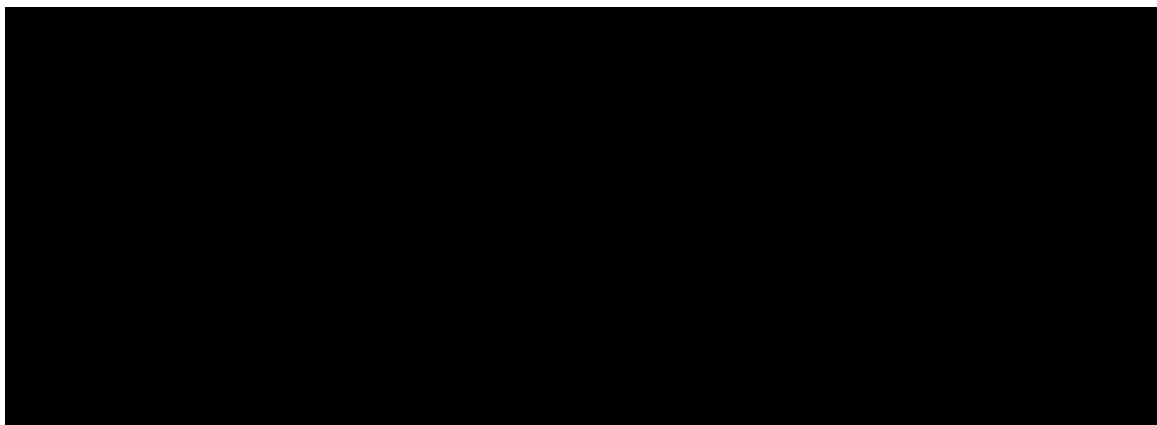
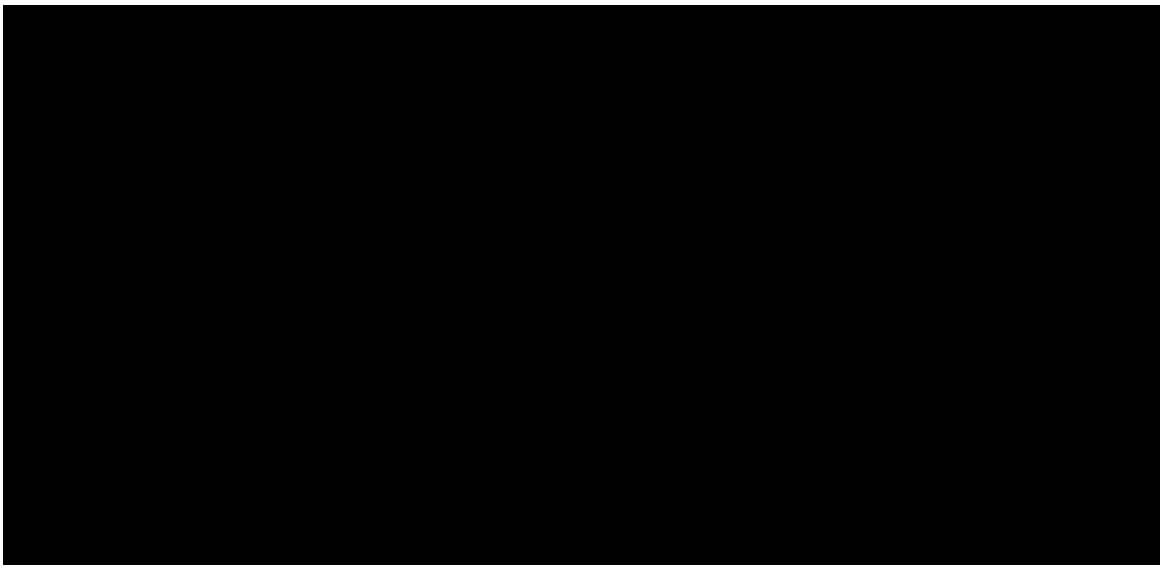
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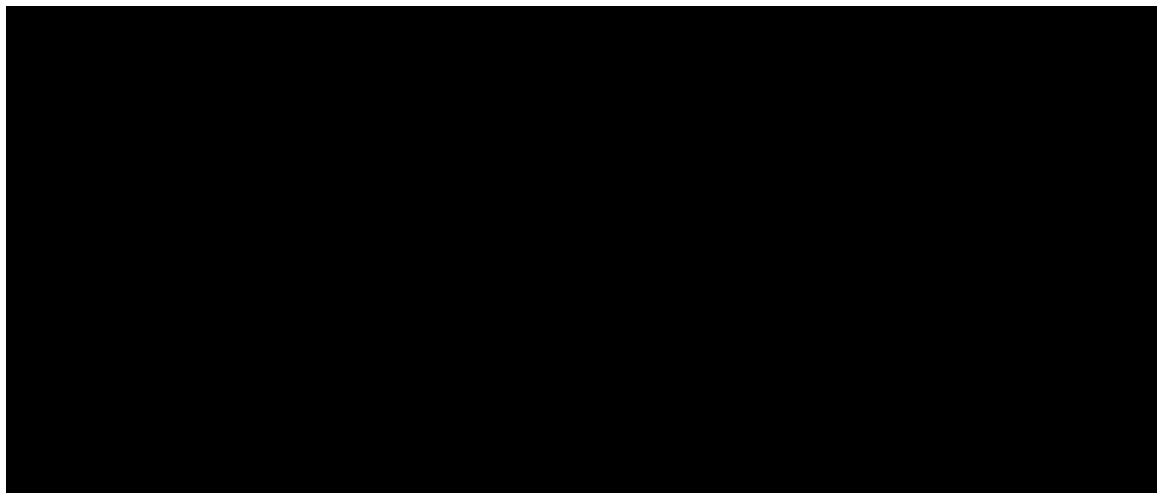
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C. *Wednesday, February 23, 2022*

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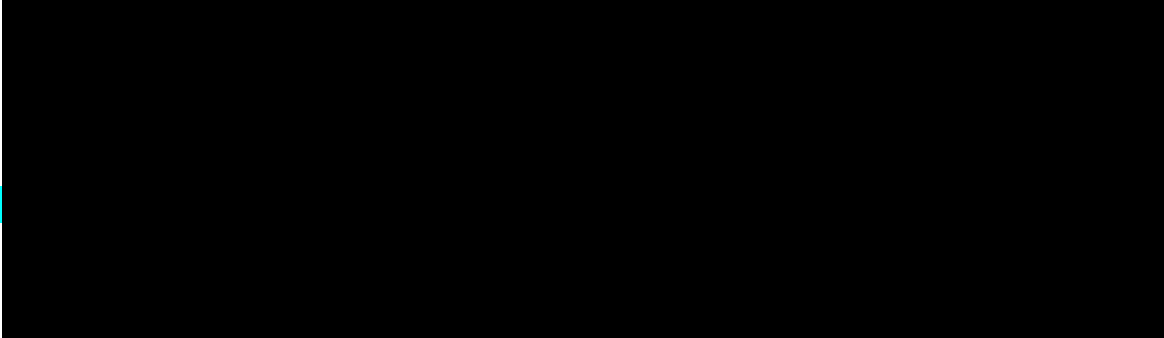


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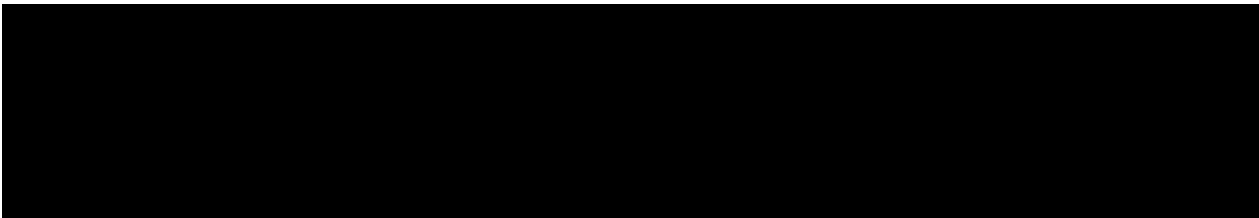
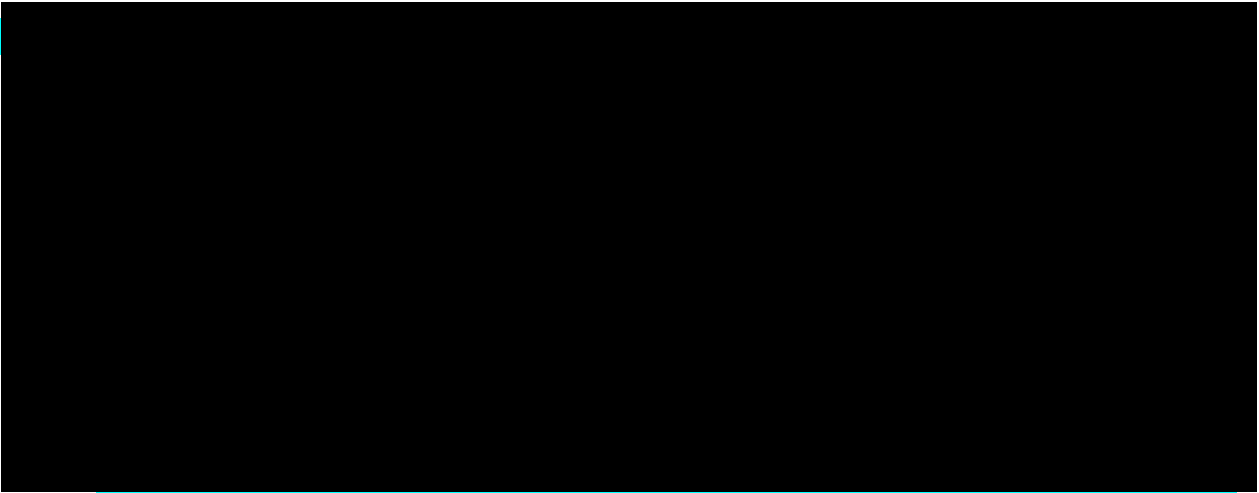
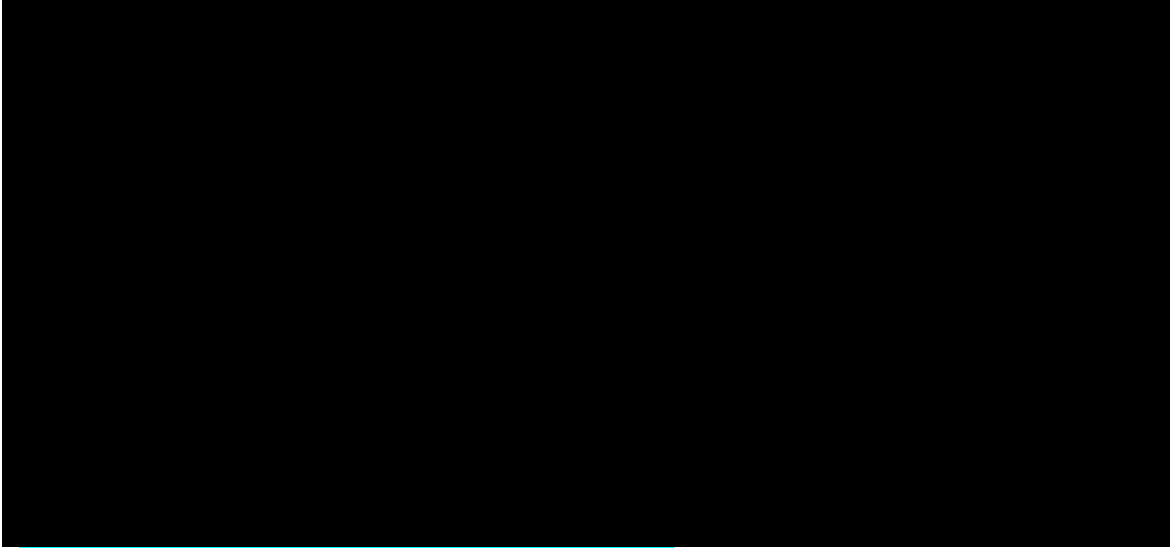
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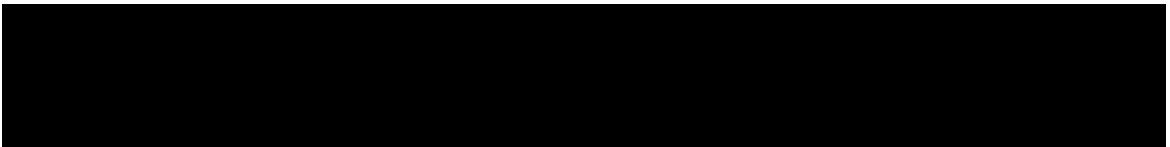
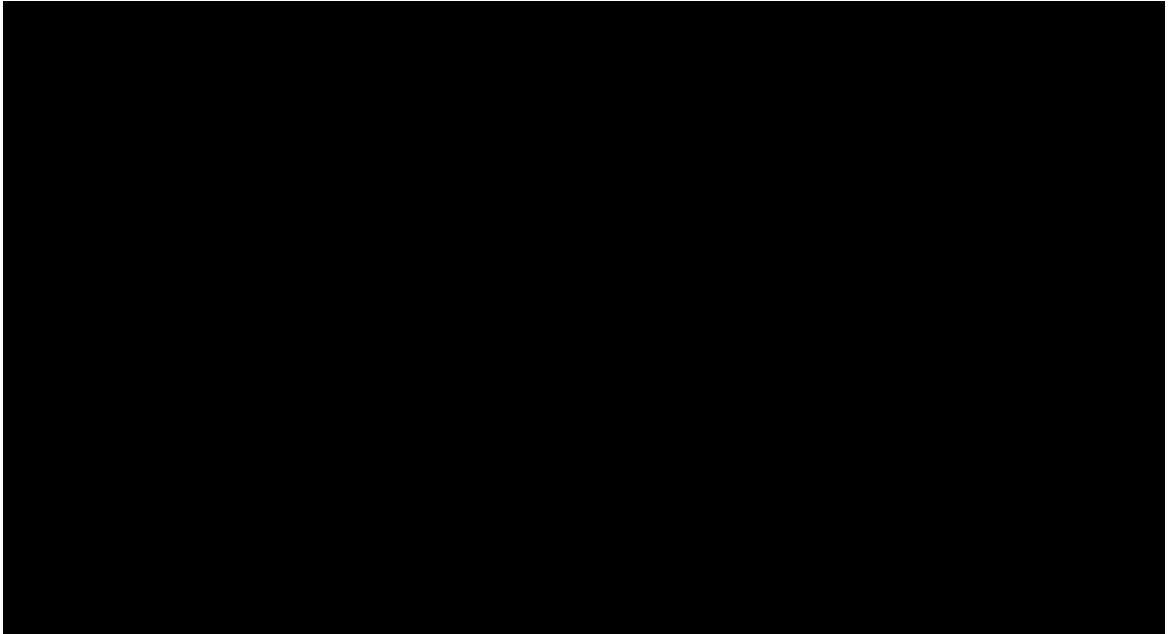
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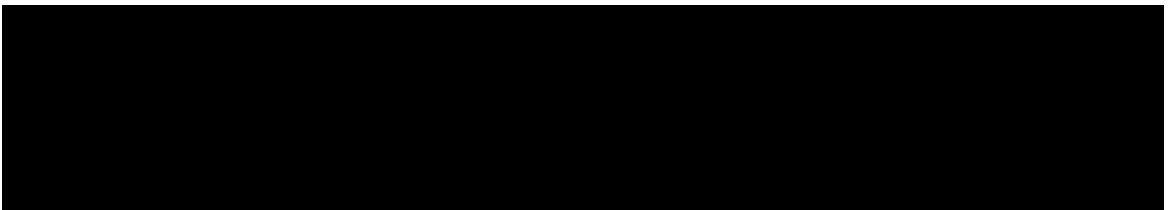
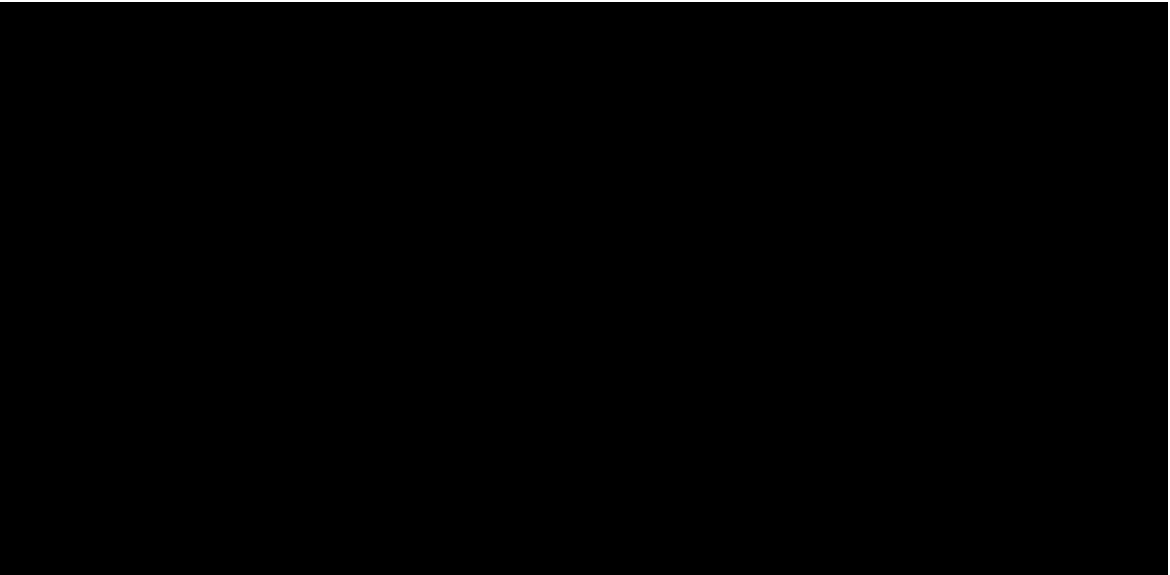


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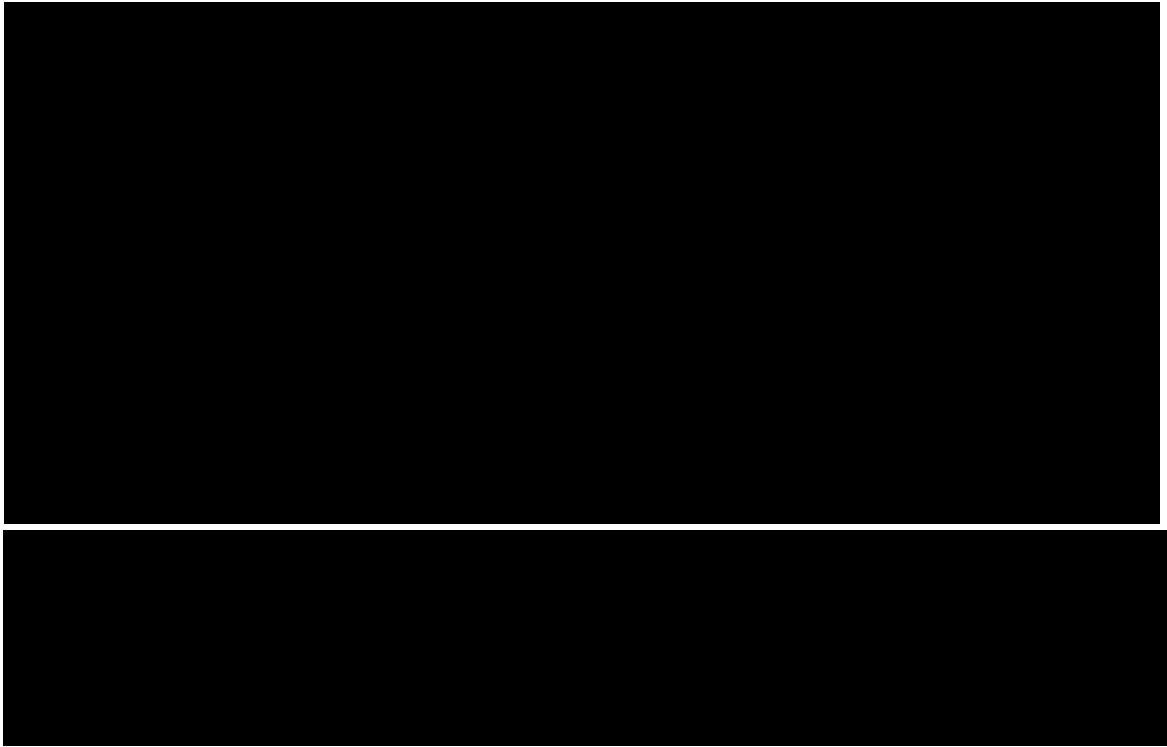


D. Thursday, February 24, 2022

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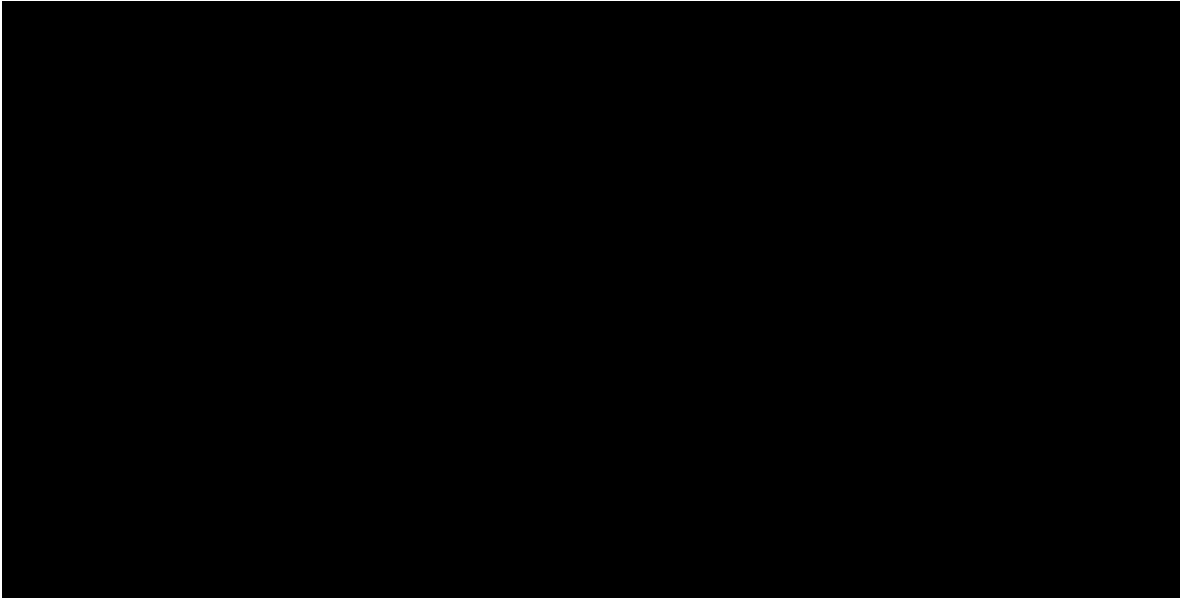
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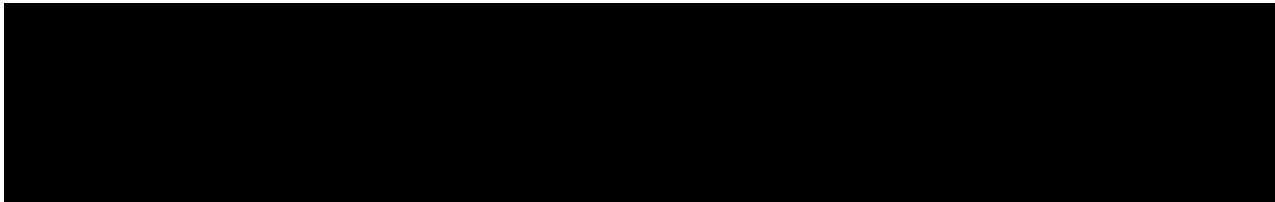
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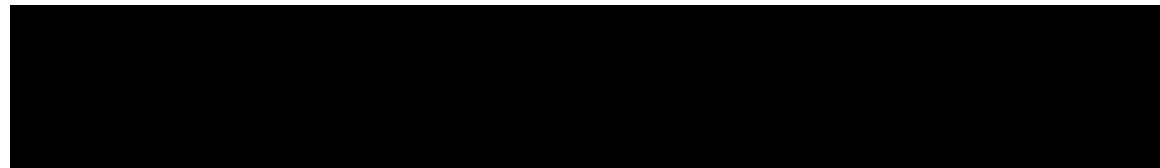
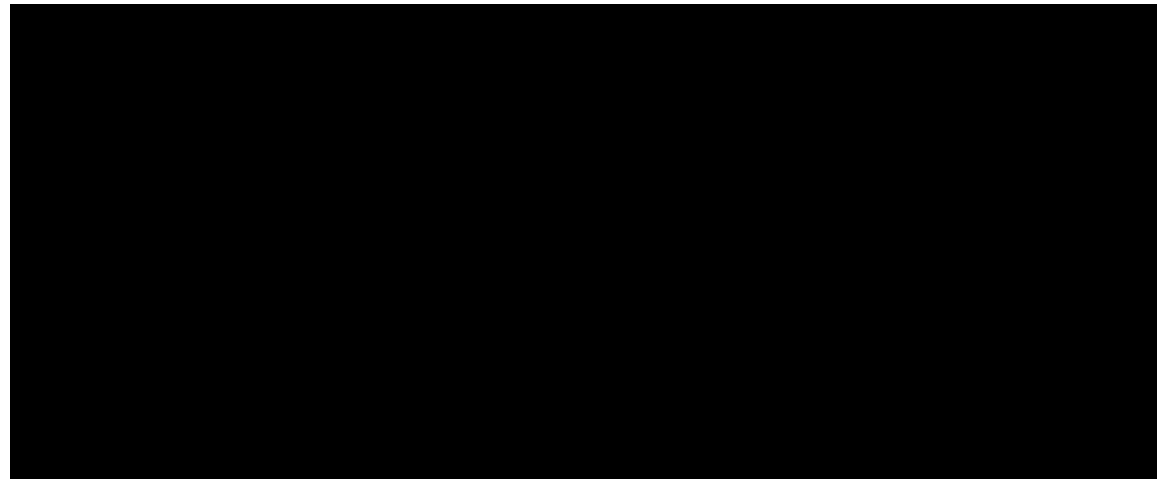


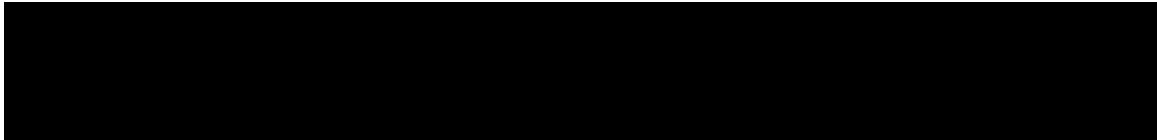
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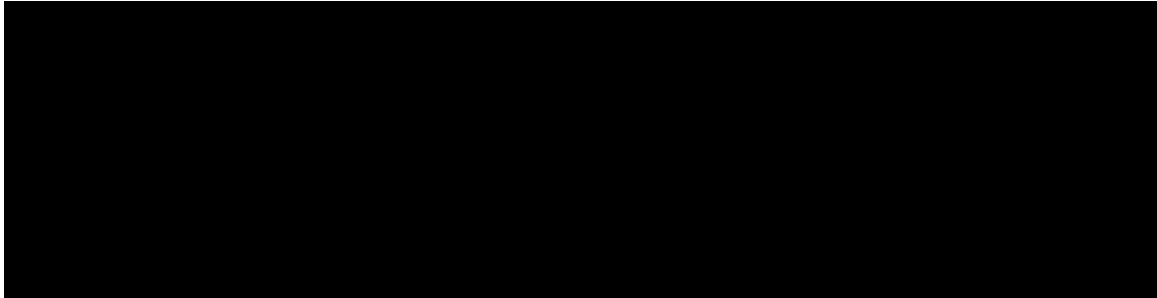
E. *Friday, February 25, 2022*

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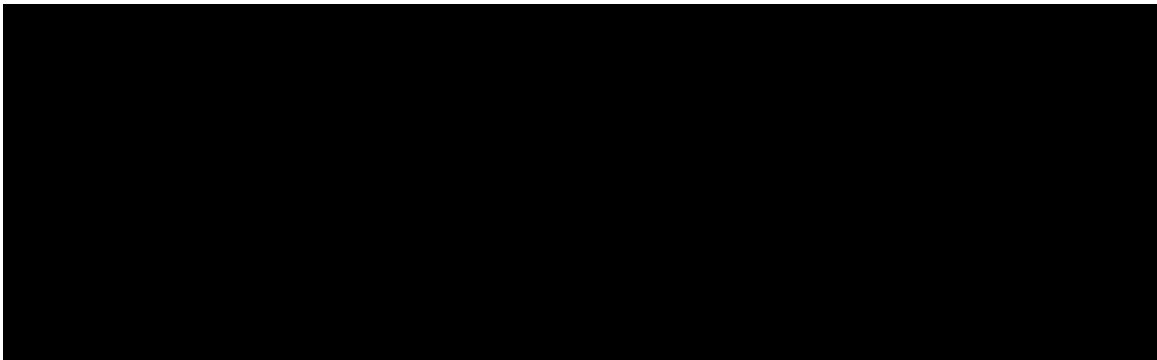




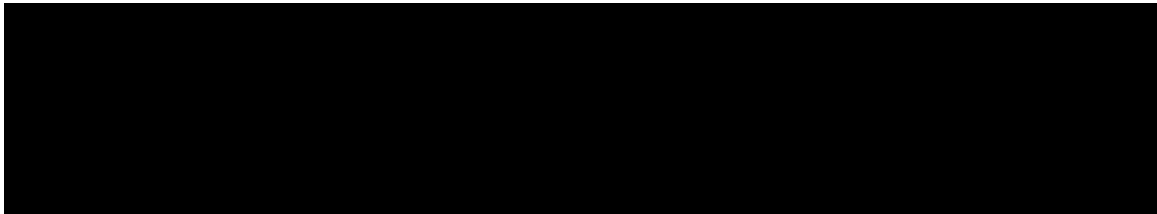
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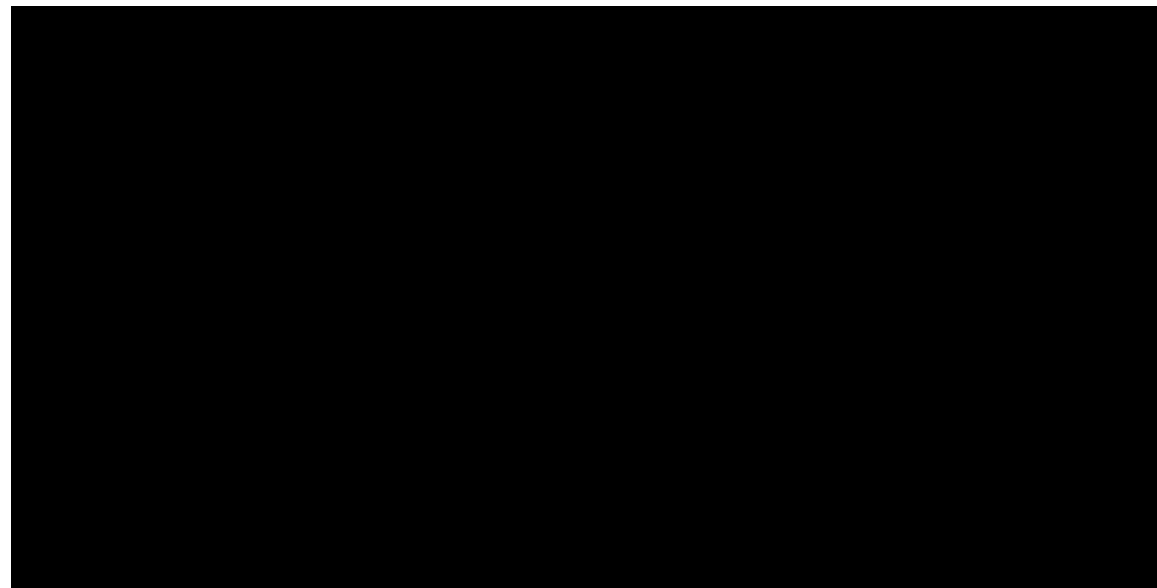
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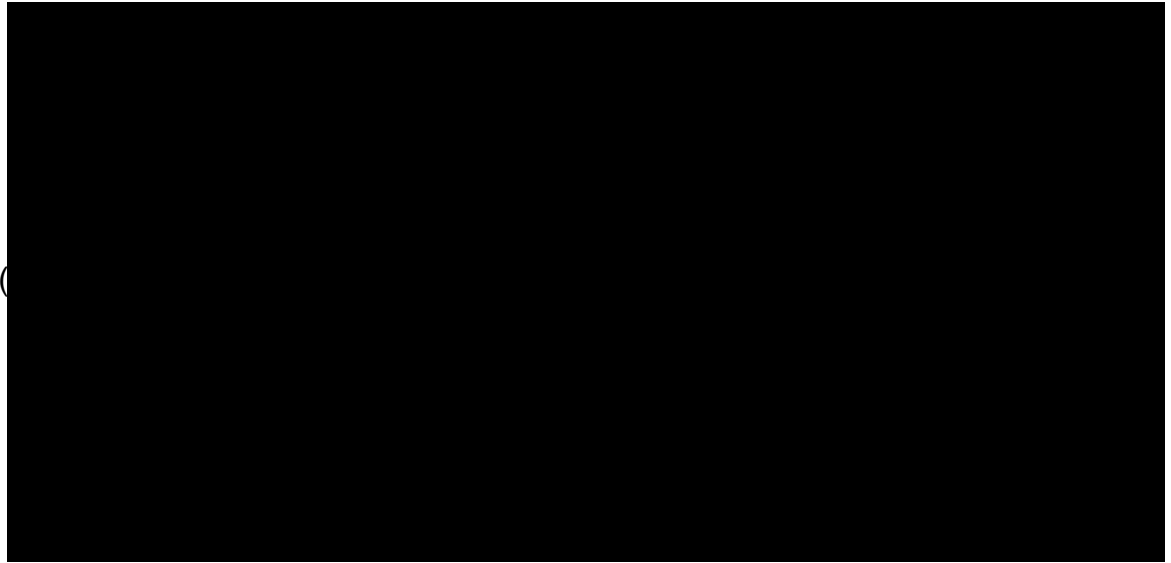
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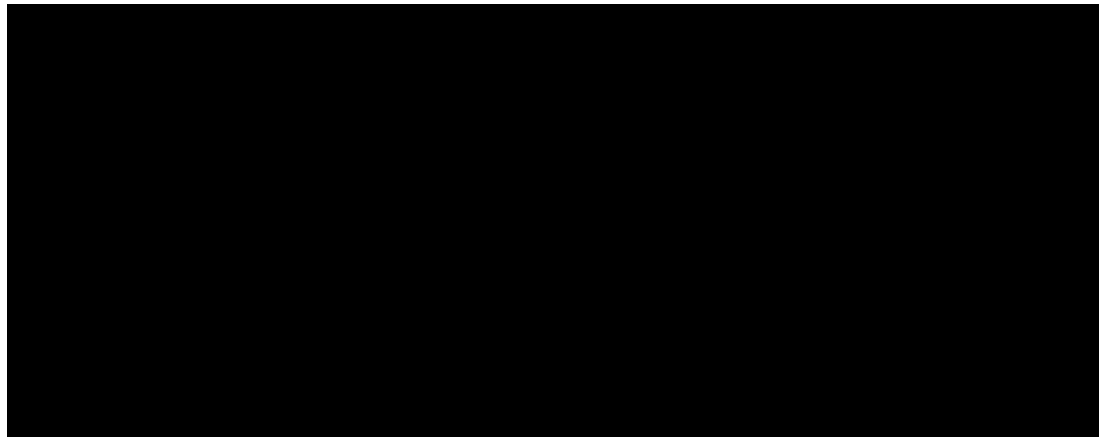
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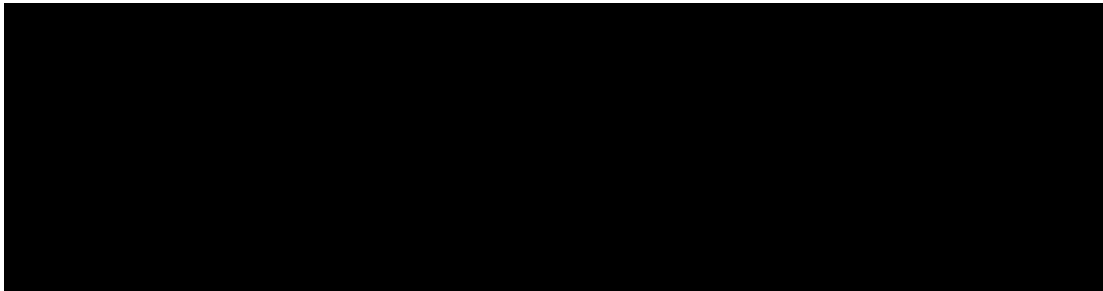
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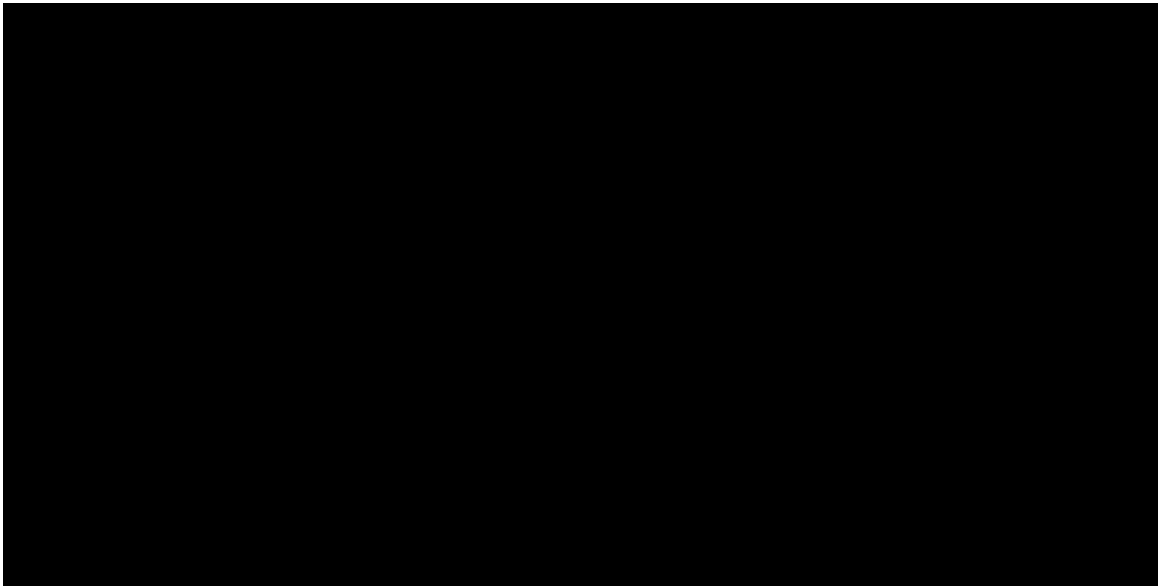


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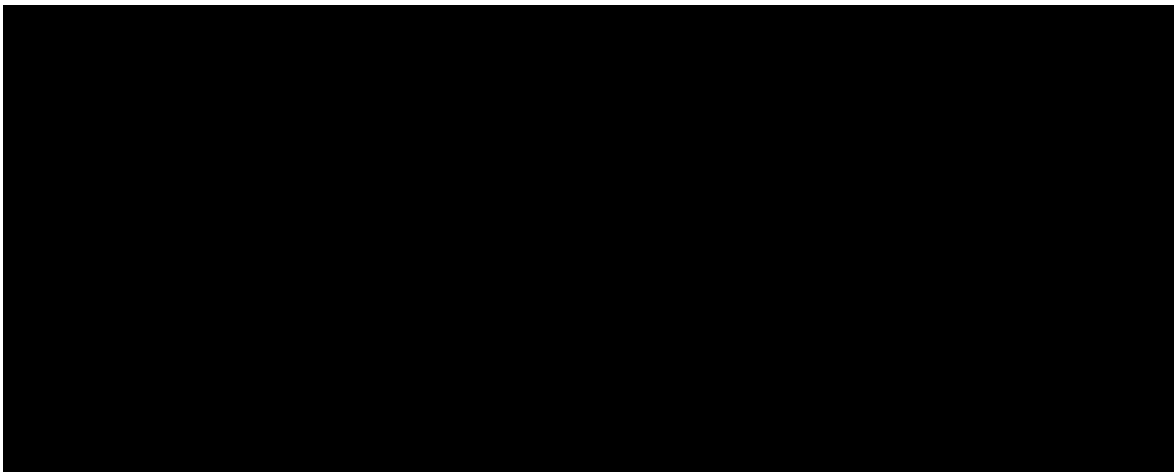


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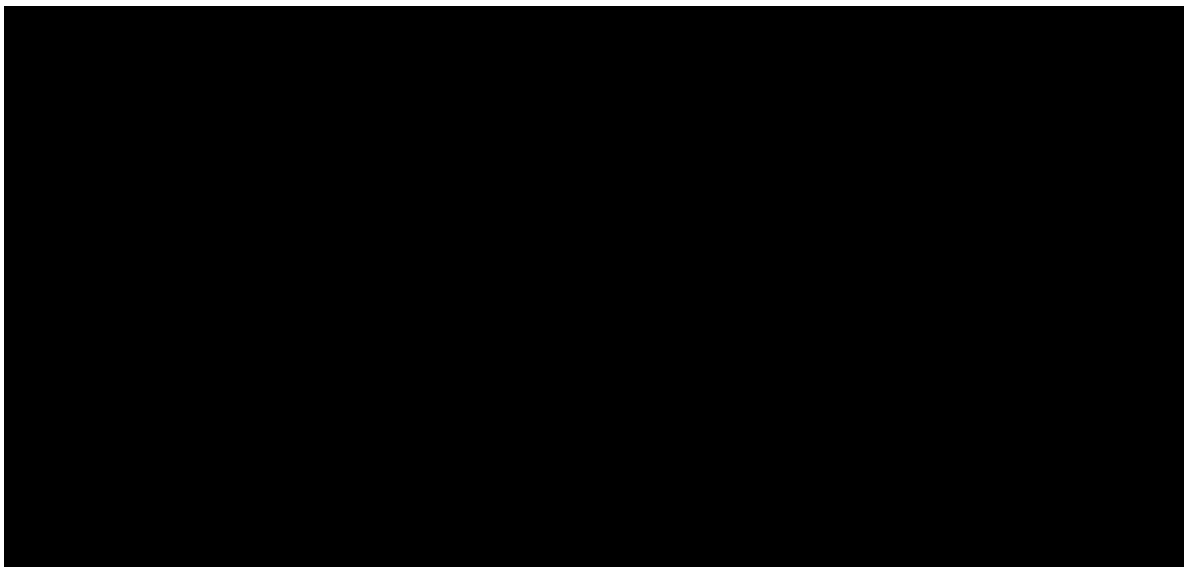
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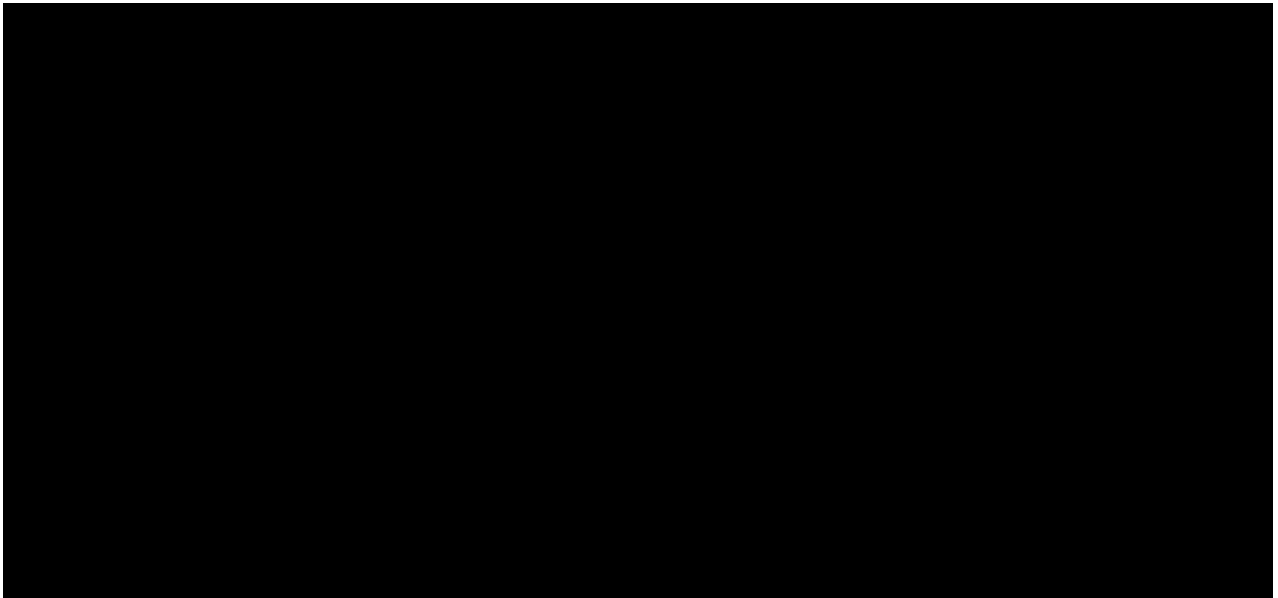
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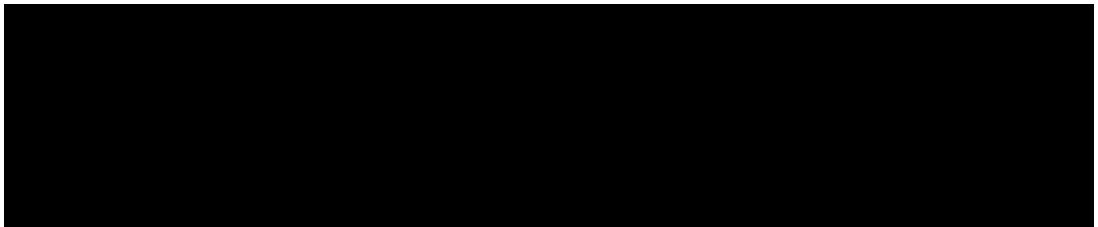
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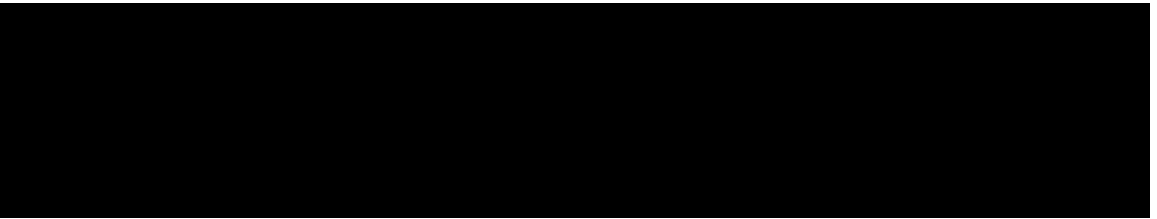
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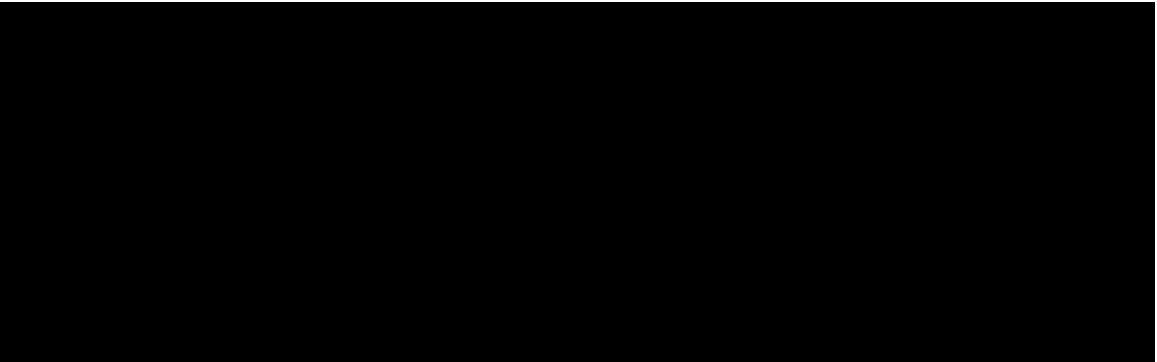
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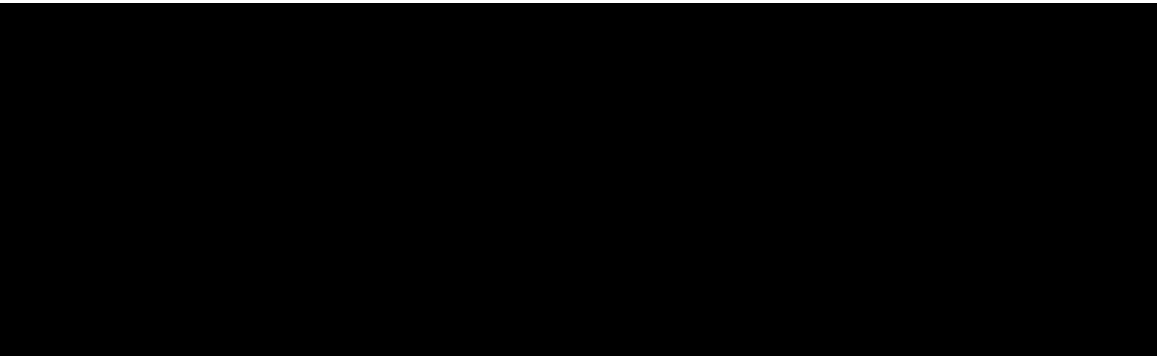
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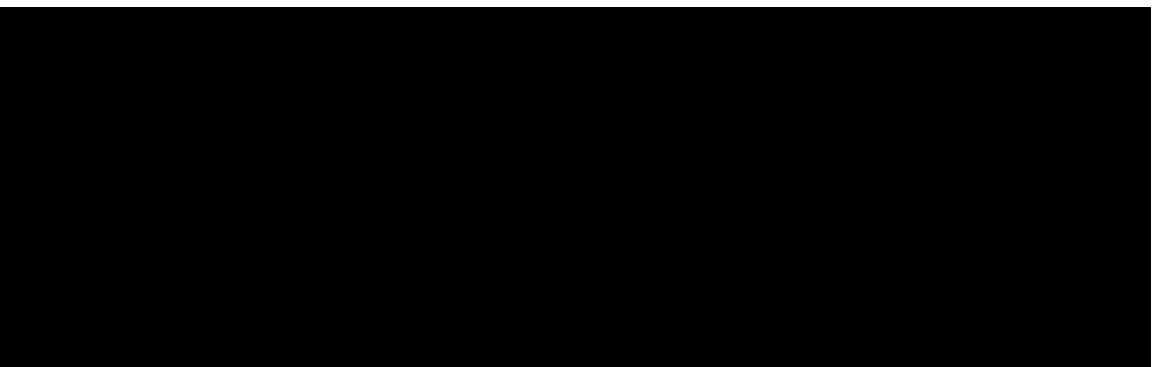
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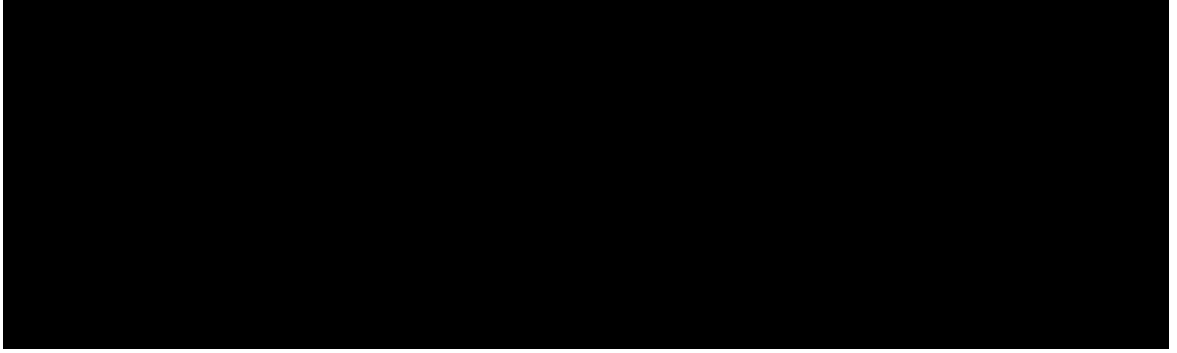
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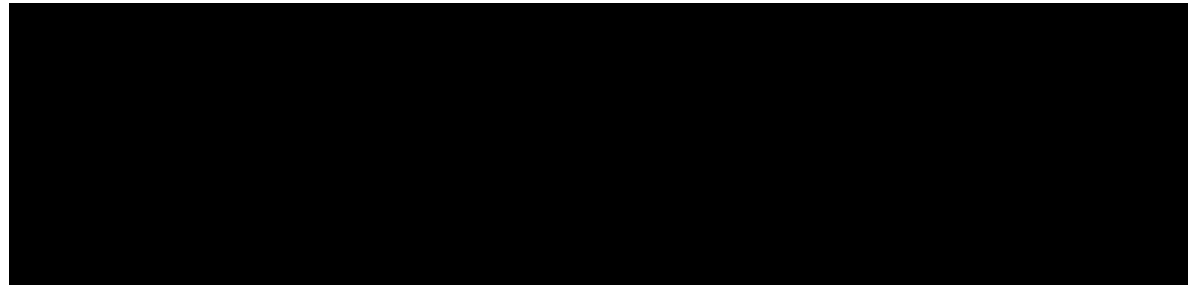
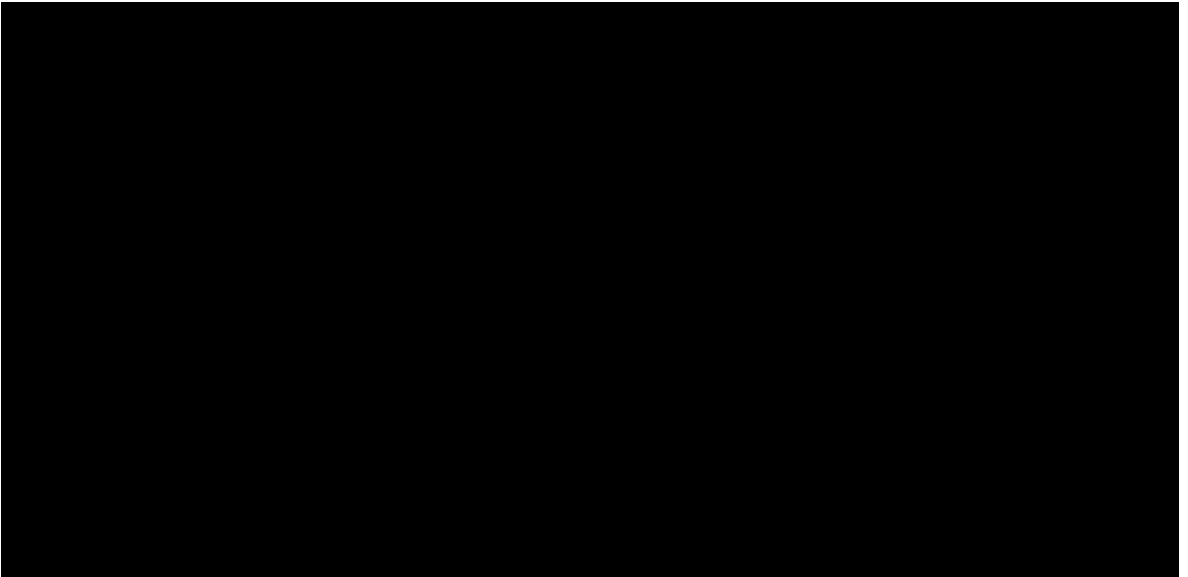
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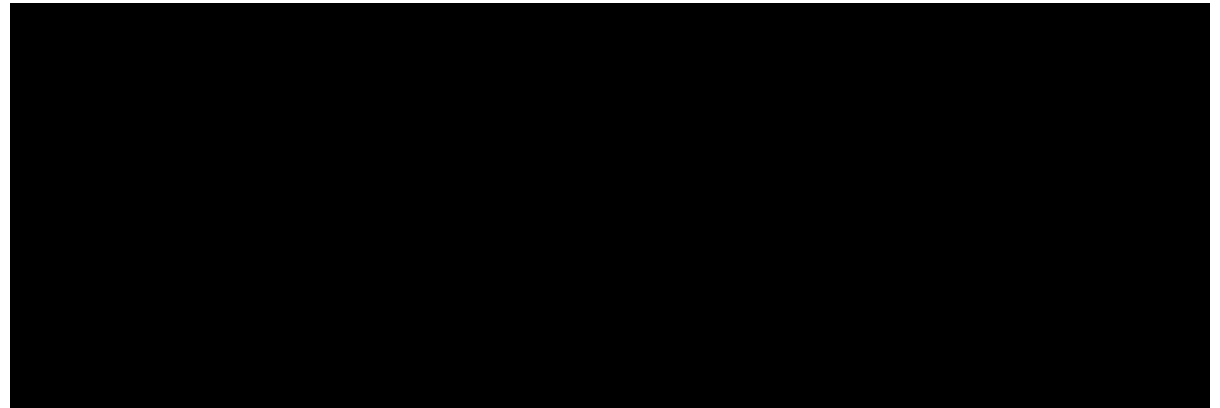
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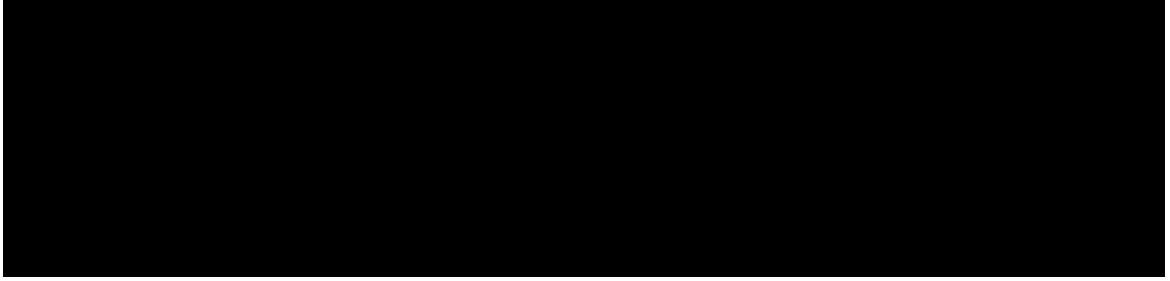


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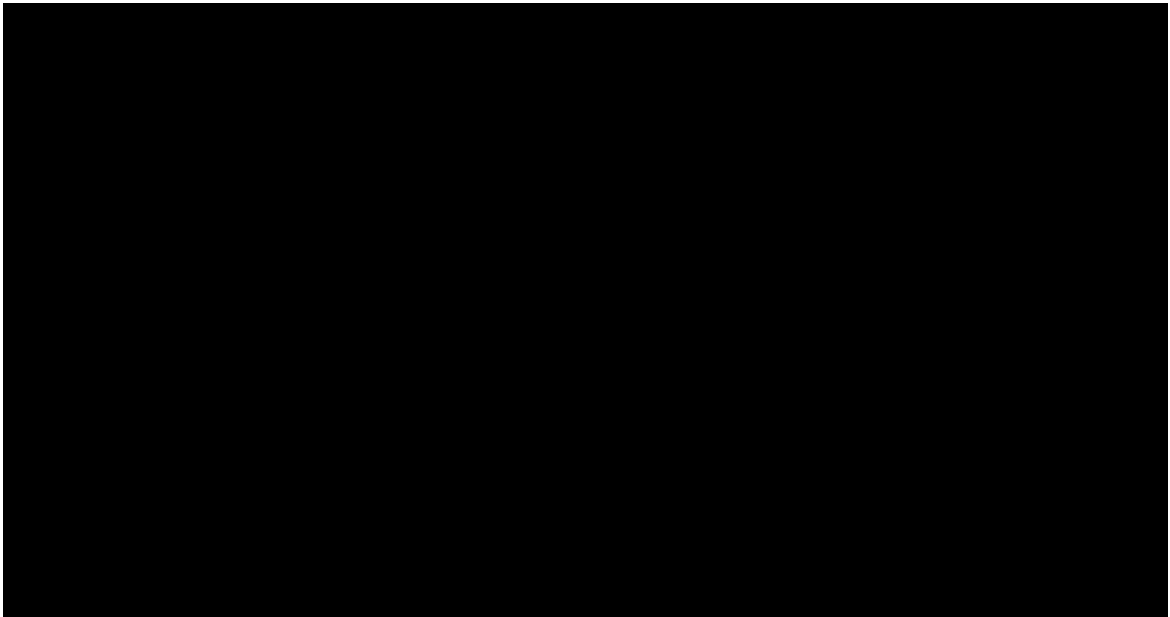


G. Sunday, February 27, 2022

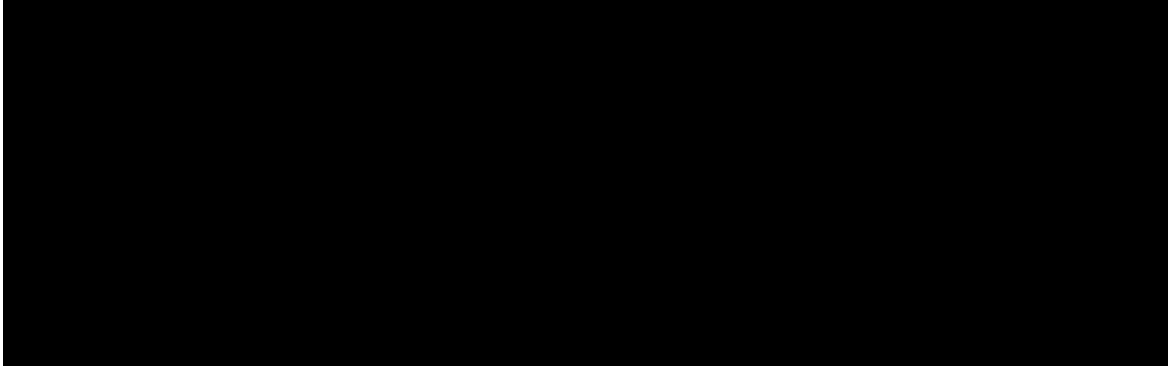
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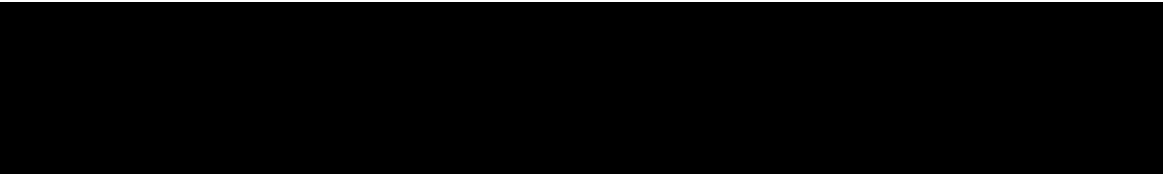
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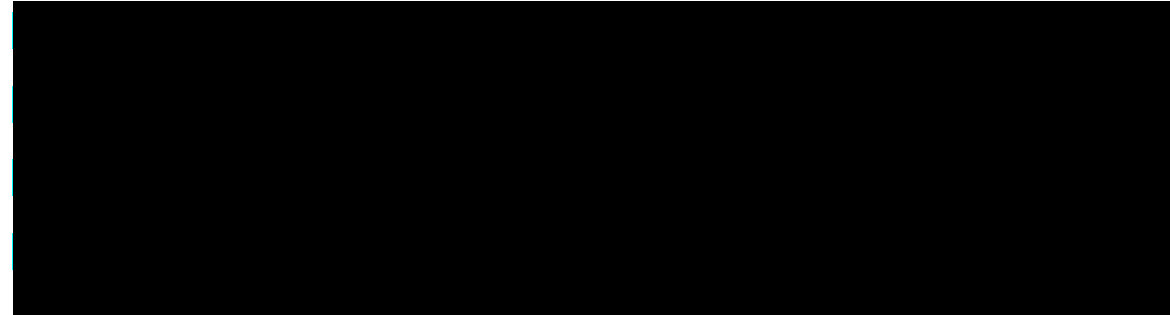
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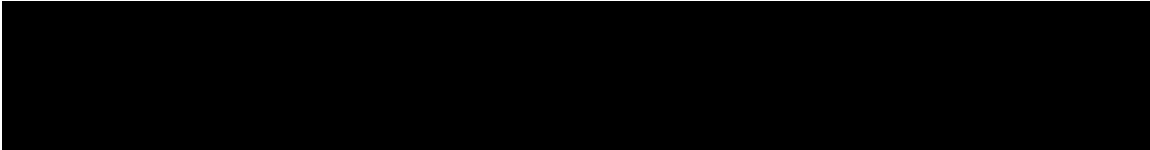


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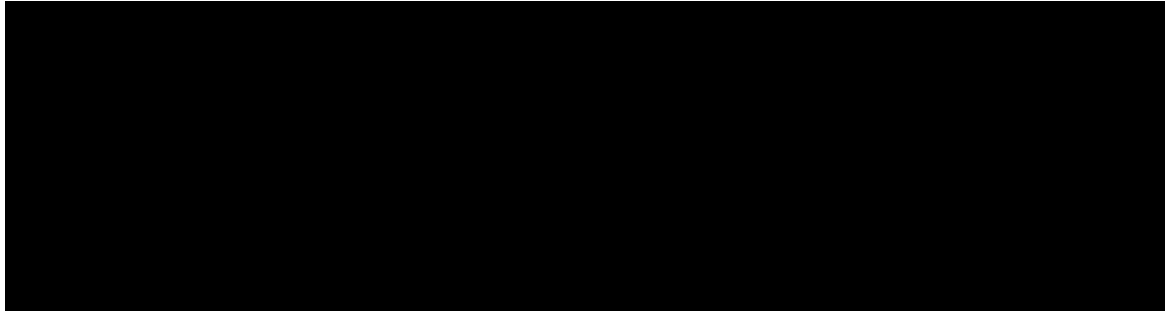


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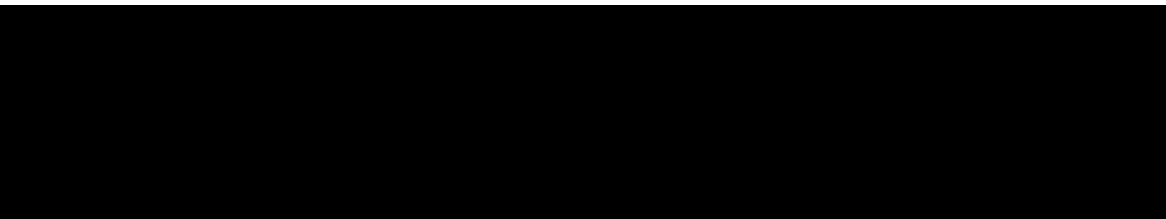




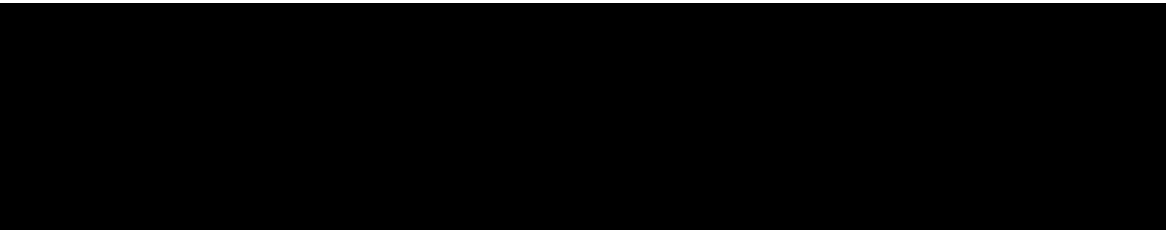
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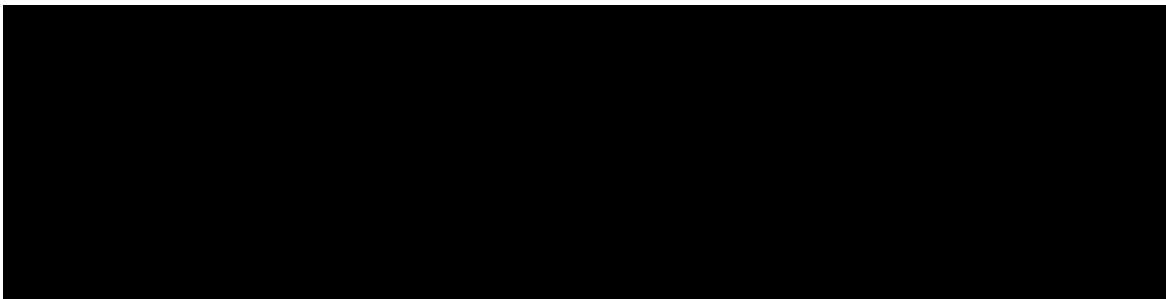
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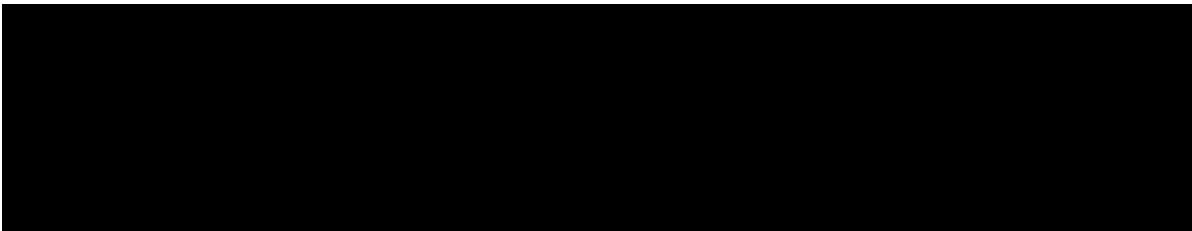
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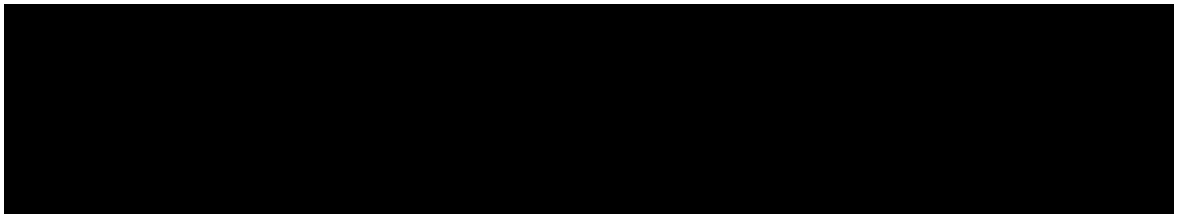


H. Monday, February 28, 2022

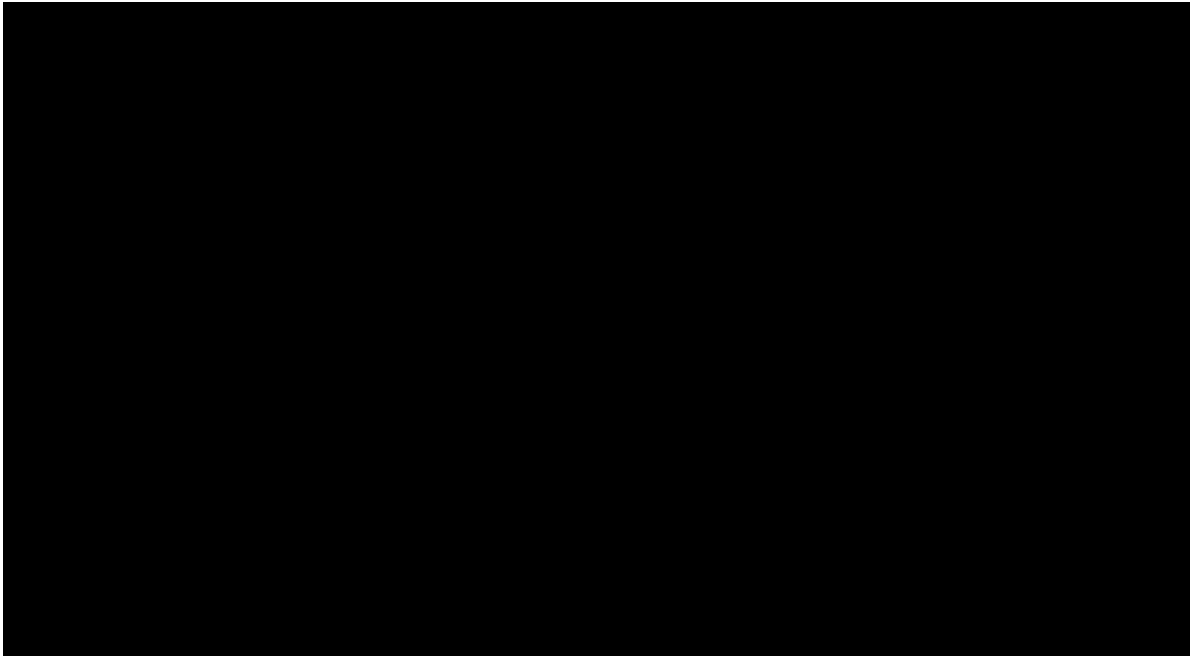
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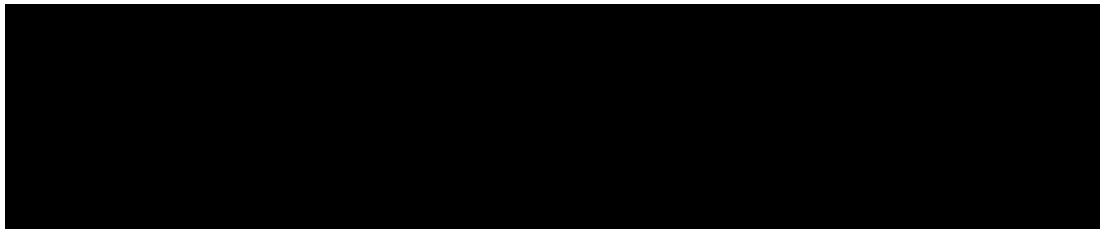
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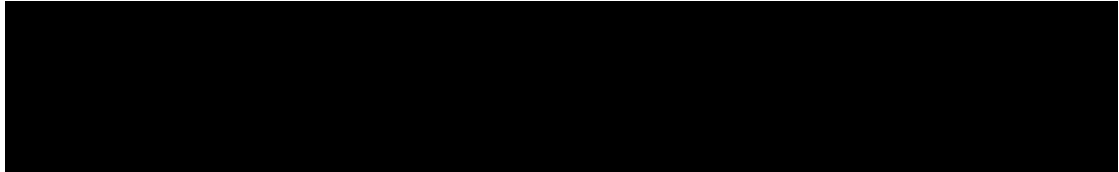


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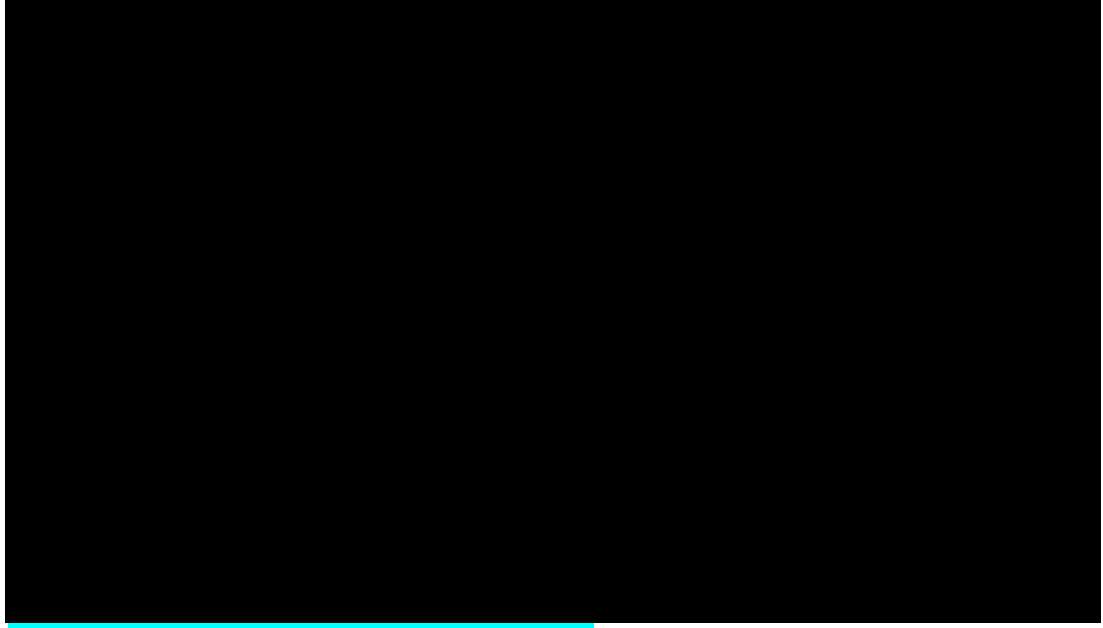


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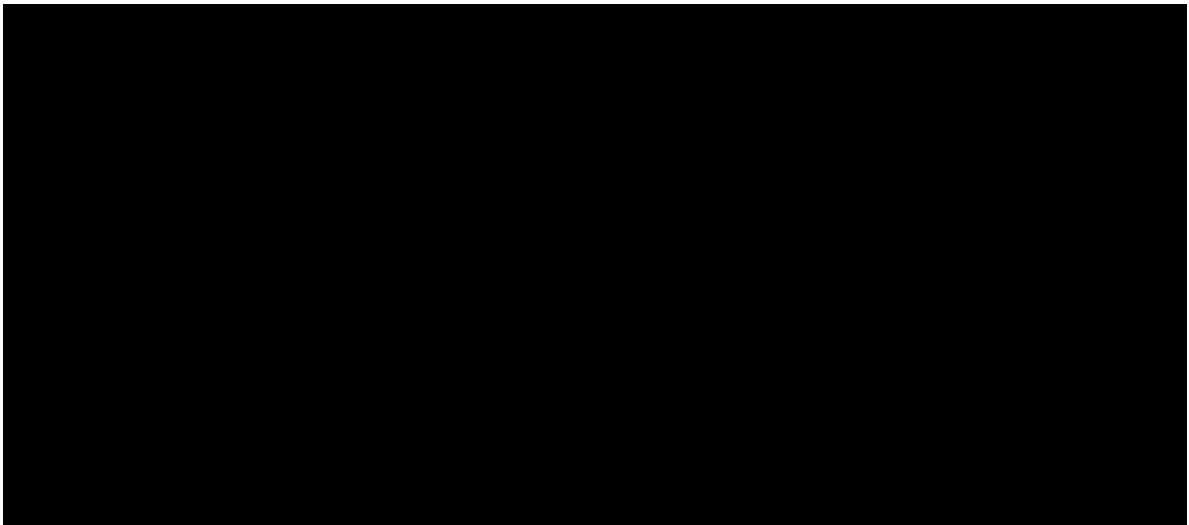




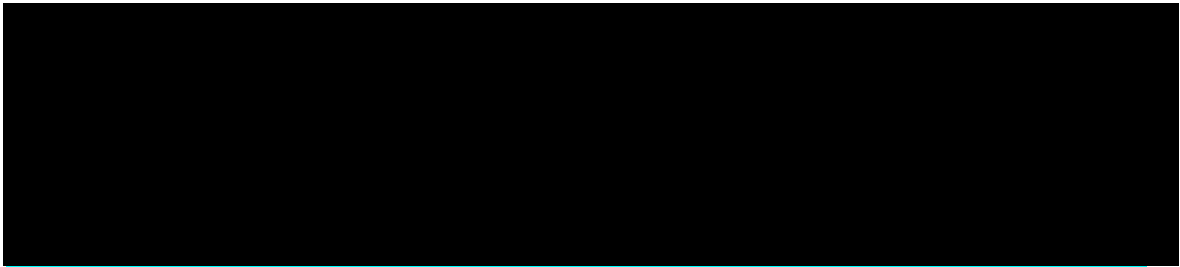
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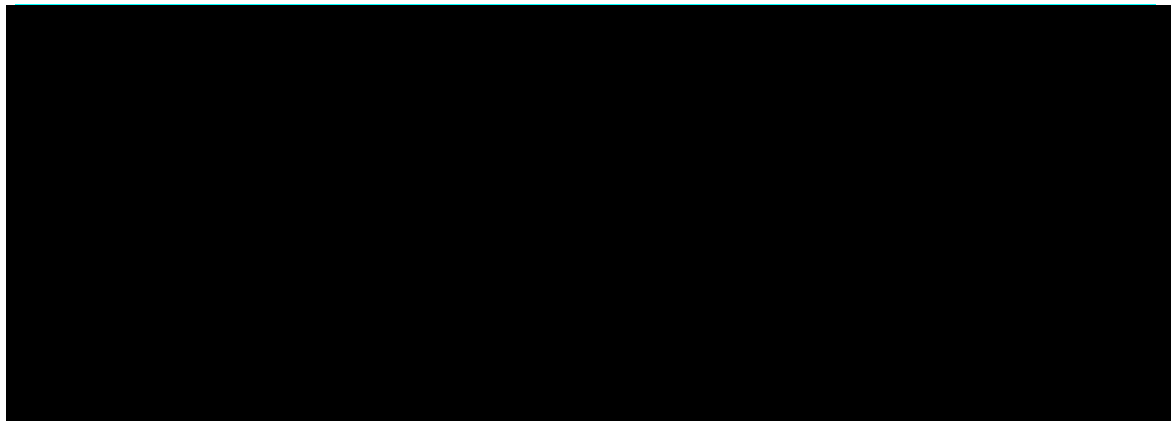
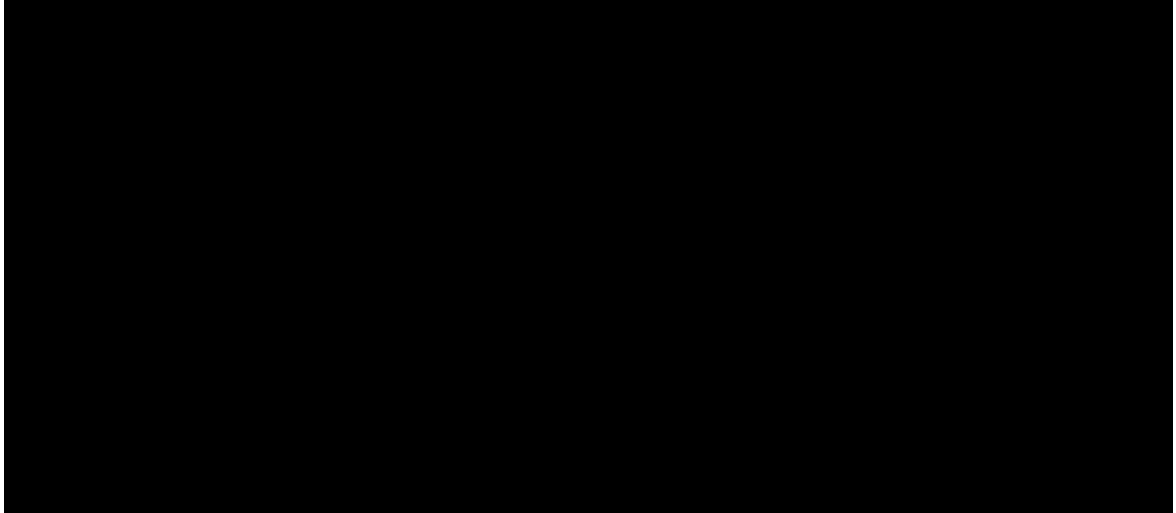


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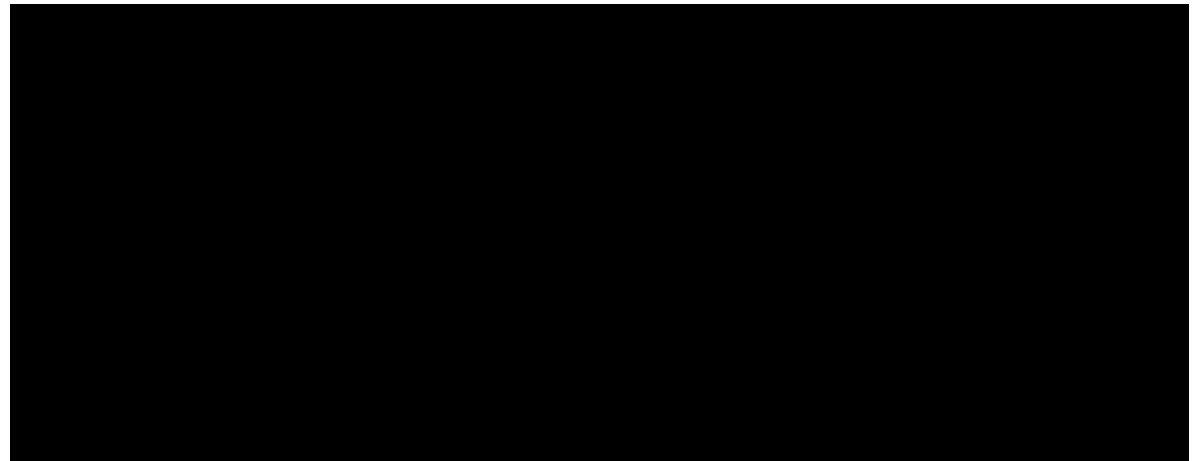




64.



65.



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I. Tuesday, March 1, 2022

67.

[Redacted]

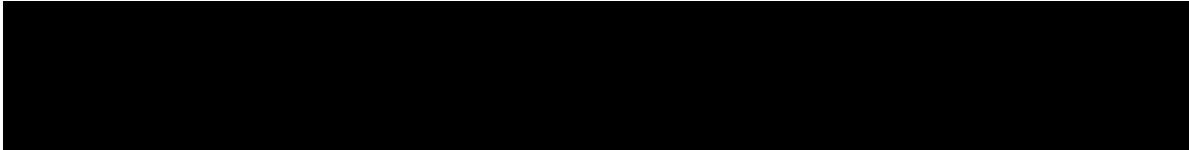
68.

[Redacted]

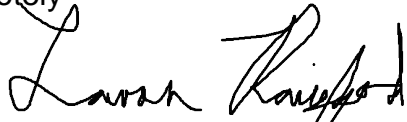
69.

[Redacted]

[Redacted]



AFFIRMED remotely by Ken Rosenberg
at the City of Toronto, in the Province of
Ontario, before me at the City of
Toronto, in the Province of Ontario, on
this 4th day of March, 2022 in
accordance with O. Reg. 431/20,
Administering Oath or Declaration
Remotely



Lauren Rainsford , Commissioner for
Taking Affidavits



Ken Rosenberg

This is Exhibit "A" referred to in the Affidavit of Ken Rosenberg, affirmed March 4, 2022.

A handwritten signature in black ink, appearing to read "Lauren Rainsford". The signature is written in a cursive style with a large initial 'L' and 'R'.

Commissioner for Taking Affidavits (or as may be)

Lauren Rainsford

Court File No. CV-22-00674810-00CL

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

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

30 ROE INVESTMENTS CORP.

Respondent

**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**

AFFIDAVIT OF RAYMOND ZAR

I, Raymond Zar, of the City of Toronto, in the Province of Ontario, hereby AFFIRM as follows.

1. I am the Chief Executive Officer of the Respondent, 30 Roe Investments Corp. (“**Roe**”), and as such I have knowledge of the matters referred to in this affidavit. Where my knowledge is based upon information provided to me by others, I have stated the source of that information and I believe it to be true.

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2. I am swearing this affidavit in support of a request for a further adjournment of this applicaiton, having finally been able to retain counsel to represent Roe just yesterday. Roe would like the opportunity to instruct counsel, tender comprehensive evidence in response, and, if necessary, cross-examine the Applicant's affiants.

3. Prior to the last attendance before this court, Roe consulted 3 different lawyers (Lawrence Thacker of Lenczner Slaght; Catherine Francis of Minden Gross; and, Chad Kopach of Blaney McMurtry). None of these lawyers were able to represent Roe due to perceived conflicts of interest with either the Applicant, Kingsett Mortgage Corporation ("Kingsett").

4. Following the last attendance before this court, Roe attempted to retain three other lawyers:

(a) Kevin Sherkin of Miller Thomson. Roe retained Mr. Sherkin on or about February 10, 2022. On or about February 17, 2022, Mr. Sherkin advised me that Kingsett objected to his engagement by Roe and that, as a result, he could not act.

(b) James Renihan of Norton Rose. I immediately attempted to retain Mr. Renihan, on February 17, 2022. Unfortunately, on Friday, February 18, 2022, he advised me that he could not represent Roe in this matter due to a conflict with Canadian Imperial Bank of Commerce ("CIBC"), which CIBC would not waive.

-3-

- (c) David O'Connor of Roy O'Connor. I next attempted to retain Mr. O'Connor on February 18, 2022. However, on the morning of Sunday, February 20, 2022, he advised me that he was unavailable to attend the hearing today, February 22, 2022.

- 5. Finally, yesterday, February 21, 2022, I was able to sign a retainer agreement with Ken Rosenberg of Paliare Roland, subject to providing a monetary retainer in advance of the hearing today. Funds were wired yesterday evening and received this morning.

- 6. If given the opportunity to respond, Roe's position will be that Kingsett agreed to extend its mortgage (or at least forebear in its enforcement), until April 1, 2022. Kingsett's agreement is evidenced by, among other things, its withdrawal of an extension fee from Roe's account.

- 7. I do not perceive any prejudice to Kingsett by virtue of the proposed adjournment having regard to the following facts.
 - (a) In November 2021, the subject properties were appraised for a total value of \$9,125,000, indicating that after the debts owing to CIBC (approximately \$4 million) and Kingsett (approximately \$1.875 million), there is approximately \$3.25 million in equity.

 - (b) The Properties are fully leased and generate positive cash flow.

 - (c) All interest under the Kingsett mortgage has been paid. There is no interest outstanding.


-4-

8. CIBC has not noted Roe in default, nor has it filed any materials in response to this Application or taken an adverse position against Roe. Discussions with respect to refinancing the Kingsett mortgage with CIBC are ongoing.

AFFIRMED remotely by Raymond Zar at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 22nd day of February, 2022 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



Ahmed Elahi, Commissioner for Taking Affidavits



Raymond Zar

Ahmed Elahi, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires August 25, 2024.

**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**

Court File No. CV-22-00674810-00CL

KINGSETT MORTGAGE CORPORATION
Applicant

and 30 ROE INVESTMENTS CORP.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

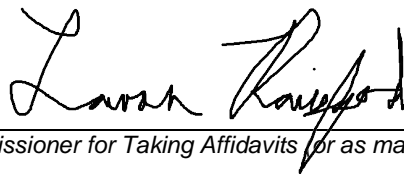
**AFFIDAVIT OF RAYMOND ZAR
SWORN FEBRUARY 22, 2022**

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Tel: 416.646.7431
max.starnino@paliareroland.com

Lawyers for the Respondent

This is Exhibit "B" referred to in the Affidavit of Ken Rosenberg, affirmed March 4, 2022.

A handwritten signature in black ink, appearing to read "Lauren Rainsford". The signature is written in a cursive style with a large initial 'L' and 'R'.

Commissioner for Taking Affidavits (or as may be)

Lauren Rainsford

COUNSEL SLIP

COURT FILE

NO.: CV-22-00674810-00CLDATE: February 22, 2022NO. ON LIST 2TITLE OF
PROCEEDING

Kingsett Mortgage Corp. v 30 Roe Investments Corp.

COUNSEL FOR: PLAINTIFF(S) **Sean Zweig** zweigs@bennettjones.com

PHONE _____

 APPLICANT(S) **Joshua Foster** fosterj@bennettjones.com

FAX _____

 PETITIONER(S)

EMAIL _____

COUNSEL FOR: DEFENDANT(S)

PHONE _____

 RESPONDENT(S)

FAX _____

Ken Rosenberg (counsel for 30 Roe Investments Corp.)ken.rosenberg@paliareroland.com**Noah Goldstein (proposed receiver)**ngoldstein@ksvadvisory.com**Murtaza Tallet (proposed receiver)**mtallat@ksvadvisory.com

EMAIL _____

Chris Armstrong (counsel for proposed receiver)carmstrong@goodmans.ca**Darren Marr (counsel for CIBC)**ben@chaitons.com / dmarr@chaitons.comJUDICIAL NOTES:

The applicant brings this application for the appointment of a receiver over real property and other property of the respondent. The application was first before me on January 17, 2022. At that appearance, I granted the request made by Mr. Zar for an adjournment so that the respondent could retain counsel and respond to the application. The hearing was adjourned to today.

This morning, Mr. Rosenberg appeared on behalf of the respondent. He had just been retained. There was evidence that the respondent had made other attempts to retain counsel but there were conflicts. Mr. Rosenberg requested an adjournment on behalf of the respondent. In support of this request, the respondent filed the affidavit of Mr. Zar.

The request for an adjournment was opposed by the applicant. After reviewing Mr. Zar's affidavit and hearing submissions from counsel, I granted the request for an adjournment.

The application is adjourned to March 28, 2022 at 10 o'clock a.m. for two hours. Counsel will agree on a timetable and, if there is difficulty, a case conference before me may be arranged.

**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**

Court File No. CV-22-00674810-00CL

KINGSETT MORTGAGE CORPORATION
Applicant

and

30 ROE INVESTMENTS CORP.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

**AFFIDAVIT OF KEN ROSENBERG
AFFIRMED MARCH 4, 2022**

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Lawyers for the Respondent

**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**

Court File No. CV-22-00674810-00CL

KINGSETT MORTGAGE CORPORATION
Applicant

and

30 ROE INVESTMENTS CORP.
Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD

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Lawyers for the Respondent