No. S-250121
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36

BETWEEN:

KINGSETT MORTGAGE CORPORATION

PETITIONER

AND:

LUMINA ECLIPSE LIMITED PARTNERSHIP,
BETA VIEW HOMES LTD.,
LUMINA ECLIPSE GP LTD., AND
D-THIND DEVELOPMENT BETA LTD.

RESPONDENTS

APPLICATION RESPONSE

APPLICATION RESPONSE OF: KSV Restructuring Inc., in its capacity as the Court-appointed monitor (in such capacity, the "**Monitor**" or the "**Respondent**") of Beta View Homes Ltd. ("**Beta View**"), Lumina Eclipse GP Ltd. ("**Lumina GP**"), Lumina Eclipse Limited Partnership ("**Lumina LP**" and collectively with Beta View and Lumina GP, the "**Developer**") and D-Thind Development Beta Ltd. ("**D-Thind Beta**" and together with the Developer, the "**Debtors**").

THIS IS A RESPONSE TO the notice of application of Chung Hei Wong, Liping Ding and Wai Thing Nicole (collectively, the "**ATAC Applicants**") filed April 22, 2026 (the "**ATAC Application**"), and the notice of application of Nazila Ghorbani, Arash Emadghaderi-Sepideh Motallebi, Mohammad Pourkarimi Shirayeh, Pegah Pourkarimi Shirayeh, Maryam Javadinia, Hossain Jabbari, Shaya Shahrezaee, Malihe Ghamarsourat, Mooein Fadaei, Farhoud Etemadol Sadati, Laila Dahaghin, Seyed Reza Deravian, Maryam Abdipour, Masaki Matsumoto (Sammy Rastkar), Ali Manavi, Naghmeh Heshamati, Nousheen Pourjahani, Kayvon Ameeri, Shirin Vosough Gerayeli, Kaveh Vosough Gerayeli, Mohsen Bagherpour, Amirhossein Marjaee, Amir Osooly, Hossein Nazapour, Roya Herischian-Heris, Hamid Riahi, Mohammad Nayebhashem, Alireza Sedghi Taromi, Shiva Olyaei, Nasim Rahmani, Mohammadjdavad Nadali, Ramtin Parvin,

Pooneh Taheri, Paniz Parvin, Mahnaz Taheri, Nima Hazar and Mohammad Medhi Basefat Nazari (collectively, the "**HG Applicants**" and together with the ATAC Applicants, the "**Applicants**") filed on April 28, 2026 (the "**HG Application**" and together with the ATAC Application, the "**Applications**").

The Respondent estimates that the application will take 3 days.

Part 1: ORDERS CONSENTED TO

The Respondent does not consent to the granting of any of the orders set out in Part 1 of the ATAC Application or any of the orders set out in Part 1 of the HG Application.

Part 2: ORDERS OPPOSED

The Respondent opposes the granting of all of the orders set out in Part 1 of the ATAC Application and all of the orders set out in Part 1 of the HG Application.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

Nil.

Part 4: FACTUAL BASIS

A. Overview

1. In the face of a broad stay of proceedings (the "**Stay of Proceedings**") granted by this Court pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), the Applicants seek (without first or contemporaneously seeking to lift the Stay of Proceedings) declarations under section 23 of the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41, as amended ("**REDMA**") that their Presale Agreements (as defined below) are unenforceable. In so doing, the Applicants seek to avoid their obligations under the Presale Agreements, breach the Stay of Proceedings, and subvert the purposes of these proceedings and the CCAA, to the significant detriment of the Debtors and their creditors.

2. The Applicants' asserted entitlement to the right or remedy afforded by section 23 of REDMA, the exercise of which is plainly stayed, is predicated on several alleged breaches of

REDMA. Substantially all such alleged breaches pre-date the commencement of these now well-advanced proceedings and were apparent by no later than January 6, 2025. Despite being aware of such alleged breaches and the Monitor's view on the enforceability of the Presale Agreements and intention to close them, the ATAC Applicants and the HG Applicants waited at least 12 and 13 months, respectively, to take any step in these proceedings and to seek to invoke section 23 of REDMA.

3. The relief sought by the Applicants is unavailable absent lifting the Stay of Proceedings, conflicts with the purposes of these proceedings and the CCAA and is inappropriate in the circumstances. The Monitor therefore opposes the Applications. It does so for three reasons.

4. *First*, even if the Applicants could establish breaches of Part 2 of REDMA sufficient to engage section 23 (which is not admitted, but expressly denied), they are prohibited by the Stay of Proceedings and the terms of the Third Amended and Restated Initial Order of this Court granted on December 19, 2025 (the "**TARIO**"), from exercising any rights and remedies against or in respect of the Debtors or affecting their business and property, and enjoined from failing to honour, repudiating, terminating, rescinding or ceasing to perform any contract or agreement held by any of the Debtors.

5. By rendering a purchase agreement unenforceable "against the purchaser by a developer who has breached any provision of Part 2", section 23 unequivocally provides a "right" or "remedy" in favour of purchasers to prevent or redress a developer's breach of Part 2 of REDMA, the practical effect of which is clear. It permits Presale Purchasers (as defined below) to fail to honour, cease to perform or repudiate their obligations under the Presale Agreements and jeopardizes the success of these proceedings to the detriment of the Debtors and their creditors, contrary to the CCAA, the Stay of Proceedings and the terms of the TARIO. The Presale Purchasers' ability to invoke section 23 of REDMA and establish the requisite breach are thus squarely within the ambit of the Stay of Proceedings and prohibited by the TARIO.

6. *Second*, despite the undeniably broad scope and unambiguous terms of the TARIO, the Applicants have not sought to lift the Stay of Proceedings. Had the Applicants done so, as required, they could not establish sound reasons for lifting the Stay of Proceedings. Lifting the Stay of Proceedings would detract from (rather than further) the CCAA's purposes. It would protract these

proceedings, erode creditor recoveries, and reward the Applicants' remarkable lack of diligence despite having ample notice of these proceedings and the Monitor's views on the enforceability of the Presale Agreements, exacerbating the losses that will be borne by the Debtors' creditors. Moreover, the relative prejudice to the parties overwhelmingly favours the Debtors and their creditors.

7. If this Court declines to grant the Applicants' proposed relief, the Applicants will receive what they bargained for – completed units in the Development (as defined below) – while retaining their rights to pursue damages under section 22 of REDMA (subject to the Stay of Proceedings). If, however, this Court exercises its discretion and lifts the Stay of Proceedings (an order the Applicants failed to seek), the Debtors will almost certainly face indemnification claims from Westmount West Services Inc. ("**Westmount**"), as agent for and on behalf of Aviva Insurance Company of Canada ("**Aviva**") and Liberty Mutual Insurance Company (together, the "**Surety**"), and an event of default under the Interim Financing Term Sheet. And, the Monitor will be forced to relist the applicable Purchased Units in a deteriorating market during an insolvency proceeding in which interest exceeding $59,000 per day accrues. The resulting erosion in asset value and increase in cost and expense will materially prejudice the Debtors, and their creditors, who will already suffer a substantial shortfall.

8. *Third*, and in any event, section 23 of REDMA is rendered inoperative by the doctrine of federal paramountcy. As Presale Purchasers cannot rely on section 23 of REDMA without contravening the TARIO, and frustrating the purposes of the CCAA, including preserving and maximizing the value of the Debtors' assets, federal paramountcy dictates that sections 11 and 11.02 of the CCAA and the provisions of the TARIO granted thereunder, must prevail.

B. Background

9. Lumina LP and Beta View (together, the "**Initial Debtors**") are the beneficial and registered owners, respectively, of a 34-story development (the "**Eclipse Project**" or "**Development**") located at 2381 Beta Ave, Burnaby, BC (the "**Lands**"), comprising 329 units (collectively, the "**Eclipse Units**").

10. At the commencement of these proceedings, 232 of the Eclipse Units had been sold pursuant to pre-sale contracts (collectively, the "**Presale Agreements**") with third-party

purchasers (collectively, the "**Presale Purchasers**"), including the Applicants, and the Eclipse Project was approximately 95% complete.

11. In connection with the Eclipse Project, the Initial Debtors entered into the following commitment letters (together, the "**Commitment Letters**"):

(a) a commitment letter dated April 28, 2021 (as amended by a first amending agreement dated June 22, 2021, second amending agreement dated July 5, 2022, third amending agreement dated May 23, 2023, fourth amending agreement dated June 22, 2023, and a fifth amending agreement dated March 5, 2024) among, *inter alios*, Lumina GP, in its capacity as the general partner for and on behalf of Lumina LP, as borrower, Beta View, as nominee, and KingSett Mortgage Corporation ("**KingSett**"), as lender, pursuant to which KingSett provided a first mortgage loan in the principal amount of $124,000,000 (the "**First KingSett Loan**"); and

(b) a commitment letter dated April 28, 2021 (as amended by a first amending agreement dated June 22, 2021, second amending agreement dated July 5, 2022, third amending agreement dated May 23, 2023, fourth amending agreement dated June 22, 2023, fifth amending agreement dated March 5, 2024, and a sixth amending agreement dated July 5, 2024) among, *inter alios*, Lumina GP, in its capacity as the general partner for and on behalf of Lumina LP, as borrower, Beta View, as nominee, and KingSett, as lender, pursuant to which KingSett provided a second mortgage loan comprising two facilities in the aggregate principal amount of $65,400,000 (the "**Second KingSett Loan**").

12. As at December 8, 2025, the total indebtedness to KingSett was approximately $225,737,348, plus interest (then accruing at more than $59,000 per day) and costs, which continue to accrue.

13. The Initial Debtors' obligations in respect of the First KingSett Loan are secured by, among other things:

(a) a site-specific general security agreement dated June 30, 2021, granted by Beta View over its personal property in connection with the Eclipse Project;

(b) a mortgage and assignment of rents dated March 14, 2024, in the principal amount of $124,000,000, registered against the Lands (as defined below) (the "**KingSett First Mortgage**"); and

(c) a beneficial owner's direction, acknowledgment, and security agreement dated March 2024, granted by the Initial Debtors in favour of KingSett.

14. The Initial Debtors' obligations in respect of the Second KingSett Loan are secured by, among other things:

(a) a general security agreement dated June 30, 2021, granted by Beta View over its personal property in connection with the Eclipse Project;

(b) a mortgage dated August 7, 2024, in the principal amount of $70,000,000, registered against the Lands (the "**KingSett Second Mortgage**"); and

(c) a beneficial owner's direction, acknowledgment, and security agreement dated August 16, 2024, granted by the Initial Debtors in favour of KingSett.

15. In connection with the Eclipse Project and the Presale Agreements, the Initial Debtors and Lumina GP (collectively, the "**Developer**") also obtained a $50,000,000 deposit protection contract facility (the "**Deposit Protection Facility**") from Westmount, as agent for and on behalf of the Surety.

16. The payment and performance of the Developer's obligations under the Deposit Protection Facility are secured by, among other things:

(a) an indemnity agreement dated May 20, 2022, granted by the Developer, among others, in favour of Westmount and the Surety;

(b) a mortgage and assignment of rents dated June 16, 2022, in the principal amount of $50,000,000, registered against the Lands (the "**Westmount Mortgage**"), which also secures the indebtedness, liabilities and obligations arising under or in connection with the New Home Warranty (as defined below);

(c) an equitable mortgage and estoppel agreement dated May 20, 2022, granted by the Initial Debtors in favour of Westmount; and

(d) a location specific security agreement dated May 20, 2022, executed by the Initial Debtors in favour of Westmount.

17. The priority among the KingSett First Mortgage, the Westmount Mortgage and the KingSett Second Mortgage is governed by a third amended and restated subordination and standstill agreement dated March 19, 2024 (the "**Subordination Agreement**"), among, *inter alios*, KingSett and Westmount, and an acknowledgment and agreement dated March 28, 2025 (the "**Acknowledgement Agreement**"), among KingSett, the Initial Debtors, Aviva and Westmount. Subject to the terms of the Subordination Agreement and the Acknowledgment Agreement, the Westmount Mortgage is subordinate to the KingSett First Mortgage, and the KingSett Second Mortgage and multiple collateral mortgages granted by the Initial Debtors as security for guarantees granted in favour of KingSett and registered against the Lands (collectively, the "**Collateral Mortgages**"), are subordinate to the Westmount Mortgage.

C. KingSett's Petition for an Initial Order Under the CCAA

18. On January 7, 2025, KingSett filed a petition (the "**Petition**") seeking relief in respect of the Initial Debtors under the CCAA. The relief was sought to "stabilize the Debtors' operations and management, secure necessary interim financing, complete construction of Brentwood Tower C, and ensure presale homebuyer agreements can be closed as intended."

19. KingSett's decision to pursue relief under the CCAA, rather than the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended, was deliberate. As described in Affidavit No. 1 of Daniel Pollack made on January 6, 2025 (the "**First Pollack Affidavit**"), pursuing relief under the CCAA was intended to "allow all the presales sold in connection with Brentwood Tower C to continue, which may not be possible in a receivership."

D. The Monitor's Appointment, the Initial Order and the Stay of Proceedings

20. The Petition was heard on January 8, 2025. On that date, the Supreme Court of British Columbia (the "**Court**") granted an initial order (the "**Initial Order**") in respect of the Initial Debtors pursuant to the CCAA.

21. Among other things, the Initial Order:

(a) granted a broad stay of proceedings (the "**Stay of Proceedings**") in favour of the Monitor and the Initial Debtors and their business and property to and including January 18, 2025;

(b) approved the Interim Financing Term Sheet dated as of January 6, 2025 (as amended, the "**Interim Financing Term Sheet**"), between the Monitor, for and on behalf of the Initial Debtors, and KingSett, and granted a charge over the Initial Debtors' property up to the maximum amount of $700,000, plus interest, fees and expenses, to secure all amounts advanced under the Interim Financing Term Sheet (the "**Interim Lender's Charge**");

(c) granted a charge over the Initial Debtors' property up to the maximum amount of $250,000, to secure the fees and disbursements of the Monitor and its counsel (the "**Administration Charge**" and together with the Interim Lender's Charge, the "**Charges**"); and

(d) granted the Monitor certain enhanced powers (the "**Initial Enhanced Powers**").

22. Following the granting of the Initial Order:

(a) the Monitor issued a notice dated January 11, 2025 to all Presale Purchasers advising of: (i) the granting of the Initial Order and the Stay of Proceedings; (ii) the primary purposes of these proceedings, being to stabilize the Initial Debtors, and provide the necessary funding to complete the Eclipse Project and deliver the Eclipse Units pursuant to the Presale Agreements; (iii) KingSett's commitment to provide the Interim Financing Facility; (iv) the Monitor's view that all Presale

Agreements remained valid and enforceable; and (v) the hearing scheduled for the ARIO (as defined below); and

(b) the BC Financial Services Authority (the "**BCFSA**") provided a letter to the Developer requesting that it deliver a cease marketing undertaking, confirming that all marketing had ceased and would not resume until after a disclosure statement amendment was filed (the "**Cease Marketing Undertaking**"), in response to which the Monitor's counsel confirmed that, subject to the granting of the ARIO, the Monitor had no issue in principle with exercising its enhanced powers to cause the Developer to provide the Cease Marketing Undertaking.

23. On January 16, 2025, KingSett obtained an amended and restated Initial Order (the "**ARIO**"), among other things:

(a) extending the Stay Period (as defined in the ARIO) to and including April 16, 2025;

(b) adding Lumina GP as a "Respondent" in these proceedings;

(c) increasing the maximum amount of the Administration Charge to $500,000;

(d) increasing the maximum principal amount that could be borrowed under the Interim Financing Facility to $18 million; and

(e) expanding the Monitor's Initial Enhanced Powers (the "**Expanded Powers**"), including to authorize the Monitor to cause the Developer to take such steps as the Monitor determines may be reasonably necessary or appropriate to comply with REDMA, subject to paragraph 11 of the ARIO.

24. Exercising the Expanded Powers under the ARIO, the Monitor provided the Cease Marketing Undertaking to the BCFSA on January 23, 2025.

25. The ARIO was subsequently amended and restated pursuant to an order granted on April 16, 2025 (the "**SARIO**") and the TARIO to, among other things:

(a) extend the Stay of Proceedings to and including July 31, 2026;

(b) add D-Thind Beta as a "Respondent" in these proceedings;

(c) approve amendments to the Interim Financing Term Sheet, which extended the Maturity Date (as defined in the Interim Financing Term Sheet) to July 31, 2026, and increased the maximum permitted borrowings under the Interim Financing Term Sheet to $25,750,000, plus interest, fees and expenses; and

(d) increase the Interim Lender's Charge to the maximum aggregate amount of $25,750,000, plus interest, fees and expenses.

26. Subject to certain variations, each of the Initial Order, the ARIO, the SARIO and the TARIO include the following broad Stay of Proceedings in favour of the Monitor and the Debtors and their business and property:

> […] no action, suit or proceeding in any court or tribunal (each, a "**Proceeding**") against or in respect of the Respondents (or any of them) or the Monitor, or their respective employees, advisors, counsel and other representatives acting in such capacities, or affecting the Business or the Property, shall be commenced or continued except with the prior written consent of the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Respondents (or any of them) or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court or the prior written consent of the Monitor.
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> During the Stay Period, the Superintendent of Real Estate shall not require the Respondents (or any of them) to file a new disclosure statement under subsection 16(2) of the *Real Estate Development Marketing Act*, S.B.C. 2004, c. 41 ("**REDMA**") nor take any steps that would otherwise trigger a purchaser's right of rescission under REDMA, and any rights and remedies of purchasers to rescind pre-sale contracts with the Respondents (or any of them) are stayed and suspended save and except for the exercise of purchasers' rights of rescission under subsections 21(2)(a) and 21(2)(b)(i) of REDMA in connection with the Sale Agreements.
>
> During the Stay Period, all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Respondents (or any of them) or the Monitor, or their respective employees, advisors, counsel and other representatives acting in such capacities, or affecting the Business or the Property, are hereby stayed and suspended except with the prior written consent of the Monitor or leave of this Court.

> […]
>
> During the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, terminate, rescind or cease to perform any right, renewal right, contract, agreement, licence, authorization or permit in favour of or held by the Respondents (or any of them), except with the prior written consent of the Monitor or leave of this Court.

27. No party or stakeholder in these proceedings, including the Applicants, has opposed any of the Initial Order, the ARIO, the SARIO or the TARIO, or sought to vary, amend, appeal or lift any such order or the Stay of Proceedings. All Presale Purchasers, including the Applicants, have been aware of the Initial Order and the Monitor's intention to close the Presale Agreements since receiving the January 11, 2025 notice referred to above.

E. The Monitor's Marketing Efforts

28. On April 16, 2025, the Monitor obtained the following orders:

(a) an order (the "**Sale Process Order**"), among other things:

(i) authorizing and empowering the Monitor to enter into the Letter Agreement dated as of April 16, 2025, among the Monitor, Rennie Marketing Systems, by its partners Rennie Project Marketing Corporation and 541823 B.C. Ltd. (collectively, "**RMS**"), and Rennie & Associates Realty Ltd. (together with RMS, "**Rennie**") in the form attached as Appendix "B" (the "**Rennie Agreement**") to the Second Report of the Monitor dated April 8, 2025 (the "**Second Report**");

(ii) approving the sale process, substantially as described in the Second Report (the "**Sale Process**"); and

(iii) subject to the filing of a disclosure statement amendment pursuant to REDMA, authorizing the Monitor and Rennie to carry out the Sale Process in accordance with its terms and the terms of the Sale Process Order; and

(b) an order, among other things, sealing the Confidential Supplement to the Second Report dated April 8, 2025 (the "**Confidential Supplement**"), pending the filing

of a Monitor's certificate evidencing the closing of the unit transaction for the last Eclipse Unit.

29. Following the Monitor's termination of the Rennie Agreement effective July 26, 2025, and the implementation of a request for proposal process, the Monitor sought and, on October 17, 2025, obtained an order (the "**Amended Sale Process Order**"), among other things:

(a) authorizing and empowering the Monitor, *nunc pro tunc*, to enter into the Service Agreement dated as of September 26, 2025 (the "**Marketing Agreement**"), between the Monitor and McNeill, Lalonde and Associates Inc. (the "**Sales Agent**") in the form attached as Appendix "D" to the Fourth Report of the Monitor dated September 30, 2025 (the "**Fourth Report**");

(b) approving the amended sale process, substantially as described in the Fourth Report (the "**Amended Sale Process**"); and

(c) subject to the filing of a disclosure statement amendment pursuant to REDMA, authorizing the Monitor and the Sales Agent to carry out the Amended Sale Process in accordance with its terms and the terms of the Amended Sale Process Order, and to take such steps as they consider necessary or desirable in carrying out each of their obligations thereunder, including, without limitation, to enter into sale agreements arising from the Amended Sale Process that satisfy the sale conditions enumerated in the Fourth Report (collectively, the "**Sale Conditions**"), including that the purchase price for the applicable Eclipse Unit be not less than that outlined in the pricing schedule included in the report prepared by Rennie and attached to the Confidential Supplement (the "**Minimum Prices**").

30. Neither the Sale Process Order nor the Amended Sale Process Order was opposed by any party or stakeholder in these proceedings, and no party has sought to vary, amend or appeal either order.

31. As contemplated by the Amended Sale Process Order, the Monitor executed and filed a fifth amendment to the disclosure statement with the BCFSA, for and on behalf of the Developer, on November 25, 2025.

32. Consistent with the Cease Marketing Undertaking, the Monitor caused the Developer to refrain from marketing the Eclipse Project between January 23, 2025, and November 25, 2025. In that time, the BCFSA did not request any further undertakings nor the earlier filing of a disclosure statement amendment.

F. The Monitor's Efforts to Complete the Eclipse Project

33. Throughout these proceedings, the Monitor has taken extensive steps, and drawn approximately $18,661,750 pursuant to the Interim Financing Term Sheet as of May 1, 2026, to advance the construction and completion of the Eclipse Project. Such steps have included, among other things, reinstating both the 1-2-5-10 home warranty insurance on the common property and Eclipse Units (the "**New Home Warranty**") and the building permit for the Eclipse Project (the "**Building Permit**"), retaining various critical trades and vendors and filing a strata plan for the Eclipse Project (the "**Strata Plan**").

34. As a result of the Monitor's substantial efforts and Brasfield Builders Limited's assistance, construction of the Eclipse Project was deemed substantially complete on or about March 17, 2026, and an occupancy permit was issued on April 10, 2026 (the "**Occupancy Permit**").

35. In addition to the first notice issued by the Monitor on January 11, 2025, the Monitor has also provided various updates to Presale Purchasers regarding the status of construction and completion of the Eclipse Project throughout these proceedings, including:

(a) advising by a notice dated June 9, 2025, that: (i) the New Home Warranty and the Building Permit had been reinstated; (ii) substantial completion of the Development was expected within five to six months, subject to typical construction variables; and (iii) the Presale Agreements remained valid and enforceable and could not be terminated or rescinded absent the prior written consent of the Monitor or leave of the Court;

(b) advising by a notice dated September 18, 2025, that: (i) the Eclipse Project remained on track for substantial completion in December 2025, subject to typical construction variables; (ii) the Presale Agreements could not be terminated or rescinded absent the prior written consent of the Monitor or the Court; and (iii) the

Monitor intended to seek an order authorizing the Monitor, on behalf of the Developer, to transfer each Purchased Unit (as defined below) free and clear of claims and encumbrances;

(c) advising by notice dated November 24, 2025, that: (i) construction of the Development remained active and was progressing well; (ii) the Monitor had engaged the Sales Agent to manage completion support for all Presale Purchasers; and (iii) the Monitor, for and on behalf of the Vendor, was exercising the option to extend the outside date of all Presale Agreements to August 24, 2026; and

(d) advising by notice dated March 31, 2026, that: (i) subject to the full registration of the Strata Plan and the issuance of the Occupancy Permit, Purchased Unit completions were expected to begin on or around April 24, 2026; and (ii) the Monitor intended to seek the Approval and Vesting Order (as defined below) on April 8, 2026.

G. The Monitor's Efforts to Close the Purchased Units

36. In anticipation of the issuance of the Occupancy Permit and to facilitate the closing of the Eclipse Units and the distribution of the proceeds thereof, the Monitor obtained the following orders on April 8, 2026:

(a) an order (the "**Approval and Vesting Order**"), among other things:

(i) authorizing the Monitor to sell, pursuant to any Presale Agreements or any sale agreements (each, a "**New Sale Agreement**") arising from the Amended Sale Process that satisfy the Sale Conditions (each such New Sale Agreement or Presale Agreement being a "**Sale Agreement**"), any and all of the strata lots that comprise the lands described in Schedule "B" to the Approval and Vesting Order, including all fixtures and chattels, in each case, as designated and described in the applicable Sale Agreement (each, a "**Purchased Unit**"), and to partially assign the parking and storage lease with respect to any parking stalls and/or storage lockers in connection therewith;

(ii) upon delivery by the Monitor to the applicable purchaser(s) (each, a "**Purchaser**") of a certificate substantially in the form attached as Schedule "C" to the Approval and Vesting Order (in each case, the "**Monitor's Certificate**"), vesting the Purchased Unit described in such Monitor's Certificate in such Purchaser(s) free and clear of any and all claims and encumbrances; and

(iii) authorizing and directing Richards Buell Sutton LLP to release and transfer all deposits and interest thereon currently held in trust by it, as trustee or stakeholder, in connection with the Presale Agreements to Bennett Jones LLP, in trust; and

(b) an order (the "**Distribution Order**"), among other things, authorizing and directing the Monitor and its counsel and other agents to make or cause to be made, for and on behalf of the applicable Debtors, one or more distributions, payments or adjustments, as applicable from the purchase price paid for each Purchased Unit approved pursuant to the Approval and Vesting Order, any interest earned on the deposits paid by the applicable Purchaser(s) of each Purchased Unit, and any deposit forfeited by any Purchaser(s) party to a Sale Agreement, free and clear of all claims and encumbrances, subject to such holdbacks as the Monitor considers necessary or appropriate to satisfy the Debtors' incurred and estimated post-filing obligations and any claims that rank in priority to the Charges, and to fund these proceedings.

37. Following the issuance of the Approval and Vesting Order and the Occupancy Permit, the Monitor caused completion notices to be delivered to certain Presale Purchasers beginning April 11, 2026, in accordance with the Presale Agreements. As of May 1, 2026, sixty-six (66) Purchased Units have closed.

38. Provided the Purchased Units close as and when intended, the proceeds are anticipated to be sufficient to satisfy the obligations under the Interim Financing Term Sheet, the First KingSett Loan and the Deposit Protection Facility. The Second KingSett Loan, however, is anticipated to

suffer a shortfall. No recovery is anticipated for subordinate claims, including claims secured by the Collateral Mortgages and lien claims.

39. Having regard to the deterioration in the real estate market in Burnaby, BC since the execution of the Presale Agreements, the Court-approved Minimum Sale Prices, the Developer's contingent liability under the Westmount Mortgage, and the interest expense and costs associated with protracting these proceedings, the failure to close Purchased Units is expected to materially exacerbate the losses suffered by the Debtors' creditors.

H. The Applicants and Their Applications

40. Counsel to the ATAC Applicants and the HG Applicants first contacted the Monitor by letters dated December 29, 2025, and February 3, 2026 (the "**Initial Letters**"), respectively – approximately 12 and 13 months after the commencement of these proceedings. The Initial Letters principally asserted that the Applicants' Presale Agreements were unenforceable and demanded the return of their deposits.

41. Counsel to the Monitor responded to each of the Initial Letters and advised, among other things, that:

(a) the Monitor was concerned that such Initial Letter and the allegations raised therein were veiled attempts to avoid the applicable Applicants' obligations under their respective Presale Agreements;

(b) the TARIO prohibits the commencement or continuation of any action, suit or proceeding in any court or tribunal against or in respect of the Debtors or affecting their business or property absent the prior written consent of the Monitor or leave of the Court;

(c) the TARIO stays and suspends the exercise of all rights and remedies of any individual, firm, corporation, organization, governmental unit, body or agency, or any other entity, against or in respect of the Debtors or the Monitor, or affecting the Debtors' business or property absent the prior written consent of the Monitor or leave of the Court; and

(d) the TARIO precludes all persons from accelerating, suspending, discontinuing, failing to honour, altering, interfering with, repudiating, terminating, rescinding or ceasing to perform any right, renewal right, contract, agreement, licence, authorization or permit in favour of or held by the Debtors, absent the prior written consent of the Monitor or leave of the Court.

42. The Monitor's counsel subsequently corresponded with counsel to the ATAC Applicants and the HG Applicants in advance of the Monitor's application for the Approval and Vesting Order. In the case of the HG Applicants, the Monitor's counsel delivered a letter dated March 27, 2026, among other things:

(a) reiterating the Monitor's view that the HG Applicants' ability to obtain a declaration under section 23 of REDMA that their respective Presale Agreements are unenforceable or to otherwise rely on section 23 of REDMA to avoid their respective obligations under such Presale Agreements is subject to the Stay of Proceedings and other protections granted under the TARIO;

(b) confirming that the Monitor had not consented, and did not intend to consent, to the exercise of any right or remedy that the HG Applicants may have under REDMA or the commencement of any proceeding to enforce any such right or remedy;

(c) advising that should the HG Applicants wish to rely on section 23 of REDMA, they must first seek leave of the Court to lift the Stay of Proceedings, which application for leave could be brought contemporaneously with an application for a declaration under section 23 of REDMA as to the enforceability of the HG Applicants' respective Presale Agreements; and

(d) noting that the Monitor would vigorously oppose any application that imperils the success of these proceedings to the detriment of the Debtors and their creditors.

43. Following the hearing of the Monitor's application for the Approval and Vesting Order, and the parties' agreement as to the appropriate time, forum and means of resolving the Applicants' asserted issues, the Applicants filed the within Applications.

44. The Applications refer to alleged breaches of REDMA that purportedly render the Applicants' Presale Agreements unenforceable. Substantially all such alleged breaches are based on events that preceded the commencement of these proceedings and were apparent by no later than January 6, 2025.

45. None of the Applicants seek to lift the Stay of Proceedings, despite being apprised of the Monitor's position as to its clear application to the relief sought.

46. As set out in the Seventh Report of the Monitor dated May 4, 2026 (the "**Seventh Report**"), the Monitor opposes the relief sought in the Applications for the following reasons, among others:

(a) in granting the Initial Order, this Court recognized the importance of providing parties, including the Debtors, the Monitor and KingSett (in its capacity as Interim Lender), with further certainty (in addition to the already broad Stay of Proceedings) as to the value destructive risk of the exercise of certain rights or remedies or the imposition of certain obligations under REDMA;

(b) the practical effect of the Applications is, notwithstanding the broad Stay of Proceedings granted by the Court, to permit the Applicants to terminate, repudiate, avoid, cease to perform or fail to honour their respective obligations under the Presale Agreements to the detriment of the Debtors and their creditors;

(c) the Presale Agreements represent a significant component of the value of the Eclipse Project and are expected to generate proceeds substantially above what could be achieved for the same units in the current market, which the HG Applicants agree has deteriorated;

(d) the marketing of unsold Eclipse Units will be, at best, challenging given current market conditions, existing inventory, purchaser financing constraints and the need to preserve market confidence in the Eclipse Project;

(e) KingSett is already expected to suffer a shortfall before accounting for any exposure under the Deposit Protection Facility, which will be exacerbated by reductions in the sale proceeds, delays in closings, and the increased interest,

professional, administrative and other costs that will invariably attend re-marketing any unsold Eclipse Units;

(f) the potential engagement of the Deposit Protection Facility would not create value for the Debtors' estates and would instead add claims, including indemnity claims against the Debtors, complexity, and delay;

(g) Presale Purchasers are expected to receive completed Eclipse Units in accordance with their respective Presale Agreements, with title conveyed through the Court-approved Approval and Vesting Order free and clear of claims and encumbrances (save and except for permitted encumbrances);

(h) notwithstanding that substantially all of the alleged breaches of REDMA were apparent by no later than January 2025, and despite being apprised of the Monitor's views as to the enforceability of the Presale Agreements as early as January 11, 2025, the ATAC Applicants and HG Applicants waited approximately 12 and 13 months, respectively, to assert that their Pre-Sale Contracts were unenforceable by the Developer and in that time, had the benefit of determining whether the real estate market would improve prior to electing to rely on section 23 of REDMA;

(i) completing the existing Presale Agreements is the best means of maximizing the value of the Debtors' property, while minimizing additional interest expense, professional fees, and carrying costs for Eclipse Units owned by the Debtors;

(j) the Monitor is not aware of any principled reason why the Applicants should receive different treatment from the Debtors' other stakeholders, who have and continue to be precluded from exercising rights and remedies (whether statutory, contractual or otherwise) against, or terminating, repudiating, ceasing to performing or failing to honour contracts with, the Debtors, pursuant to the Stay of Proceedings;

(k) as of May 1, 2026, the Monitor, for and on behalf of the Developer, had closed sixty-six (66) Presale Agreements; and

(l) granting the relief sought by the Applicants will undermine the Court-approved realization strategy, encourage further challenges to closings by other Presale Purchasers, resulting in additional value erosion, disrupt and destabilize these proceedings at a critical juncture, result in an event of default under the Interim Financing Term Sheet, and introduce uncertainty for the Debtors and their creditors, which have relied upon the numerous steps taken, and orders obtained in, these proceedings to date.

47. For these reasons and in considering the legal basis set out below in Part 5, the Monitor respectfully recommends that this Court dismiss the Applications and award the Monitor, for the benefit of the Debtors and their creditors, its costs of having to respond to the Applications.

Part 5: LEGAL BASIS

48. The Monitor relies on:

(a) the CCAA, REDMA, the *Interpretation Act,* R.S.C. 1985, c. I-21, as amended (the "**Interpretation Act**") and the *Supreme Court Civil Rules*, BC Reg. 241/2010 (the "**Rules**");

(b) the inherent and equitable jurisdiction of this Court; and

(c) such further and other legal basis as counsel may advise and this Court may allow.

A. Purpose and Application of Section 23 of REDMA

49. REDMA has two purposes. It (i) protects consumers by providing them with material information on a development and affords them certain remedies where a developer fails to provide full and plain disclosure and (ii) reduces the regulatory burden on developers by providing clear and consistent marketing rules while safeguarding the use of deposit monies.

Woo v Onni Ioco Road Five Development Limited Partnership, 2014 BCCA 76 at para 48 [*Woo*] citing to *Drake v North Ellis Developments Ltd.*, 2012 BCCA 256 at paras 37-38.

50. Section 23 of REDMA, being the provision relied upon by the Applicants, provides that "a purchase agreement in relation to a development unit is not enforceable against the purchaser by a

developer who has breached any provision of Part 2 *[Marketing and Holding Deposits]*". Section 23 goes on to provide two exceptions to this rule, being:

(a) where there is no misrepresentation in the disclosure statement concerning a material fact that was or would have been reasonably relevant to the purchaser in deciding to enter the purchase agreement; or

(b) there was a misrepresentation concerning a material fact, but the developer was not aware of the misrepresentation at the time the purchaser and the developer entered into the purchase agreement, and the misrepresentation is corrected in an amendment to the disclosure statement filed in accordance with the timelines contemplated under subsections 23(2)(b)(i) and 23(2)(b)(ii).

REDMA, s 23.

51. Section 16 of REDMA, which falls under Part 2 *[Marketing and Holding Deposits]*, creates an obligation on developers to either file a new disclosure statement or an amendment that clearly identifies the failure to comply or the misrepresentation in one of two circumstances: (i) where a disclosure statement does not comply with REDMA or its regulations; or (ii) where the filed disclosure statement contains a misrepresentation.

REDMA, s 16;
Woo at paras 55-56.

52. A "misrepresentation" is defined under section 1 of REDMA as meaning either a "false or misleading statement of a material fact" or an "omission to state a material fact". An amendment to a disclosure statement is required if the failure to comply or the misrepresentation is in respect of a matter set out in subparagraph (a) of the definition of "material fact" under section 1 of REDMA, which states:

> "**material fact**" means, in relation to a development unit or development property, any of the following:
>
> > (a) a fact, or a proposal to do something, that affects, or could reasonably be expected to affect, the value, price, or use of the development unit or development property;

REDMA, s 1;
Woo at para 57.

53. The Applicants complain that the Developer failed to comply with section 16 of REDMA by failing to immediately file an amendment to the disclosure statement with the superintendent after learning of, what they allege are, misrepresentations of material facts related to the Development. In particular, the Applicants assert that the following are material facts that ought to have been disclosed by the Developer through an amendment to the disclosure statement:

(a) on June 30, 2023, the Canada Revenue Agency obtained a judgment against Beta View for $11,996,763;[1]

(b) by October 31, 2024, WBI Home Warranty Ltd. suspended the Developer's new home warranty coverage due to arrears owing in connection with the warranty insurance and, as a result, on or about November 14, 2024, the City of Burnaby suspended the building permit for the Development thereby halting construction;[2] and

(c) by April 15, 2025, the last construction completion date range between January 15, 2025 and April 15, 2025, as stated in the fourth amendment to the disclosure statement dated December 3, 2024, had passed.[3]

54. The HG Applicants also allege that in or around September 2024, the Developer misappropriated funds by obtaining cash in lieu of certain letters of credit commitments from the City of Burnaby which ought to have been used to paydown the indebtedness to KingSett.[4] The HG Applicants rely on the allegations contained in the First Pollack Affidavit to assert that this

[1] See HG Application, Part 2, at paras 48-54; ATAC Application, Part 2, at para 12.
[2] See HG Application, Part 2, at paras 58-65; ATAC Application, Part 2, at para 12, 17-19.
[3] See HG Application, Part 2, at para 75; ATAC Application, Part 2, at paras 20-23.
[4] See HG Application, Part 2, at paras 55-57.

was a material fact, which would have been relevant to them in deciding to enter into a Presale Agreement.

55. The ATAC Applicants allege that the following are material facts related to the Development that would have been relevant to their respective decisions to enter into the Presale Agreements:

(a) the Developer made false representations to the ATAC Applicants prior to entering into the Presale Agreements that the Development would have a construction window of 3.5 years with an estimated completion date between December 1, 2024 and March 1, 2025;[5]

(b) the first amendment to the disclosure statement dated June 17, 2022, increased monthly strata fees for the Eclipse Unit from the original amount;[6]

(c) the Developer altered the physical plans for a balcony on the development unit being purchased by one of the ATAC Applicants, Mr. Chung Hei Wong, which prompted Mr. Wong to try and rescind his Presale Agreement in June 2023;[7]

(d) the Developer did not provide the second amendment to the disclosure statement dated May 24, 2024 to the ATAC Applicants within a reasonable time until on or about September 20, 2024;[8] and

(e) the Monitor was appointed as monitor of the Developer in these proceedings on January 8, 2025, and was granted control of the Development, but did not file an amendment to the disclosure statement until November 25, 2025.[9]

56. The Monitor's position with respect to these alleged breaches of REDMA is as follows:

(a) regarding the alleged delay to the construction completion date, the Monitor gave an undertaking to the Superintendent on January 23, 2025, that it would cease all

[5] See ATAC Application, Part 2, paras 25-28.
[6] See ATAC Application, Part 2, paras 35-36.
[7] See ATAC Application, Part 2, paras 37-38; see also Affidavit No. 1 of Chung Hei Wong, made April 7, 2026, at paras 8-11, Exhibit "C".
[8] See ATAC Application, Part 2, paras 29-30.
[9] See ATAC Application, Part 2, paras 31-34.

marketing of the development and would not resume marketing until after a disclosure statement amendment was filed (which it did on November 25, 2025), the TARIO expressly granted the Monitor certain relief from complying with REDMA during the Stay Period, and the BCFSA requested nothing further from the Monitor despite the breadth of its powers under section 36 of REDMA;

(b) regarding the appointment of the Monitor and the allegation that this constituted a change of control, paragraph 11 of the TARIO provides a complete response. Pursuant to the TARIO, during the Stay Period, the Monitor is not required to file a new disclosure statement under subsection 16(2) of REDMA nor take any steps that would otherwise trigger a purchaser's right of recission under REDMA, which in ordinary circumstances might include "the appointment, in respect of the developer, of a receiver, liquidator or trustee in bankruptcy, or other similar person acting under the authority of a court" per subparagraph (c) of the definition of "material fact" under section 1 of REDMA;

(c) the additional ground raised by the ATAC Applicants with respect to the increased monthly strata fees is not a material fact that would afford purchasers any remedies under Division 1 of Part 3 of REDMA, as the ATAC Applicants readily admit that the Developer filed an amendment to the disclosure statement on June 17, 2022, which disclosed the estimated interim budget for the Strata Corporation, as required by REDMA, and provide no evidence that the Developer failed to disclose the estimated strata fees in a timely manner;

(d) the additional ground raised by the ATAC Applicants with respect to the alterations of the physical plan of a development unit purchased by Mr. Wong is not a material fact that would afford purchasers any remedies under Division 1 of Part 3 of REDMA and, in any event, the Developer's disclosure statement of September 24, 2021, expressly stipulated at Section 2.1(e) that "the proposed layout, dimensions, areas, lot lines, configuration and location of the Development and its components shown on the Preliminary Strata Plan, and in any sales brochures, drawings, renderings, plans, presentation centre, or other materials regarding the

Development are provided for information purposes only, are subject to revision by the Developer in its sole discretion, and are not represented as being the actual final layout, areas, lot lines, dimensions, configuration or location of the Development and its components"; and

(e) in further response to those alleged misrepresentations above, and in response to all other alleged misrepresentations of a material fact, even if the Debtors were aware of those misrepresentations, which the Monitor does not admit but recognizes that this Court may find:

(i) section 11.02 of the CCAA authorizes this Court to stay the exercise of rights, remedies or conduct impairing a restructuring of the Debtors and it is not appropriate to lift the Stay of Proceedings in the circumstances;

(ii) section 11 of the CCAA specifically authorizes this Court to grant relief from, and override, other statutes such as REDMA, which it has already done in these proceedings; and

(iii) section 23 of REDMA conflicts with section 11.02 of the CCAA and the TARIO such that the doctrine of federal paramountcy must apply thereby rendering section 23 of REDMA inoperative to the extent of its incompatibility.

TARIO, at paras 10-12, 16.
CCAA, s 11, s 11.02.
REDMA, s 1, s 16, s 23, s 36.
Seventh Report, s 5.1 at paras 3-6, s 6.0 at para 5.
Affidavit No. 1 of Karen Buquet made April 28, 2026, Exhibit "A" at para 58 [Buquet Affidavit].

57. The Monitor's position with respect to paragraph 56(e) above is set out in further detail below.

B. The Exercise of Rights or Remedies Under REDMA is Stayed

58. In granting the TARIO, this Court exercised its jurisdiction under sections 11 and 11.02 of the CCAA to, among other things, prohibit the commencement or continuation of any "action, suit

or proceeding", and the exercise of "all rights and remedies" against or in respect of Debtors or affecting their business or property and "any rights and remedies of purchasers to rescind pre-sale contracts", and enjoin all persons from failing to honour, repudiating, terminating, rescinding or ceasing to perform any contract or agreement held by any of the Debtors.

TARIO, at paras 10-12, 16.
CCAA, s 11, s 11.02.

59. Sections 11 and 11.02 squarely authorize this Court to stay and enjoin any right or remedy, whether statutory, contractual or otherwise, against a debtor company or affecting its business or property, held by any creditor or third party, and prohibit conduct that could imperil a restructuring.

(i) Section 11.02 of the CCAA Authorizes Courts to Stay the Exercise of Rights and Remedies and Conduct Impairing the Restructuring

60. The stay of proceedings under section 11.02 of the CCAA is the primary tool that "allows the *CCAA* to achieve its restructuring objective". It is therefore interpreted purposively, having regard to the CCAA's remedial objectives. Namely, to provide "for timely, efficient and impartial resolution of a debtor's insolvency", afford a debtor "breathing room during which to negotiate with its creditors", preserve and maximize "the value of a debtor's assets", prevent "any creditors from gaining an advantage" or maneuvering "for positioning", and ensure the "fair and equitable treatment of the claims against a debtor".

Interpretation Act, s 12.
Montréal (City) v Deloitte Restructuring Inc., 2021 SCC 53 at paras 54-55 [*Montréal City*].
Century Services Inc. v Canada (Attorney General), 2010 SCC 60 at para 15 [*Century Services*].
9354-9186 Québec inc. v Callidus Capital Corp., 2020 SCC 10 at para 40 [*Callidus*].
Canwest Global Communications Corp. (Re), 2009 CanLII 70508 (ON SC) at para 28 [*Canwest*].
Canadian Airlines Corp. (Re), [2000] A.J. No. 1692 at paras 17-19 [*Canadian Airlines*].
Canwest Global Communications Corp., 2010 ONSC 3530 at para 30.
Re Xinergy Ltd., 2015 ONSC 3699 at para 32.

61. As the Supreme Court of Canada recognized in *Montréal (City) v Deloitte Restructuring Inc.*, Courts have taken a "large and liberal approach in interpreting the scope of the rights and remedies that can be included in a stay order". The term "remedy" covers "any kind of attempt at recovery, judicial or extrajudicial", "any remedial right" and the "means by which a right is

enforced or the violation of a right is prevented, redressed or compensated". The term "proceeding" captures any step to "be taken vis-à-vis the insolvent company for a creditor to enforce its rights", which may include "judicial and extrajudicial debt-collection steps."

Montréal City at para 55.
Re Blade Energy Services Corp, 2024 ABKB 100 at para 14 [*Blade*].
Re Nortel Networks Corporation, 2010 ONSC 1304 at paras 37-42 [*Nortel Networks*].
Re Air Canada, [2003] 28 CBR (5th) 52 at para 12 [*Air Canada*].

62. By rendering a purchase agreement unenforceable "against the purchaser by a developer who has breached any provision of Part 2", section 23 unequivocally provides a "right" or "remedy" in favour of purchasers to prevent or redress a developer's breach of Part 2 of REDMA. Whether characterized as a "statutory shield" or "sword", the practical effect of section 23 of REDMA, if invoked, is clear: it renders executory Presale Agreements unenforceable (and not void), thereby permitting Presale Purchasers to elect to either perform, or to fail to honour, cease to perform or repudiate, their obligations thereunder. All Pre-Sale Purchasers, including the Applicants, are therefore precluded from relying on section 23 of REDMA.

REDMA, s 23.
Blade at para 14.
Nortel Networks at paras 37-42.
Woo at para 36.

63. The narrow interpretation of the terms of the TARIO advanced by the Applicants (which should be rejected), does not, in any event, address that stays of proceedings granted under section 11.02 of the CCAA also extend to "conduct which could seriously impair" a debtor company's ability to effectuate a restructuring.

Montréal City at para 54.
Campeau v Olympia & York Developments Ltd., [1992] O.J. No. 1946 at para 20.
Chef Ready Foods Ltd. v Hongkong Bank of Canada, [1990] B.C.J. No. 2384 (C.A.) at paras 10-11.
Stelco Inc. (Re), [2005] O.J. No. 4733 (C.A.) at para 18.
Re Timminco Limited, 2012 ONSC 2515 at para 15 [*Timminco*].
Air Canada, Re, [2004] 47 CBR (4th) 177 at para 6.

64. As explained in the Seventh Report and herein, the effect of permitting Presale Purchasers, including the Applicants, to rely on section 23 of REDMA in the circumstances are profound.

Value-maximizing Presale Agreements will be converted into unsold Eclipse Units that must be remarketed in the context of a challenging market and insolvency – exacerbating the costs and length of, and losses to be incurred in, these proceedings to the significant detriment of the Debtors and their creditors. At the same time, the Debtors will be required to face indemnification claims from the Surety, an event of default under the Interim Financing Term Sheet, and further attempts by Presale Purchasers to avoid their obligations under the Presale Agreements.

Seventh Report, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.4 at paras 1-2.
Buquet Affidavit, Exhibit "A" at para 16.

65. Exceptions to the stay of proceedings under section 11.02 of the CCAA "must be read restrictively in order to achieve its remedial purpose." The Applicants have identified no such exception. Rather, the HG Applicants baldly contend that closing the Presale Agreements is unlawful and "there is no enforceable Pre-Sale Agreement for the Applicants to terminate, perform, or fail to honour".[10] The former assumes the conclusion it seeks to establish and, like the latter, conflates contracts that are void or void *ab initio* with contracts that are unenforceable, which are "valid in all respects except that one or both parties cannot be sued on the contract."

Chambers v Pennyfarthing Dev. Corp., [1985] 20 DLR (4th) 488 at para 127.
Re Teal-Jones Group, 2025 BCSC 919 at para 23 [*Teal-Jones*].

66. Section 23 of REDMA does not prohibit purchasers from electing to affirm purchase contracts to which they are party. It protects purchasers by providing a means of redress and avoiding their contractual obligations where a breach by a developer of Part 2 of REDMA is established. Both the election to avoid such obligations and the steps required to establish the requisite breach are, for the reasons set above, subject to the Stay of Proceedings.

(ii) Section 11 of the CCAA Authorizes Courts to Grant Relief From, and Override, Other Statutes and to Permanently Interfere with the Rights of Third Parties

67. The CCAA vests Courts with jurisdiction to temporarily or permanently interfere with, and override, the rights of third parties, whether statutory, contractual or otherwise, where doing so

[10] See HG Application, Part 3, at para 98.

furthers the CCAA's remedial purposes. This is routinely done when imposing a stay or granting a release pursuant to section 11 of the CCAA.

CCAA, s 11.
Norcen Energy Resources v Oakwood Petroleum Limited, 1988 CanLII 3560 (AB KB) at para 52 [*Norcen*].
Pacific National Lease Holding Corporation, 1992 CanLII 427 (BC CA) at para 28 [*Pacific National*].
Re Collins & Aikman Automotive Canada Inc., [2007] O.J. No. 4186 at para 42 [*Collins*].
Re Nortel Networks Corp., 2009 ONCA 833 at para 44 [*Nortel*].
Luscar Ltd. v Smoky River Coal Ltd., 1999 ABCA 179 at para 60 [*Luscar*].

68. Section 11 of the CCAA is "the most important feature of", and "the engine that drives", the CCAA's "broad and flexible statutory regime". The "broad discretionary power" in section 11 of the CCAA "is vast" – enabling Courts to "make a variety of orders that respond to the circumstances of each case", adapt the CCAA "readily to each reorganization", and fashion creative solutions, for which there is no express authority".

CCAA, s 11.
Callidus, at paras 47-50.
Canada v Canada North Group Inc., 2021 SCC 30 at para 21 [*North Group*].
Re San Industries, 2025 BCSC 645 at para 34.

69. The vast discretionary power provided under section 11 of the CCAA is not constrained by the "availability of more specific orders." Rather, it is "constrained only by the restrictions set out in the CCAA itself" and the "baseline requirements of appropriateness, good faith and due diligence".

Callidus at paras 40-44, 48-51.
Century Services at para 70.
North Group at paras 21, 24.

70. Appropriateness is assessed by inquiring whether the proposed relief advances the policy and remedial objectives of the CCAA. These objectives include the maximization of the value of a debtor company's assets, ensuring the fair and equitable treatment of claims against such debtor company, and the timely, efficient and impartial resolution of its insolvency.

Callidus at paras 40-44, 48-51.
North Group at para 21.

71. In furtherance of the CCAA's remedial objectives and the doctrine of federal paramountcy (which is discussed in detail below), Courts, including this Court, have previously exercised their discretion under present and former section 11 of the CCAA to grant relief from, and override, the provisions of REDMA and other provincial and federal statutes. In so doing, Courts have "ensured that the *CCAA* is given a liberal construction to fulfill its broad purpose and to prevent this purpose from being neutralized by other statutes".

CCAA, s 11.
North Group at paras 4, 21, 24, 27-28, 31.
Pacific National at para 28.
Collins at paras 42, 87.
Nortel at para 47.
TARIO, at para 11
Pacific National Lease Holding Corp. v Sun Life Trust Co., 1995 CanLII 2575 (BC CA) at paras 26-29, 41 [*Pacific National 2*].
Re Sulphur Corp. of Canada, 2002 ABQB 682 at paras 37-38.
Re Jameson House Properties Ltd., 2009 BCSC 964 at paras 22, 33-34 [*Jameson*].
Sun Indalex Finance, LLC v United Steelworkers, 2013 SCC 6 at para 60 [*Indalex*].
Bank of Montreal v No. 249 Seabright Holdings Ltd., 2014 BCSC 1094 at para 35.
Re Freedom Cannabis Inc., 2025 ABKB 272 at paras 15-17, 22, 24, 26.
SR Telecom & Co. v Apex - Micro Manufacturing Corporation, 2008 BCSC 1768 at paras 33, 38, 43-44 [*SR Telecom*].
Re Hayes Forest Services Limited, 2009 BCSC 1169 at paras 22-30 [*Hayes Forest*].
Skeena Cellulose Inc. v Clear Creek Contracting Ltd., 2003 BCCA 344 at para 50 [*Skeena*].
KingSett Mortgage Corporation v 6511 Sussex Heights Development Ltd. (April 17, 2026), Vancouver, S-261991 (Order), BCSC at para 11.

72. In *Pacific National Lease Holding Corporation*, for instance, the British Columbia Court of Appeal heard an appeal from an order of a CCAA judge that, among other things, stayed any proceedings that could be brought by the debtor companies' employees to compel payment of statutory severance payments. The employees sought leave to appeal the order to require the debtor companies to comply with their statutory obligations, including under the *Employment Standards Act*, S.B.C. 1979, c.10. The Court of Appeal dismissed the leave application and, noting that the CCAA is meant to serve a broad constituency of investors, creditors and employees, concluded that recognizing a stay of proceedings "may inevitably conflict with provincial legislation, but the broad purpose of the CCAA must be served."

Pacific National at paras 19-22, 26-28.

73. The Ontario Court of Appeal in *Sproule v Nortel Networks Corporation* ("***Nortel***"), similarly held that former employees of a group of debtor companies could not enforce payment obligations under the *Employment Standards Act, 2000*, S.O. 2000, c. 41 ("**ESA**"), and that a stay under the CCAA is a "clear example" of a situation where Courts can freeze contractual and statutory obligations.

Nortel at paras 39, 41-42, 44-45.

74. *In SR Telecom & Co. v Apex – Micro Manufacturing Corporation*, this Court considered an application from a CCAA debtor company for an order requiring the defendant to return certain telecommunications equipment to it. The defendant claimed that it had acquired a security interest in the subject property and had a right to follow its security under the *Personal Property Security Act*, R.S.B.C. 1996, c. 359 (the "**PPSA**"). This Court concluded that the CCAA gives broad latitude to intrude on the affairs of companies under its protection, in priority over other legislation, operational or otherwise, including provincial legislation such as the PPSA, particularly where the debtor company would otherwise face irreparable harm.

SR Telecom, supra at paras 33, 38, 43-44.

75. Finally, in *Re Hayes Forest Services Limited* and *Skeena Cellulose Inc. v Clear Creek Contracting Ltd*. ("***Skeena***"), this Court and the Court of Appeal, respectively, considered whether the CCAA and the doctrine of paramountcy could operate to resolve conflicts with the *Forest Act,* R.S.B.C. 1996, c. 157, and in both decisions concluded that the CCAA provides the court with jurisdiction to decide a contractual dispute despite any provincial statutory authority and/or the terms of that contract.

Hayes Forest, *supra* at paras 22-30.
Skeena, *supra* at para 50.

76. In addition to interfering with and overriding the provisions of provincial statutes, it is settled law that CCAA courts can interfere with the contractual rights of non-creditor third parties where doing so promotes the purposes of the CCAA. In this regard, *Norcen Energy Resources v Oakwood Petroleum Limited* ("***Norcen***") and *Luscar Limited v Smoky River Coal Limited* "***Luscar***") are illustrative.

77. In *Norcen*, the Alberta Court of Queen's Bench (as it then was) considered an application from a non-creditor third party to enforce an agreement that would replace the debtor company as the operator of 20 oil and gas wells. The Court dismissed the application and favoured a broad interpretation of former section 11 of the CCAA that stayed the non-creditor applicant from enforcing contracts against the debtor company:

> [52] … if promoting the continuance of insolvent companies is constitutionally valid as insolvency legislation, it follows that a stay which happens to affect some non-creditors in pursuit of that end is valid. Surely a necessary part of promoting the continuance of a company is to give that company some time to stop and gather its faculties without interference from affected parties for a brief period of time. In my opinion, the distinction between creditors' contractual rights and the contractual rights of non-creditor third parties that Norcen asks me to draw is not a helpful one in these circumstances. Continuance of a company involves more than consideration of creditor claims. For that reason, I am of the opinion that s. 11 of the C.C.A.A. can validly be used to interfere with some other contractual relationships in circumstances which threaten a company's existence. I add, however, that in my judgment, such interference in the interest of fairness to all parties should be effective only for a relatively short period of time. [*Emphases added*]

Norcen at para 52.
See also *Re T. Eaton Co.*, [1997], 46 C.B.R. (3d) 293 at para 6.

78. Here, the stated purpose of these proceedings at inception was to stabilize the Debtors' operations and management, secure necessary interim financing, complete the Development's construction, and ensure the Presale Agreements can be closed as intended, for the benefit of the Debtors and their stakeholders, including the Applicants. To allow the Applicants to avoid their Presale Agreements in breach of the TARIO would cause irreparable harm and prevent these purposes from being realized, imperiling the success of these proceedings. The "relatively short period of time" referred to in *Norcen* is the amount of time the Stay of Proceedings must remain in place to realize the objectives of these proceedings, which are now well-advanced.

Seventh Report, s 1.0 at para 2, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.4 at paras 1-2.
Pollack Affidavit, at paras 9, 56.
Pre-Filing Report of the Proposed Monitor dated January 7, 2025, s 1.0 at para 3.

79. Notably, in *Norcen*, much like this case, while the application was only in respect of 20 oil and gas wells, the Court considered whether the relief sought by the applicants could have a detrimental future impact on the approximately 800 oil and gas wells that the debtor company operated. Here too, the outcome of the Applications extend to all other Presale Purchasers that have not yet closed their Presale Agreements.

Norcen at para 44.

80. In *Luscar*, the Alberta Court of Appeal, affirming *Norcen*, considered whether to stay a dispute resolution provision in favour of arbitration under a shareholders agreement, and whether in doing so the Court would alter permanently the contractual rights of a non-creditor. The Court of Appeal concluded that the language of former section 11 of the CCAA permitted such an order, observing, in relevant part, as follows:

> the language of s. 11(4), considered in the context of the *CCAA's* purpose, authorizes the order made by the chambers judge.
>
> […]
>
> The language of s. 11(4) is very broad. It allows the court to make an order "on such terms as it may impose". Paragraphs (a), (b) and (c) empower the court order to stay "all proceedings taken or that might be taken" against the debtor company; restrain further proceedings "in any action, suit or proceeding" against the debtor company; and prohibit "the commencement of or proceeding with any other action, suit or proceeding" (emphasis added). These words are sufficiently expansive to support the kind of discretion exercised by the chambers judge.
>
> This interpretation is supported by the legislative objectives underlying the *CCAA*.

Luscar at paras 47, 49-52, 54, 72.
See also *Re Playdium Entertainment Corp.*, 2001 CanLII 28282 (ON SC) at paras 19-24, 26-34.

81. The foregoing authorities demonstrate that this Court's vast jurisdiction under section 11 of the CCAA can, whether independently or together with section 11.02, override a provincial statute such as REDMA and permanently stay the rights and remedies of third parties such as the Applicants thereunder. Indeed, in *Re Jameson House Properties Ltd.* ("***Jameson***"), the only case on which the HG Applicants rely to assert that the Stay of Proceedings does not apply, this Court held that it had jurisdiction to override the rights afforded to non-creditor purchasers under REDMA and, in doing so, relied upon *Norcen*, *Skeena*, and *Luscar*, among other authorities.

CCAA, s 11, 11.02.
Jameson at paras 22, 33-34.

82. Having regard to the foregoing, this Court undoubtedly had, when granting the Initial Order, the ARIO, the SARIO and the TARIO, and maintains, the jurisdiction under sections 11 and 11.02 of the CCAA, to grant the Stay of Proceedings and enjoin all persons from failing to honour, repudiating, terminating, rescinding or ceasing to perform any contract or agreement held by any of the Debtors, regardless of whether such relief interferes with or overrides section 23 of REDMA.

C. The Applicants Have Failed to Seek to Lift the Stay of Proceedings

83. Despite the undeniably broad scope and unambiguous terms of the TARIO, the Applicants do not seek to lift the Stay of Proceedings. Instead, they assert that section 23 of REDMA operates as a "shield" exempt from the Stay of Proceedings and the TARIO, and rely on specific terms of the TARIO to restrict the breadth of its general (and model order) provisions.[11]

Model *Companies' Creditors Arrangement Act* Initial Order issued August 1, 2015.

84. The Applicants' unduly narrow interpretation of the Stay of Proceedings and the TARIO is untenable and contrary to the "large and liberal approach in interpreting the scope of the rights and remedies that can be included in a stay order" endorsed by the Supreme Court of Canada. Whether framed as a "shield" or a "sword", the step of invoking section 23 of REDMA and its practical consequences – permitting Presale Purchasers to fail to honour, cease to perform or repudiate their obligations under the Presale Agreements, crystalizing indemnification claims against the Debtors and jeopardizing the success of these proceedings – are squarely within the ambit of the Stay of Proceedings and prohibited by the TARIO. Leave of this Court to invoke section 23 of REDMA is required.

Interpretation Act, s 12.
Montréal City at para 54-55.
Teal-Jones at paras 21-23.
TARIO, at paras 10-12, 16.

[11] See HG Application, Part 3, at paras 96-97.

D. It is not Appropriate to Lift the Stay of Proceedings

85. It is neither appropriate nor in the interests of justice to lift the Stay of Proceedings.

86. As noted above and held by both the Supreme Court of Canada and this Court, the "stay of proceedings is, at the very core of protections, offered by the *CCAA*" – it is the "primary tool that allows the *CCAA* to achieve its restructuring objectives". Accordingly, lifting the stay of proceedings is far from routine.

Montréal (City) at para 46.
Teal-Jones at para 22.
Nortel at para 16.
Re Bellatrix Exploration Ltd, 2020 ABQB 809 at para 67 [*Bellatrix*].

87. There is a "very heavy onus" on the moving party to establish that there are "sound reasons" for lifting the stay of proceedings consistent with the CCAA's objectives, having regard to the relative prejudice to the parties, the balance of convenience and, where relevant, the merits of the moving party's claim.

Bellatrix at para 65.
Canadian Airlines at paras 15-19.
Canwest at paras 28, 32.
Timminco at paras 15-17.
Re Azure Dynamis Corp., 2012 BCSC 781 at para 5 [*Azure*].
Re Wallace & Carey Inc., 2025 ABKB 750 at paras 55-56 [*Wallace*].

88. The circumstances in which the relative prejudice experienced by the parties and the balance of convenience may militate in favour of lifting the stay of proceedings include where:

(a) the plan is likely to fail;

(b) the moving party establishes hardship caused by the stay;

(c) the moving party demonstrates necessity for payment;

(d) the moving party would be significantly prejudiced by the refusal to lift the stay and there would be no resulting prejudice to the debtor company or the positions of creditors;

(e) it is necessary to permit the moving party to take steps to protect a right that could be lost by the passage of time;

(f) after the lapse of a significant period, the debtor is no closer to a proposal than at the commencement of the stay period;

(g) there is a real risk that the moving party will become unsecured during the stay period;

(h) it is necessary to allow the moving party to perfect a right that existed prior to the commencement of the stay period; and

(i) it is in the interests of justice to do so.

Azure at para 6.
Wallace at para 56.
Canwest at para 33.
Canadian Airlines at para 20.

89. Courts, including this Court, have determined that the CCAA's remedial objectives would not be served, and have thus declined to exercise their discretion to lift the stay of proceedings, where:

(a) lifting the stay of proceedings is prejudicial to the debtor's ongoing restructuring efforts;

(b) lifting the stay of proceedings is prejudicial to creditors and other stakeholders;

(c) the debtor's restructuring efforts are progressing; and

(d) the moving party is not prejudiced by the continued operation of the stay, or any prejudice experienced by the moving party is shared by other stakeholders.

Azure at paras 7-30.
Canadian Airlines at paras 21-32.
Bellatrix at paras 69-75.
Wallace at paras 59-124.
Re 505396 B.C. Ltd., 2013 BCSC 1580 at para 22.

Hazelton Development Corporation (February 22, 2024), Toronto, CV-22-00679931-00CL (Endorsement) (ONSC) at paras 15-22.

90. The Applicants have not, and cannot, establish sound reasons for lifting the Stay of Proceedings. There are numerous compelling reasons for declining to do so.

91. First, as a discretionary decision, an order to lift the Stay of Proceedings must further the purposes of the CCAA and be informed by the baseline considerations of good faith and due diligence. Here, lifting the Stay of Proceedings would detract from (rather than further) the CCAA's purposes and countenance a remarkable lack of diligence.

Callidus at paras 40, 46, 49.
Montréal (City) at paras 48, 50.
Seventh Report, s 5.2 at para 1, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.4 at paras 1-2.
Buquet Affidavit, Exhibit "A" at paras 62-63, 65, 68, 70, 77, 82.

92. As discussed previously, the exercise of the right or remedy conferred under section 23 of REDMA, will subvert, rather than advance, the CCAA's remedial purposes. Indeed, if such right or remedy is permitted to be exercised, the Debtors' insolvency will be protracted, the breathing room afforded to the Debtors will be significantly disrupted, and creditor recoveries will be eroded. Each such result is inconsistent with the CCAA's purposes of providing "for [the] timely, efficient and impartial resolution of a debtor's insolvency", affording a debtor "breathing room during which to negotiate with its creditors", and preserving and maximizing "the value of a debtor's assets".

Callidus at paras 40-42.
Canadian Airlines at paras 17-19.
Air Canada at para 12.
Seventh Report, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.4 at paras 1-2.

93. The baseline consideration of due diligence further militates against lifting the Stay of Proceedings. As the Supreme Court of Canada explained in *9354-9186 Québec inc. v Callidus Capital Corp.* ("***Callidus***"), the "due diligence consideration discourages parties from sitting on their rights" and recognizes that a "party's failure to participate in *CCAA* proceedings in a diligent and timely fashion can undermine these procedures and, more generally, the effective functioning

of the *CCAA* regime". CCAA proceedings "move quickly and require diligent engagement by the Court and all stakeholders", who should be discouraged from "lying in the weeds" or waiting to see how they unfold.

Callidus at para 51.
Wallace at paras 102-103.
Enron Canada Corp. v National Oil-Well Canada Ltd., 2000 ABCA 285 at para 18.
Re Delta 9 Cannabis Inc., 2025 ABKB 52 at paras 88, 138-140.
See also *Taber Water Disposal Inc. (Re)*, 2024 ABKB 680 at paras 29-34.
CCAA, s 18.6.

94. Despite having been apprised since January 2025 of these proceedings, the Monitor's intention to complete the Development and close the Presale Agreements, and the Monitor's consistent position on their enforceability, the Applicants took no steps in these proceedings and did not seek directions from this Court or to vary or appeal the Initial Order, the ARIO, the SARIO or the TARIO. Rather, the Applicants waited approximately one year, after the Interim Financing Facility was substantially funded and these proceedings were well-advanced, to assert any rights or remedies. Given that section 23 of REDMA renders purchase agreements unenforceable (and not void), the only rational explanation for the Applicants' lack of diligence is that they wished to see whether the real estate market would rebound before resiling from their Presale Agreements. This strategic delay should not be condoned.

Seventh Report, s 5.2 at para 1, s 6.1 at paras 1-5, s 6.4 at paras 1.
Buquet Affidavit, Exhibit "A" at paras 62-63, 65, 68, 70, 77, 82.

95. Second, the relative prejudice to the parties overwhelmingly favours the Debtors and their creditors. If this Court declines to lift the Stay of Proceedings, the Applicants will receive what they bargained for – completed units in the Development – while retaining their rights to pursue damages under section 22 of REDMA (subject to the Stay of Proceedings). If, however, this Court lifts the Stay of Proceedings, the Debtors will face indemnification claims from the Surety and an event of default under the Interim Financing Term Sheet, and will be forced to relist the applicable Purchased Units in a deteriorating market during an insolvency proceeding in which interest exceeding $59,000 per day accrues. The resulting erosion in asset value and increase in cost and expense will materially prejudice the Debtors, and their creditors, who will already suffer a substantial shortfall.

REDMA, s 22.
Seventh Report, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.3 at paras 1-3, s 6.4 at paras 1-2.

96. Third, the Applicants have provided no cogent evidence of the magnitude of the harm or loss they will suffer from the continuance of the Stay of Proceedings, or any explanation as to how such harm differs from that suffered by the Debtors' numerous other creditors and contractual counterparties – all of whom are equally prohibited from exercising their respective rights or remedies (whether contractual, statutory or otherwise) against, and enjoined from terminating, rescinding, repudiating or failing to honour their agreements with, the Debtors. The Applicants are positioned to receive exactly what they contracted for in the Presale Agreements.

Seventh Report, s 6.3 at paras 1-3, s 6.4 at para 1.

97. Fourth, lifting the Stay of Proceedings in the circumstances of this case would set a deeply concerning precedent for real estate insolvencies. Existing creditors and prospective interim lenders will have little certainty as to the enforceability of a debtor's existing presale agreements, while purchasers party to such agreements will be incentivized to lie in the weeds until the applicable completion date to determine the then-applicable value of their purchased units, and thereafter elect to complete or assign their presale agreement if the market has risen or assert that it has been rendered unenforceable if the market has declined. Such a result undermines the building block approach to Canadian insolvency proceedings and the predictability on which debtors, creditors and interim lenders rely.

Grant Forest Products Inc. v GE Canada Leasing Services Co., 2013 ONSC 5933 at para 124 [*Grant Forest*].
Re Target Canada Co., 2016 ONSC 316 at para 81.
In the Matter of a Plan of Compromise or Arrangement of Forme Development Group Inc. et al. (February 20, 2020), Toronto, CV-18-608313-00CL (Endorsement) (ONSC) at para 3(vi)(b).
The Vancor Group Inc v 2744364 Ontario Limited et al, 2025 ONSC 5925 at paras 57-59
2668602 Ontario Inc. v GWL Realty Advisors Inc., 2026 ONCA 96 at para 81.

E. Federal Paramountcy Renders Section 23 of REDMA Inoperative

98. The doctrine of federal paramountcy "resolves conflicts in the application of overlapping valid provincial and federal legislation". It dictates that when "the operational effects of provincial

legislation are incompatible with federal legislation, the federal legislation must prevail and the provincial legislation is rendered inoperative to the extent of the incompatibility."

Indalex at para 55.
Saskatchewan (Attorney General) v Lemare Lake Logging Ltd., 2015 SCC 53 at para 15 [*Lemare Lake*].
Alberta (Attorney General) v Moloney, 2015 SCC 51 at paras 16, 18 [*Moloney*].
Canadian Western Bank v Alberta, 2007 SCC 22 at para 69 [*Western*].

99. Federal paramountcy applies "either where a provincial and a federal statutory provision are in conflict and cannot both be complied with, or where complying with the provincial law will have the effect of frustrating the purpose of the federal law". As the Supreme Court of Canada made clear in *Sun Indalex Finance, LLC v United Steelworkers* ("***Indalex***"), federal paramountcy also applies to such conflicts arising between Court orders made pursuant to federal law and the provisions of provincial law. In either case, the focus of the analysis is on the "effect" or "substance" of the provincial law.

Indalex at paras 56, 60.
Lemare Lake at para 18.
Moloney at paras 18, 28.
Nortel at para 38.
Grant Forest at para 95.
Re Urbancorp Cumberland 2 GP Inc., 2020 ONCA 197 at para 45 [*Urbancorp*].

100. The onus to demonstrate that "federal and provincial laws are in fact incompatible by establishing either that it is impossible to comply with both laws or that to apply the provincial law would frustrate the purpose of the federal law" rests on the party alleging the conflict. While paramountcy is to be construed narrowly, Courts must not "refrain from applying the doctrine where the two laws are genuinely inconsistent."

Moloney at paras 27-28.
Western at para 75.

101. Here, section 23 of REDMA conflicts with sections 11 and 11.02 of the CCAA and the TARIO granted thereunder and frustrates the purposes of the CCAA. The broad scope of the CCAA and the TARIO thus prevail and section 23 of REDMA is rendered inoperative.

REDMA, s 23.

CCAA, s 11, s 11.02.
TARIO, at paras 10-12, 16.
North Group at para 31.
Grant Forest at para 95.
Jameson at para 25.
Pacific National 2 at paras 26-27.

(i) Section 23 of REDMA Conflicts with Sections 11 and 11.02 of the CCAA and the TARIO

102. An operational conflict between a provincial and a federal statutory provision or an order granted pursuant thereto will exist where "compliance with both the federal and provincial law is impossible". Put differently, the operational conflict branch of the doctrine of federal paramountcy "requires that there be 'actual conflict' between the federal and provincial legislation", which "conflict arises 'where one enactment says 'yes' and the other says 'no', such that 'compliance with one is defiance of the other'".

Lemare Lake at paras 17-18.
Moloney at para 19.
Nortel at para 36.
M & D Farm Ltd. v Manitoba Agricultural Credit Corp., [1999] 2 SCR 961 at para 40.
407 ETR Concession Co. v Canada (Superintendent of Bankruptcy), 2015 SCC 52 at paras 24-25 [*407*].

103. In *Indalex*, the Supreme Court of Canada considered the operational conflict branch of federal paramountcy in the context of proceedings under the CCAA. Namely, whether an amended and restated initial order granting a charge under section 11.2 of the CCAA securing debtor-in-possession financing in priority to "all other security interests, trusts, liens, charges and encumbrances, statutory or otherwise" was in direct conflict with, and therefore prevailed over, the deemed trust established under subsections 57(4) of the *Pension Benefits Act,* R.S.O. 1990, c. P.8 and 30(7) of the *Personal Property Security Act*, R.S.O. 1990. c. P.10. Applying federal paramountcy, Justice Deschamps resolved the conflict in favour of the terms of the amended and restated initial order, holding, in relevant part, that:

> compliance with the provincial law necessarily entails defiance of the order made under federal law. On the one hand, s. 30(7) of the *PPSA* required a part of the proceeds from the sale related to assets described in the provincial statute to be paid to the plan's administrator before other secured creditors were paid. On the other hand, the Amended Initial Order provided that the DIP charge ranked in priority to "all other security interests, trusts, liens, charges and encumbrances, statutory or

> otherwise" (para. 45). Granting priority to the DIP lenders subordinates the claims of other stakeholders, including the Plan Members. This court-ordered priority based on the *CCAA* has the same effect as a statutory priority. The federal and provincial laws are inconsistent, as they give rise to different, and conflicting, orders of priority. As a result of the application of the doctrine of federal paramountcy, the DIP charge supersedes the deemed trust. [*Emphases added*]

Indalex at para 60.
North Group at para 27.
Urbancorp at para 44.
Re Comstock Canada Ltd., 2013 ONSC 4756 at paras 126-127.

104. The Ontario Superior Court of Justice (Commercial List) was similarly required to consider the operational conflict branch of federal paramountcy in the context of proceedings under the CCAA in *Re Essar Steel Algoma Inc.* ("***Algoma***"). Specifically, whether the exclusive jurisdiction conferred on arbitrators to resolve grievances under collective agreements under sections 48 and 49 of the *Labour Relations Act*, *1995*, S.O. 1995, c. 1, Schedule A (the "**LRA**"), conflicted with an order to stay proceedings against a debtor company granted pursuant to sections 11 and 11.02 of the CCAA. Applying federal paramountcy, Justice Newbould resolved the conflict in favour of the provisions of the CCAA, holding, in pertinent part, that:

> Section 48 mandates a grievance arbitration procedure in collective agreements and provides that a decision is binding on the parties. Section 49 permits a request to the Minister to appoint an arbitrator whose decision will be binding on the parties. Sections 11 and 11.02 of the *CCAA* provide for an order to be made staying proceedings against the debtor company. These provisions permit the staying of grievance claims under a collective agreement. The two statutes are thus in conflict as one cannot comply with the one without violating the other. Thus under the doctrine of paramountcy, the *CCAA* provisions must prevail over sections 48 and 49 of the *Labour Relations Act*. [*Emphasis added*]

Re Essar Steel Algoma Inc., 2016 ONSC 1802 at para 33 [*Algoma*].

105. Here, as in *Indalex* and *Algoma,* the Stay of Proceedings granted pursuant to sections 11 and 11.02 of the CCAA, directly conflicts with section 23 of REDMA. Whether characterized as a "statutory shield" or "sword", section 23 of REDMA plainly confers a "right" or "remedy" the practical effect of which, if invoked, is clear. It permits Presale Purchasers to fail to honour, cease to perform or repudiate their obligations under the Presale Agreements and assert claims for the

return of their deposits as against the Surety, which claims are indemnified by the Debtors. The CCAA and the TARIO say "no" where REDMA says "yes".

CCAA, s 11, s 11.02.
REDMA, s 23.
TARIO, at paras 10-12, 16.

106. As Presale Purchasers cannot rely on section 23 of REDMA without contravening the TARIO, federal paramountcy dictates that sections 11 and 11.02 of the CCAA and the provisions of the TARIO granted thereunder, prevail.

(ii) Compliance with Section 23 of REDMA Frustrates the Purposes of the CCAA

107. Where there is no direct conflict between valid provincial and federal statutory provisions, the doctrine of paramountcy may still apply where complying with the provincial law has the effect of frustrating the purpose of the federal law and therefore, the intent of Parliament.

Moloney at para 25.
Lemare Lake at para 19.
Nortel at paras 37-38.

108. The CCAA is "remedial legislation in the purest sense." Its remedial purposes include, as noted previously, providing for the "timely, efficient and impartial resolution of a debtor's insolvency", affording a debtor "breathing room", preserving and maximizing "the value of a debtor's assets" and "maximizing creditor recovery", preventing "any creditors from gaining an advantage" or maneuvering "for positioning", and ensuring the "fair and equitable treatment of the claims against a debtor".

Interpretation Act, s 12.
Callidus at paras 40-42.
Canadian Airlines at paras 17-19.
Air Canada at para 12.

109. As the Supreme Court of Canada held in *Callidus*, the relative weight that the CCAA's different objectives "take on in a particular case may vary based on the factual circumstances, the stage of the proceedings, or the proposed solutions that are presented to the court for approval." Where, as in this case, a CCAA proceeding involves some form of liquidation or sale of a debtor's

assets or inventory, the "objective of maximizing creditor recovery from those assets may take centre stage".

Callidus at para 46.

110. Courts, including this Court in analogous circumstances, have previously applied the second branch of federal paramountcy in the context of stays of proceedings to prevent valid provincial legislation from subverting the CCAA's remedial purposes. Certain of these cases merit review.

111. In *Jameson*, this Court was asked to determine whether the Court had authority under former section 11 of the CCAA to preclude purchasers from exercising rights of rescission or asserting their respective presale contracts were unenforceable. While this Court was "not convinced" that REDMA conferred a right of rescission to such purchasers in the circumstances, it proceeded to consider whether the Court could "override the rights that the non-creditors purchasers may have under [REDMA]" pursuant to "the paramountcy doctrine". This Court concluded that it could.

Jameson at paras 21-22, 33.
Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended, as in force from 2007-11-17 to 2009-09-17, s 11.

112. In determining that federal paramountcy permitted the Court to override the rights of presale purchasers under REDMA in *Jameson,* this Court reasoned, in pertinent part, as follows:

> It is clear that the relief from *REDMA* that is sought is directed squarely towards the successful restructuring of this enterprise. This is a fundamental purpose of the *CCAA*. Without the relief the arrangement proposed by the Petitioners and voted in favour of by close to 100% of the Creditors, in number and value, will fail. All of the unsecured Creditors and all but one of the secured Creditors will recover nothing. Set against that is, if this plan is approved, the purchasers will receive precisely what they bargained for.
>
> […]
>
> > The jurisprudence which deals with the *C.C.A.A.* establishes two propositions: (a) first, this legislation is to be broadly interpreted so as to give a Supreme Court justice exercising jurisdiction a good deal of power

> and flexibility; and, (b) the *C.C.A.A.* will prevail should a conflict arise between this statute and another federal or provincial statute.

[…]

The next question is whether the *CCAA* enables the Court to grant the *REDMA* relief. That relief, if it is to be found, is contained in s. 11 of the statute. It provides as follows:

> 11. (1) Notwithstanding anything in the *Bankruptcy and Insolvency Act* or the *Winding-up Act*, where an application is made under this Act in respect of a company, the court, on the application of any person interested in the matter, may, subject to this Act, on notice to any other person or without notice as it may see fit, make an order under this section.

Subsection 4 provides:

> A court may, on an application in respect of a company other than an initial application, make an order on such terms as it may impose.

The section then goes on to outline the powers of the court to stay, restrain and prohibit either the continuation or the initiation of proceedings against the debtor filing company.

Section 11 was interpreted by the *Alberta Court of Appeal in Luscar Limited v. Smoky River Coal Limited*, 1999 ABCA 179, 175 D.L.R. (4th) 703. […] Madam Justice Hunt observed that the language of s. 11 is very broad, allowing the court to make an order "on such terms as it may impose" and empowering the court to stay "all proceedings taken or that might be taken", restraining "further proceedings in any action, suit or proceeding" and prohibiting "the commencement of or proceeding with any other action, suit or proceeding." […] Madam Justice Hunt held that these words were sufficient to give the CCAA judge in the case the authority to permanently affect the contractual rates of a non-creditor.

[…]

This was also recognized in *Clear Creek* by Madam Justice Newbury at para. 37 where she stated at para. 37:

> In the exercise of their "broad discretion" under the *CCAA*, it has now become common for courts to sanction the indefinite, or even permanent, affecting of contractual rights.

In *Re. Doman Industries Ltd.* (2003) BCSC 376 at paragraph 15, Mr. Justice Tysoe was quoted with approval the Reasons of Mr. Justice Spence in *Re Playdium Enterprises Corp.* (2001), 2001 CanLII 28282 (ON SC), 31 CBR (4th) 309. In that decision, Mr. Justice Spence observed that in interpreting s. 11(4) the court is to

> take into account the remedial nature of the *CCAA*. Mr. Justice Tysoe agreed with his statement. He also expressed the view in para. 15 that:
>
> > (T)he court has similar jurisdiction to grant a permanent stay surviving the restructuring of the debtor company in respect of events of default or breaches occurring prior to the restructuring.
>
> […]
>
> In this case I conclude that if *REDMA* relief is required, the Court should exercise its discretion and grant it. [*Emphases added*]

Jameson, supra at paras 24-33.

113. In *Nortel*, the Ontario Court of Appeal affirmed the decision of Justice Morawetz (as he then was) to stay the payment of mandatory amounts owing by a debtor company under the ESA pursuant to the second branch of federal paramountcy, notwithstanding that the general stay provision did not explicitly extend to such payments. Specifically, the Ontario Court of Appeal held that:

> it would thwart the intent of Parliament for the successful conduct of the *CCAA* restructuring if the initial order and the amended order could not include a stay provision that allowed Nortel to suspend the payment of statutory obligations for termination and severance under the *ESA*.
>
> […]
>
> [The paramountcy] analysis is driven by the need to preserve the ability of the *CCAA* court to ensure, through the scope of the stay order, that Parliament's intent for the operation of the *CCAA* regime is not thwarted by the operation of provincial legislation. The court issuing the stay order considers all of the circumstances and can impose an order that has the effect of overriding a provincial enactment where it is necessary to do so.
>
> Morawetz J. was satisfied that such a stay was necessary in the circumstances of this case. We see no error in that conclusion on the record before him and before this court. [*Emphasis added*]

Nortel, supra at paras 42, 44-45.

114. After concluding in *Algoma* that an order to stay proceedings against a debtor company granted under sections 11 and 11.02 of the CCAA prevailed over the exclusive jurisdiction to resolve grievances under collective agreements prescribed by sections 48 and 49 of the LRA

pursuant to the first branch of federal paramountcy, Justice Newbould proceeded to consider the second branch's application. Ultimately, Justice Newbould was satisfied that "the doctrine of paramountcy on this ground leads to the paramountcy of sections 11 and 11.02 of the CCAA over sections 48 and 49 of the [LRA]" as "it would be very detrimental to the attempt at a successful restructuring in this case if the stay of the approximately 3000 grievance claims and a process for their speedy resolution were not granted."

Algoma, supra at paras 34-35.

115. *Jameson*, *Nortel* and *Algoma* are instructive. Consistent with the Supreme Court of Canada's observations in *Canada v Canada North Group Inc.*, each makes clear that the second branch of federal paramountcy ensures the purposes of the "CCAA and orders made under it" are neither "affected" nor "neutralized by other statutes". Section 23 of REDMA should not be permitted to frustrate those purposes here.

Canada North at para 31.

116. If permitted to exercise the right or remedy conferred under section 23 of REDMA, the Applicants and similarly situated Presale Purchasers will avoid their obligations under the Presale Agreements and assert claims for the return of their deposits. The Debtors, in turn, will face indemnification claims from the Surety and an event of default under the Interim Financing Term Sheet, and be forced to relist the applicable Purchased Units in a deteriorating market during an insolvency proceeding in which interest exceeding $59,000 per day accrues. The value realized from the Debtors' assets will diminish while their substantial indebtedness increases, with no certainty as to the time, cost and purchase price reductions required to resell the Eclipse Units.

Seventh Report, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.4 at paras 1-2.

117. The impact on the Debtors and their creditors – the "Court's primary concerns under the CCAA" – will be severe. Contrary to the purposes of the CCAA, the Debtors' insolvency will be protracted, the breathing room afforded to the Debtors will be significantly disrupted, and creditor recoveries will be eroded. The second branch of federal paramountcy precludes section 23 of REDMA from undermining the purposes of the CCAA in this manner and renders it inoperative.

Callidus at paras 40-42.
Canadian Airlines at paras 17-19.
Air Canada at para 12.
Re Canwest Global Communcations Corp., 2011 ONSC 2215 at para 25.
Seventh Report, s 6.0 at paras 7-8, s 6.1 at paras 1-5, 6.2 at paras 1-2, s 6.4 at paras 1-2.

F. It is not Appropriate to Grant a Summary Trial

118. The ATAC Applicants seek an order pursuant to Rule 9-7(2) of the Rules for an order: (i) declaring that the Presale Agreements are unenforceable against the ATAC Applicants pursuant to section 23 of REDMA; and (ii) requiring the Developer to return the deposits to the ATAC Applicants. The relief sought by the ATAC Applicants under Rule 9-7(2) is misguided for two reasons.

119. First, this Court advised counsel for the ATAC Applicants at a hearing on April 8, 2026 in these proceedings that there was no need to seek an order for summary trial. The ATAC Applicants filed an application seeking an order under Rule 9-7 notwithstanding those clear directions and the Monitor's agreement that any Purchaser wishing to challenge the enforceability of their pre-sale contracts under REDMA could, subject to the Stay of Proceedings, bring an application within these proceedings.

120. Second, while the Monitor acknowledges that Rule 16-1(18) permits the Court to apply the summary trial rule to petition proceedings in addition to actions, it is unclear which petition or pleading the ATAC Applicants seek to resolve on a summary basis. The ATAC Applicants filed a notice of application. There is no underlying petition proceeding or action on which this Court could grant summary relief and none of the circumstances listed in Rule 9-7(2) apply at hand. The ATAC Applicants list the Petition filed January 7, 2025 – being the Petition filed by KingSett that sought the Initial Order in these proceedings – in the material to be relied on. The only other petition that the Monitor is aware of is the petition that the ATAC Applicants improperly filed against Richards Buell Sutton LLP on March 18, 2026 (after the Monitor advised them on January 7, 2026 of the Stay of Proceedings) in which the ATAC Applicants sought a return of their deposits, and which the ATAC Applicants advised this Court on April 8, 2026 was no longer being pursued.

Rule 9-7(2).
Rochette v Bradburn, 2021 BCSC 1752 at para 54,
citing to *J&A Properties Ltd. v De Angelis*, 2019 BCSC 750 at para 32.

121. More importantly, and as noted above, the ATAC Applicants have not cited to any factual or legal basis on which this Court should lift the Stay of Proceedings in the circumstances, which would be a necessary first step prior to this Court granting any summary relief.

Part 6: MATERIAL TO BE RELIED ON

122. The Pre-Filing Report of the Proposed Monitor dated January 7, 2025.

123. The First Report of the Monitor dated January 14, 2025.

124. The Second Report of the Monitor dated April 8, 2025.

125. The Confidential Supplement to the Second Report of the Monitor dated April 8, 2025.

126. The Third Report of the Monitor dated July 9, 2025.

127. The Fourth Report of the Monitor dated September 30, 2025.

128. The Fifth Report of the Monitor dated December 8, 2025.

129. The Sixth Report of the Monitor dated March 30, 2026.

130. The Seventh Report of the Monitor dated May 4, 2026.

131. Affidavit #1 of Daniel Pollack made on January 6, 2025.

132. Affidavit #1 of Tom Reeves made on January 15, 2025.

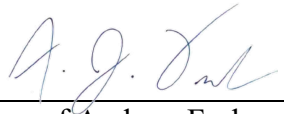
133. Affidavit #2 of Daniel Pollack made on December 9, 2025.

134. Affidavit #1 of Karen Buquet made on April 28, 2026.

135. Such further and other material as counsel may advise and this Court may permit.

The Respondent has filed in this proceeding a document that contains the Respondent's address for service.

Dated: May 4, 2026



Signature of Andrew Froh
☐ Application respondent
☒ Lawyer for the Monitor

THIS APPLICATION RESPONSE is prepared and delivered by Sean Zweig, Joshua Foster, and Andrew Froh of the firm Bennett Jones LLP, Barristers & Solicitors, counsel for the Monitor, File No. 074735.58, whose place of business and address for delivery is 2500 – 666 Burrard Street, Vancouver, British Columbia, V6C 2X8. Telephone: (604) 891-7500. Facsimile: (604) 891-5100. [zweigs@bennettjones.com; fosterj@bennettjones.com; froha@bennettjones.com]