

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

THE HONOURABLE	)	THURSDAY, THE 23 RD
	)	
JUSTICE STEELE	)	DAY OF OCTOBER, 2025

B E T W E E N:

MIZUE FUKIAGE, AKIKO KOBAYASHI, YOSHIKI FUKIAGE, KOBAYASHI KYOHODO CO., LTD., TORU FUKIAGE, and KWANG-CHENG (TONY) WEI, IN HIS PERSONAL CAPACITY AS A TAIWANESE INVESTOR AND IN HIS CAPACITY AS AGENT FOR THE OTHER TAIWANESE INVESTORS

Applicants

- and -

CLEARVIEW GARDEN ESTATES INC., TALBOT CROSSING INC., NIAGARA ESTATES OF CHIPPAWA II INC., LONDON VALLEY INC., LONDON VALLEY II INC., LONDON VALLEY III INC., LONDON VALLEY IV INC., LONDON VALLEY V INC., FORT ERIE HILLS INC., 2533430 ONTARIO INC., CGE CAPITAL MANAGEMENT INC., TGP-TALBOT CROSSING INC., NEC II CAPITAL MANAGEMENT INC., LV CAPITAL MANAGEMENT INC., LV II CAPITAL MANAGEMENT INC., LV III CAPITAL MANAGEMENT INC., LV IV CAPITAL MANAGEMENT INC., LV V CAPITAL MANAGEMENT INC., FORT ERIE HILLS CAPITAL MANAGEMENT INC., HALTON PARK INC., NIAGARA FALLS PARK INC., TSI-HP INTERNATIONAL CANADA INC., and TSI INTERNATIONAL-GRANDTAG A2A NIAGARA IV INC.

Respondents

REPRESENTATIVE COUNSEL APPOINTMENT ORDER

THIS MOTION made by Kwang-Cheng (Tony) Wei, in his personal capacity as a Taiwanese Investor and in his capacity as agent for the other Taiwanese Investors, for an Order, among other things, appointing Gowling WLG (Canada) LLP as representative counsel of all Investors (as defined below), other than the Opt-Out Investors (as defined below) pursuant to Rule 10.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended, was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the Motion Record dated , including the Affidavit of Kwang-Cheng (Tony) Wei, affirmed August 1, 2025 and the exhibits thereto (the “**Wei Affidavit**”), the Affidavit of Patryk Sawicki, affirmed August 27, 2025 and the exhibits thereto, and on hearing the submissions of counsel for Mr. Wei, counsel for the Receiver, and such other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the affidavit of service sworn and filed, and lawyer’s certificate of service,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is validated and further service thereof is hereby dispensed with.
2. **THIS COURT ORDERS** that the following terms shall be given the following meanings, and, unless otherwise stated, undefined capitalized terms used in this Order are given the meanings ascribed to such terms in the Wei Affidavit. Words importing the singular shall include the plural and vice versa:

- (a) **“Amended and Restated Receivership Order”** means the Amended and Restated Receivership Order dated October 23, 2025, granted by the Court in these proceedings;
- (b) **“Claims”** means all claims, choses in action, entitlements, debts, actions, suits, damages of such Investor against any Respondent in connection with the Property or the Land Banking Program;
- (c) **“Claims Process”** means any claims process established by the Receiver in these proceedings in respect of the Claims of the Investors;
- (d) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (e) **“Investor”** means all individuals, persons or entities, each of which: (i) invested as a beneficial owner in real estate development projects through the Land Banking Program; and (ii) has a Claim in respect of the Property;
- (f) **“Kobayashi Group”** has the meaning ascribed to such term in the Amended and Restated Receivership Order;
- (g) **“Land Banking Program”** means that certain investment program administered and managed by the Respondents and / or their affiliates pursuant to which Investors acquired fractional, beneficial, undivided interests in one or more of the real properties comprising the Property or the real property municipally and legally described in Schedule “B” to the Amended and Restated Receivership Order;

- (h) **“Opt-Out Investor”** means (i) any Investor who opts out of representation by Representative Counsel under paragraph 8 of this Order and (ii) the Kobayashi Group;
- (i) **“Property”** has the meaning ascribed to such term in the Amended and Restated Receivership Order;
- (j) **“Receiver”** means KSV Restructuring Inc., in its capacity as receiver and manager in these proceedings; and
- (k) **“Respondents”** means the respondents in these proceedings, including any additional parties that may be added as respondents by Order of the Court from time to time.

APPOINTMENT OF REPRESENTATIVE COUNSEL

- 3. **THIS COURT ORDERS** that, subject to paragraph 8 of this Order, Gowling WLG (Canada) LLP is appointed as representative counsel of all Investors in respect of their Claims in this proceeding (in such capacity, **“Representative Counsel”**), other than the Opt-Out Investors.

MANDATE OF REPRESENTATIVE COUNSEL

- 4. **THIS COURT ORDERS** that Representative Counsel is authorized (but not obligated) to take all steps and to perform all acts necessary or desirable to carry out the terms of this Order, including, without limitation:

- (a) taking any steps necessary or desirable to locate, identify, and notify Investors of these proceedings (the “**Investor Identification Process**”);
- (b) consulting with the Receiver on steps or actions the Receiver intends to take in these proceedings for the purpose of protecting Investors’ interests or otherwise discharging the Receiver’s mandate;
- (c) reviewing, and advising Investors on, steps taken by the Receiver in these proceedings and the status of the Claims Process, as applicable;
- (d) assisting Investors in connection with their Claims within the Claims Process, if applicable;
- (e) keeping the Receiver apprised of the status of the Investor Identification Process including identifying any other real property related to the Land Banking Program subject to Claims of the Investors and taking such steps as may be necessary to protect Investor interests;
- (f) establishing a website to provide general information about these proceedings with such information, features and updates (if any) as Representative Counsel considers appropriate or advisable;
- (g) filing and preparing materials and advancing submissions in motions brought in these proceedings;
- (h) negotiating, as may be appropriate or advisable, any resolution to any motion brought in these proceedings;

- (i) bringing any motion as may be required to advance the interests of Investors, including to further expand the scope of the Receiver's mandate in connection with the Land Banking Program; and
- (j) performing such other actions as may be necessary or desirable to fulfill the mandate of Representative Counsel.

5. **THIS COURT ORDERS** that other than as set out in this Order or by further Order of the Court, the scope of Representative Counsel's mandate shall not include the commencement of a claim, action or proceeding against another individual, person or entity.

6. **THIS COURT ORDERS** that the Representative Counsel shall be entitled to apply to this Court for advice and direction in the discharge or variation of its powers and duties set out in this Order.

7. **THIS COURT ORDERS** that, subject to confidentiality arrangements acceptable to the Receiver, and only to the extent available and in its possession, the Receiver is authorized to disclose and shall provide to Representative Counsel, without charge, the following information, documents and data (the "**Information**") in machine-readable format as soon as possible after the granting of this Order, for the purposes of enabling Representative Counsel to carry out its mandate in accordance with this Order:

- (a) the names, last known addresses, and last known telephone numbers and e-mail addresses (if any) of the Investors;

- (b) upon request of Representative Counsel, such documents and data as Representative Counsel deems necessary or desirable in order to carry out its mandate,

and that, in doing so, the Receiver is not required to obtain express consent from such Investors authorizing disclosure of the Information to Representative Counsel and, further, in accordance with section 7(3) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, if applicable, this Order shall be sufficient to authorize the disclosure of the Information, without the knowledge or consent of the individual Investors. Representative Counsel shall maintain and protect the privacy of such information and limit the use of such Information to the performance of its mandate.

OPT-OUT INVESTORS

8. **THIS COURT ORDERS** that any Investor (other than the Kobayashi Group) who does not wish to be represented by the Representative Counsel shall, by no later than 4:00 pm (Toronto time) on the first business day that is 45 days after the granting of this Order, deliver to Representative Counsel and the Receiver a completed “Opt-Out Notice” (appended to the “Notice of Investors”, a form of which is attached hereto as Schedule “A”) in accordance with the instructions contained therein, or otherwise with the written consent of Representative Counsel or further Order of the Court. Each Opt-Out Investor shall not be or shall cease being, as applicable, an “Investor” as defined herein, shall be responsible for representing themselves, personally or through

counsel, as an independent individual party to the extent they wish to appear in these proceedings, and shall not be bound by the applicable provisions of this Order.

REPRESENTATIVE COUNSEL FEES, CHARGE AND ACCOUNTS

9. **THIS COURT ORDERS** that, subject to paragraph 10 of this Order, Representative Counsel shall be entitled to the benefit of a charge attaching to the Property of the Respondents as security for its professional fees at its standard rates and charges, up to an aggregate maximum amount of \$250,000, exclusive of HST and disbursements, including for professional fees incurred prior to the date of this Order up to a maximum of \$50,000 (plus taxes and disbursements) (the “**Representative Counsel Charge**”). The Representative Counsel Charge may be increased by further Order of the Court. For greater certainty, and notwithstanding anything else contained herein: (i) the Representative Counsel Charge shall only attach to the Property of the Respondents in relation to the *pro rata* interest of the Investors (and not the Opt-Out Investors) therein; and (ii) payment of amounts to Representative Counsel from the Property of the Respondents or the net proceeds thereof shall only be made from the *pro rata* portion of the Respondents’ Property or the net proceeds to which the Investors (and not the Opt-Out Investors) have an interest. The *pro rata* interests of the Investors (and not the Opt-Out Investors) in the Property or the net proceeds thereof as described in this paragraph shall be defined as the “**Represented Investors’ Interest**”.
10. **THIS COURT ORDERS** that the Representative Counsel Charge shall form a *third* ranking charge on the Represented Investors’ Interest in the Property or the net

proceeds thereof ranking subordinate to the Receiver's Charge and the Receiver's Borrowings Charge (each as defined in the Amended and Restated Receivership Order) but in priority to all other security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any individual, person, or entity, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3. For the avoidance of doubt, the Representative Counsel Charge shall apply only to the extent of the Represented Investors' Interests.

11. **THIS COURT ORDERS** that the Representative Counsel shall pass its accounts from time to time, and for this purpose the accounts of the Representative Counsel are referred to a judge of the Court, subject to such redactions to the invoices as are necessary to maintain privilege. Representative Counsel shall be entitled to receive payment of its reasonable and documented fees by making a request to the Receiver, which amounts will be paid from the monetization of the Respondents' Property (but only in respect of the Represented Investors' Interest in such Property or the net proceeds thereof and not that of the Opt-Out Investors), as and when such net proceeds become available; provided further that Representative Counsel shall have given the Receiver an accounting of any such fees and disbursements incurred prior to their appointment, and all subject to the terms of the Representative Counsel Charge. In the event of any disagreement regarding such fees and disbursements, such disagreement may be remitted to this Court for determination.

REPRESENTATIVE COUNSEL PROTECTIONS

12. **THIS COURT ORDERS** that the Representative Investors and Representative Counsel shall have no personal liability as a result of the performance of their duties in carrying out the provisions of this Order, or any subsequent Order in these proceedings, save and except for liability arising out of gross negligence or willful misconduct.
13. **THIS COURT ORDERS** that no proceeding may be commenced against Representative Counsel in respect of the performance of duties under this Order without leave of this Court, and on at least seven (7) days' notice to Representative Counsel.
14. **THIS COURT ORDERS** that neither the appointment of Representative Counsel or Representative Investors nor any actions or steps taken by Representative Counsel or Representative Investors shall be deemed to constitute Representative Counsel or any Investor as having taken or maintained any control or possession of or over any of the Property or having assumed management or control of any of the Respondents or the Property.

GENERAL

15. **THIS COURT ORDERS** that within five (5) business days of the date of this Order, the Receiver shall send a copy of this Order to all known Investors by way of email (to the extent that the Receiver has such email) and / or regular mail, and a copy of

this Order shall be posted on the case website maintained by the Receiver in respect of these proceedings.

16. **THIS COURT ORDERS** that the Receiver, its counsel, and Representative Counsel may serve or distribute this Order and any related materials, including, without limitation, the notice of the appointment of Representative Counsel set out at Schedule “A” hereto, by forwarding true copies thereof by email or regular mail to the Investors, creditors or other interested parties and their advisors (if any). For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and the notice requirements within the meaning of subclause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).
17. **THIS COURT ORDERS** that the Receiver shall have no personal liability as a result of the performance of their duties in carrying out the provisions of this Order, save and except for liability arising out of gross negligence or willful misconduct.
18. **THIS COURT REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body, including those having jurisdiction in Canada, Taiwan, China, Japan, Singapore, or in the United States, to give effect to this Order and to assist Representative Counsel and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are respectfully requested to make such orders and to provide such assistance to the Receiver or Representative Counsel, as officers of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Receiver or Representative Counsel in

any foreign proceeding, or to assist the Receiver or Representative Counsel and their respective agents in carrying out the terms of this Order.

19. **THIS COURT ORDERS** that Representative Counsel shall be at liberty and are authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for advice and directions in the discharge or variation of their powers and duties hereunder.
 20. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Toronto time) on the date of this Order, and this Order is enforceable without the need for entry and filing.
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SCHEDULE “A”

Court File No.: CV-25-00736577-00CL

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

AND IN THE MATTER OF THE RECEIVERSHIP OF CLEARVIEW GARDEN ESTATES INC., TALBOT CROSSING INC., NIAGARA ESTATES OF CHIPPAWA II INC., LONDON VALLEY INC., LONDON VALLEY II INC., LONDON VALLEY III INC., LONDON VALLEY IV INC., LONDON VALLEY V INC., FORT ERIE HILLS INC., 2533430 ONTARIO INC., CGE CAPITAL MANAGEMENT INC., TGP-TALBOT CROSSING INC., NEC II CAPITAL MANAGEMENT INC., LV CAPITAL MANAGEMENT INC., LV II CAPITAL MANAGEMENT INC., LV III CAPITAL MANAGEMENT INC., LV IV CAPITAL MANAGEMENT INC., LV V CAPITAL MANAGEMENT INC., FORT ERIE HILLS CAPITAL MANAGEMENT INC., HALTON PARK INC., NIAGARA FALLS PARK INC., TSI-HP INTERNATIONAL CANADA INC., and TSI INTERNATIONAL-GRANDTAG A2A NIAGARA IV INC.

(collectively, the “Respondents”)

NOTICE TO INVESTORS

Capitalized but undefined terms are defined in the Amended and Restated Receivership Order dated October 23, 2025 (the “**Amended and Restated Receivership Order**”) or the Representative Counsel Appointment Order dated October 23, 2025 (the “**Representative Counsel Order**”), as applicable, each as granted by the Ontario Superior Court of Justice (Commercial List), located in Toronto, Ontario, Canada (the “**Court**”) in the above proceedings (the “**Receivership Proceedings**”). A copy of the Representative Counsel Order is attached hereto as Appendix “**B**”. A copy of the Amended and Restated Receivership Order is attached hereto as Appendix “**C**”.

Following an application brought by Mizue Fukiage, Akiko Kobayashi, Yoshiki Fukiage, Kobayashi Kyohodo Co., Ltd. and Toru Fukiage heard on March 6, 2025, and a motion brought by Kwang-Cheng (Tony) Wei in his personal capacity as a Taiwanese Investor and as agent for the other Taiwanese Investors heard on October 23, 2025, KSV Restructuring Inc. was appointed as receiver and manager, without security, over the Property of the Respondents (in such capacity, the “**Receiver**”), pursuant to the Amended and Restated Receivership Order. The Receiver’s website in connection with the Receivership Proceedings may be accessed at the following URL: <https://www.ksvadvisory.com/experience/case/clearviewgarden>.

The Property includes the real properties, or claims in respect of the real properties, owned or previously owned by: 2533430 Ontario Inc.; Clearview Garden Estates Inc.; Fort Erie Hills Inc.; Halton Park Inc.; London Valley Inc.; London Valley II Inc.; London Valley IV Inc.;

London Valley V Inc.; Niagara Estates of Chippawa II Inc.; Niagara Falls Park Inc.; and Talbot Crossing Inc.

TAKE NOTICE THAT, pursuant to the Representative Counsel Order, Gowling WLG (Canada) LLP was appointed as Representative Counsel to act on behalf of all individuals, persons or entities that: (i) invested as beneficial owners in real estate development projects through the Land Banking Program; and (ii) which have Claims in respect of the Property (the “**Investors**”, and each, an “**Investor**”).

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU MAY BE AN INVESTOR in one or more of the real estate development projects associated with the Property.

IF YOU DO NOT WISH TO BE REPRESENTED in the Receivership Proceedings by Representative Counsel, you must, no later than 4:00 p.m. (Toronto time) on December 8, 2025, deliver written notice to both the Receiver and Representative Counsel by submitting a completed “**Opt-Out Notice**” attached hereto as Appendix “A” in accordance with paragraph 8 of the Representative Counsel Order, to the contact information provided below:

To Counsel for the Receiver:

AIRD & BERLIS LLP
Counsel for the Receiver
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Attention: Mark van Zandvoort, email: mvanzandvoort@airdberlis.com
Calvin Horsten, email: chorsten@airdberlis.com

To Representative Counsel:

GOWLING WLG (CANADA) LLP
Representative Counsel
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Attention: Asim Iqbal, email: asim.iqbal@gowlingwlg.com
Patryk Sawicki, email: patryk.sawicki@gowlingwlg.com
Carol Liu, email: carol.liu@gowlingwlg.com

Sincerely,

The Receiver and Representative Counsel

APPENDIX “A”
OPT-OUT NOTICE

Court File No.: CV-25-00736577-00CL

IN THE MATTER OF AN APPLICATION UNDER SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

AND IN THE MATTER OF THE RECEIVERSHIP OF CLEARVIEW GARDEN ESTATES INC. ET AL

AIRD & BERLIS LLP
Counsel to the Receiver
Brookfield Place
181 Bay Street, Suite 1800
Toronto, ON M5J 2T9

Attn: Mark van Zandvoort
mvanzandvoort@airdberlis.com
Calvin Horsten
chorsten@airdberlis.com

GOWLING WLG (CANADA) LLP
Representative Counsel
1 First Canadian Place
100 King Street West, Suite 1600
Toronto, ON M5X 1G5

Attn: Asim Iqbal
asim.iqbal@gowlingwlg.com
Patryk Sawicki
patryk.sawicki@gowlingwlg.com
Carol Liu
carol.liu@gowlingwlg.com

I am an “Investor” as defined in the Representative Counsel Appointment Order of the Ontario Superior Court of Justice (Commercial List) dated October 23, 2025 (the “**Order**”) in the above matter (the “**Proceedings**”).

Pursuant to paragraph 8 of the Order, I hereby provide written notice that I do not wish to be bound by the Order and will be represented as an independent individual party at my own expense to the extent that I wish to participate in the Proceedings.

[Signature Page Follows]

If the Investor is an individual

Name:

Signature:

Date:

Address:

Email:

Phone
number:

If the Investor is a corporation

Corporation

Name:

Signature:

Name:

Title:

I/we have authority to bind the corporation

Date:

Address:

Email:

Phone
number:

APPENDIX “B”

REPRESENTATIVE COUNSEL ORDER

See attached.

APPENDIX “C”

AMENDED AND RESTATED RECEIVERSHIP ORDER

See attached.

MIZUE FUKIAGE et al

- and -

CLEARVIEW GARDEN ESTATES INC. et al

Applicants

Respondents

	<i>ONTARIO</i> SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST) PROCEEDINGS COMMENCED AT TORONTO
	DRAFT REPRESENTATIVE COUNSEL APPOINTMENT ORDER
	Gowling WLG (CANADA) LLP Barristers & Solicitors 1 First Canadian Place 100 King Street West, Suite 1600 Toronto ON M5X 1G5 Clifton P. Prophet (LSO# 34845K) Tel: 416-8623509 Email: clifton.prophet@gowlingwlg.com Asim Iqbal (LSO# 61884B) Tel: 416 862 4693 Email: asim.iqbal@gowlingwlg.com Patryk Sawicki (LSO# 88028I) Tel: 416-369-7246 Email: patryk.sawicki@gowlingwlg.com Lawyers for Kwang-Cheng (Tony) Wei, in his personal capacity and as agent for other Taiwanese Investors