

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

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

**MAPLEVIEW DEVELOPMENTS LTD., PACE MAPLEVIEW LTD. and
2552741 ONTARIO INC.**

Respondents

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

COMPENIDUM OF DUNSIRE HOMES INC.

September 16, 2024

Thornton Grout Finnigan LLP
100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON M5K 1K7

Robert I. Thornton (LSO# 24266B)
Tel: (416) 304-0560
Email: rthornton@tgf.ca

Alexander Soutter (LSO# 72403T)
Tel: (416) 304-0595
Email: asoutter@tgf.ca

Lawyers for Dunsire Homes Inc.

TO: SERVICE LIST

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

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TAB 1

Appendix E

Summary of Construction Liens

| | Lien Claimant | Date of Lien Registration | Claim for Lien (CAD) |
|-----|---|---------------------------|----------------------|
| 1. | Rivervalley Masonry Group Ltd. | January 16, 2024 | \$3,947,900.46 |
| 2. | Greenwall Concrete Forming Ltd. | April 11, 2024 | \$103,322.02 |
| 3. | Cortina Kitchens Inc. | April 26, 2024 | \$342,404.12 |
| 4. | Schaeffer Dzaldov Purcell Ltd. | April 5, 2024 | \$70,354.44 |
| 5. | Penegal Trim & Supply Ltd. | March 19, 2024 | \$309,908.68 |
| 6. | Bisoukis Enterprises Ltd. | April 18, 2024 | \$542,070.29 |
| 7. | 669857 Ontario Limited (Alma Mechanical) | March 22, 2024 | \$476,690.25 |
| 8. | Quality Rugs of Canada Limited O/A Quality Sterling Group | January 29, 2024 | \$1,016,739.88 |
| 9. | Foremont Drywall Contracting | February 7, 2024 | \$2,453,798.21 |
| 10. | Con-Drain Company (1983) Limited: Block 16 (Phase 4) | December 8, 2023 | \$3,404,024.68 |
| 11. | Con-Drain Company (1983) Limited: Block 17 (Phase 3) | December 8, 2023 | \$729,256.22 |
| 12. | North Gate Farms Limited | January 17, 2024 | \$69,271.58 |
| 13. | | January 17, 2024 | \$473,988.54 |
| 14. | Sunbelt Rentals of Canada Inc. | February 14, 2024 | \$227,629.24 |
| 15. | Mykon Electric North Ltd. | March 25, 2024 | \$859,890.27 |
| 16. | Home Lumber Inc. | January 25, 2024 | \$1,421,466.63 |
| 17. | Alpa Stairs And Railings Inc. | January 25, 2024 | \$195,615.55 |

| | | | |
|--------------|--|-------------------|------------------------|
| 18. | Newmar Window Manufacturing Inc. | January 26, 2024 | \$445,756.09 |
| 19. | 1588555 Ontario Inc. O/A Neb's Caulking | February 22, 2024 | \$52,553.48 |
| 20. | Capelas Homes Ltd. | April 3, 2024 | \$1,978,305.85 |
| 21. | 1833785 Ontario Inc. (Breda Bay Point Plumbing) | May 17, 2024 | \$583,386.80 |
| TOTAL | | | \$19,704,333.28 |

TAB 2

ARTICLE 2 PURCHASE AND SALE OF PROPERTY

Section 2.1 Purchase and Sale of Purchased Assets.

Subject to the terms and conditions of this Agreement, the Receiver hereby agrees to sell, assign and transfer to the Purchaser, and the Purchaser agrees to purchase and assume from the Receiver, all of the Debtors' and the Receiver's right, title and interest, in and to the Debtor Property comprised of the following (the "**Purchased Assets**"):

- (1) the Lands;
- (2) the Buildings;
- (3) the Inventory;
- (4) the Securities;
- (5) the Development Approvals, to the extent transferable without consent or subject to any required consent being received by the time all conditions to Closing are satisfied if consent is required;
- (6) such other Debtor Property as the Purchaser may advise the Receiver of in writing before Closing, to the extent transferable without consent or subject to any required consent being received by the time all conditions to Closing are satisfied if consent is required, as shall be confirmed in a Schedule added hereto prior to Closing, if applicable; and
- (7) the Books and Records relating to the Purchased Assets,

free and clear of all Encumbrances (other than Permitted Encumbrances), in exchange for the payment of the Purchase Price.

Section 2.2 Sale Process

The Receiver shall as soon as reasonably practicable and in any event no later than May 20, 2024 serve a motion to the Court for the Sale Process Order. The Receiver shall, in respect of such motion, consult with the Purchaser regarding the content of its motion materials, the return date and relief sought in addition to the Sale Process Order, if any.

Section 2.3 Purchase Price.

- (1) **The purchase price for the Purchased Assets (the "Purchase Price")** shall be equal to the sum of:
 - (a) the amount outstanding under the Receiver's Charge and the Receiver's Borrowing Charge (as such terms are defined in the Appointment Order) on the Closing Date, if any, as approved by the Court;
 - (b) the amount secured under the charge registered on title to the Lands bearing registration number SC1950702 in favour of KingSett Mortgage Corporation

including, without limitation, all outstanding (i) principal, (ii) accrued interest, (iii) fees, (iv) costs, and (v) amounts on account of protective disbursements, all as determined by the Receiver, acting reasonably;

- (c) **the amount outstanding in respect of any Priority Payables** on the Closing Date;
- (d) \$400,000, which shall be used by the Receiver to fund costs incurred in connection with necessary post-Closing matters, which may include, among other things, bringing a motion for approval of its fees and activities, for approval of proposed distributions creditors, to terminate the ongoing receivership proceedings with respect to the Debtors and to fund the bankruptcy of the Debtors (but not for distribution to any creditor of the Debtors), with any unused portion to be returned to the Purchaser; and
- (e) the amount outstanding pursuant to the Assumed Mortgages on the Closing Date, including all fees or costs associated therewith.

Section 2.4 Payment of Purchase Price.

(1) The Purchaser shall satisfy the Purchase Price as follows:

- (a) **Deposit.** Upon execution of this Agreement, by payment of a deposit to the Receiver, in trust, by wire transfer of immediately available funds of ten million (\$10,000,000.00) dollars (the “**Deposit**”). The Deposit will be held by the Receiver until Closing or termination of this Agreement. The parties to this Agreement hereby acknowledge that the Receiver shall place the Deposit in an interest bearing account;
- (b) **Assumed Mortgages.** On the Closing Date, the Purchaser shall either pay the amount outstanding pursuant to the Assumed Mortgages, including all fees or costs associated therewith, or, at the Purchaser’s option and if AI and MarshallZehr, as applicable, have consented, shall assume either or both of the Assumed Mortgages, in which case such portion of the Purchase Price shall be satisfied by such assumption by the Purchaser;
- (c) **Balance Due on Closing.** On the Closing Date, the remainder of the Purchase Price by payment to the Receiver by wire transfer of immediately available funds to an account specified in writing by the Receiver.

Section 2.5 Allocation

The entire Purchase Price shall be allocated to the Purchased Assets as directed by the Purchaser on or before the Closing Date, and the Parties agree that they shall follow such allocation in determining and reporting their liabilities for any taxes and, without limitation, shall file their respective income tax returns prepared in accordance with such allocation, provided that nothing herein shall require the Receiver to file any income tax returns that it is not otherwise required to file.

“**Person**” includes an individual, partnership, association, body corporate, trustee, executor, administrator, legal representative, government (including any Governmental Authority) or any other entity, whether or not having legal status.

“**Priority Payables**” means any payables that have priority over the Assumed Mortgages, excluding any Harmonized Sales Tax owing by the Debtors, but including amounts that have priority pursuant to s.78(2) of the *Construction Act*, RSO 1990, c C30, as determined by the Receiver in consultation with the Purchaser, both acting reasonably, or as determined by the Court, after application of any amount of cash on hand of the Debtors, excluding the Deposit, immediately prior to Closing.

“**Purchase Price**” shall have the meaning set out in Section 2.3.

“**Purchased Assets**” has the meaning set out in Section 2.1.

“**Purchaser**” shall have the meaning set out in the Recitals hereto.

“**Receiver**” shall have the meaning set out in the Recitals hereto.

“**Release**” means any release or discharge of any Hazardous Substance including any discharge, spray, injection, inoculation, abandonment, deposit, spillage, leakage, seepage, pouring, emission, emptying, throwing, dumping, placing, exhausting, escape, leach, migration, dispersal, dispensing or disposal.

“**Releasees**” shall have the meaning defined in Section 4.5.

“**Sale Process**” means the marketing and sale process for the right, title and interest of the Debtor and the Receiver, if any, in and to the Purchased Assets, substantially in the form attached as Schedule “E” or in such other form agreed upon by the Parties in writing, acting reasonably.

“**Sale Process Order**” means the Order to be received from the Court, pursuant to a motion brought by the Receiver in consultation with the Purchaser (including for the content, the return date and, relief sought), and which among other things, shall authorize the Receiver to enter into this Agreement and to conduct the Sale Process, as more particularly set out therein, substantially in the form attached at Schedule “F” or in such other form agreed upon by the Parties in writing, acting reasonably.

“**Sanctioned Person**” means any Person that is the subject or target of any Sanctions, including (a) any Person listed in any Sanctions-related list of designated Persons, or (b) a person with whom it is otherwise prohibited to transact under Sanctions.

“**Sanctions**” means all applicable export control and economic sanctions laws, regulations, and orders of the Government of Canada, including the *Special Economic Measures Act* (Canada), the *Freezing of Assets of Corrupt Foreign Officials Act* (Canada), the *United Nations Act* (Canada), the *Justice for Victims of Corrupt Foreign Officials Act* (Sergei Magnitsky Law) (Canada), the *Criminal Code* (Canada), any rules or regulations promulgated thereunder, or any other relevant economic sanctions laws.

TAB 3



Court File No. CV-24-00716511-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE

)

FRIDAY, THE 16TH

JUSTICE CAVANAGH

)

DAY OF AUGUST, 2024

)

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

**MAPLEVIEW DEVELOPMENTS LTD., PACE MAPLEVIEW LTD. and 2552741
ONTARIO INC.**

Respondents

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

SALE APPROVAL, VESTING AND ANCILLARY MATTERS ORDER

THIS MOTION, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (the "**Receiver**") without security, of the real property legally described in Schedule "A-1" and Schedule "A-2" (collectively the "**Lands**") hereto and all present and future assets, undertakings and personal property, with the exception of certain deposit monies, of Maplevue Developments Ltd. ("**Maplevue**"), Pace Maplevue Ltd. ("**Pace**") and 2552741 Ontario Inc. ("**255 Ontario**") and together with Maplevue and Pace, the "**Debtors**" and each a "**Debtor**"), located at, related to, used in connection with or arising from or out of the Lands or

which is necessary to the use and operation of the Lands, including all proceeds thereto, for an order, among other things, (a) approving the sale transaction (the "**Transaction**") contemplated by an agreement of purchase and sale between the Receiver and Dunsire Homes Inc. (the "**Purchaser**") dated May 9, 2024, as amended on August 15, 2024 (the "**Sale Agreement**"); (b) vesting in the Purchaser the Debtors' right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement); (c) approving the First Report of the Receiver dated May 21, 2024 (the "**First Report**") and the Second Report of the Receiver dated July 26, 2024 (the "**Second Report**"), and the Receiver's conduct and activities described therein; and (d) approving the fees and disbursements of the Receiver and the Receiver's counsel, Osler, Hoskin & Harcourt LLP ("**Osler**"), as set out in the Affidavit of Noah Goldstein sworn on July 26, 2024 attached at Appendix "H" to the Second Report (the "**Goldstein Affidavit**") and the Affidavit of David Rosenblat sworn on July 26, 2024 attached at Appendix "I" to the Second Report (the "**Rosenblat Affidavit**" and, together with the Goldstein Affidavit, the "**Fee Affidavits**"), was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Receiver, the First Report, the Second Report and the Appendices thereto, and on hearing the submissions of counsel for the Receiver, and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Sierra Farr affirmed July 29, 2024, filed,

1. **THIS COURT ORDERS** that unless otherwise indicated herein, capitalized words and terms have the meanings given to them in the Sale Agreement or the Second Report, as applicable.
2. **THIS COURT ORDERS** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

VESTING AND REGISTRATION ON TITLE

3. **THIS COURT ORDERS** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as Schedule "B" hereto (the "**Receiver's**

Certificate”), all of the Purchased Assets, including, without limitation, all of the Debtor's right, title and interest in and to:

- (a) the Lands described in Schedule “A-1” shall vest absolutely in Dunsire Properties Inc. (the “**Dunsire Properties Lands**”); and
- (b) the Lands described in Schedule “A-2”, which right, title and interest in respect of Simcoe Common Elements Condominium Plan no. 497 and its appurtenant interest, being PIN 59497-0001(LT), is not fee simple but is evidenced by the declaration registered as instrument no. SC1974651 only, shall vest absolutely in the Purchaser (the “**Purchaser Lands**”),

free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing:

(i) any encumbrances or charges created by the Order of the Honourable Justice Osborne made on March 21, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; (iii) all rights any person had, has, or may in the future have in connection with or arising from any agreements of purchase and sale for the purchase of any or all of the Property by a builder, homeowner and/or any other Person (“**Buyer Agreements**”) entered into by a Debtor, and (iv) those Claims listed on Schedule “C” hereto (all of which are collectively referred to as the “**Encumbrances**”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on Schedule “D”) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets shall be expunged and discharged as against the Purchased Assets upon the delivery of the Receiver’s Certificate.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act, the Land Registrar is hereby directed to enter:

- (a) Dunsire Properties Inc. as the owner of the Dunsire Properties Lands, each as identified in Schedule “A-1” hereto, in fee simple; and

- (b) the Purchaser as the owner of the Purchaser Lands each as identified in Schedule “A-2” hereto, in fee simple (save and except with respect to Simcoe Common Elements Condominium Plan no. 497 and its appurtenant interest, being PIN 59497-0001(LT)),

and is hereby directed to delete and expunge from title to the Lands all of the Claims listed in Schedule “C” hereto. For the avoidance of doubt, this Court orders that upon the registration in the Land Registry Office for the appropriate Titles Division of an Application for Vesting Order in the form prescribed by the Land Titles Act and/or the Land Registration Reform Act, the Land Registrar is hereby directed to not transfer title of, nor enter the Purchaser as owner of, Simcoe Common Elements Condominium Plan no. 497 and its appurtenant interest, being PIN 59497-0001(LT), with the Purchaser’s interest in this parcel to be evidenced by the Declaration registered as Instrument No. SC1974651.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed, on or prior to Closing, to terminate and disclaim the Buyer Agreements and, following the delivery of the Receiver’s Certificate in accordance with this Order, such Buyer Agreements shall cease to be continuing obligations effective against the Property or binding on the Purchaser.

PORTLAND RESERVE

7. **THIS COURT ORDERS** that the Receiver is authorized and directed to establish, hold and maintain a reserve (the “**Portland Reserve**”), which shall be separate from the cash portions of the Purchase Price contemplated by Sections 2.3(1)(a), (b) and (d) of the Sale Agreement, in the amount of \$2.3 million (the “**Portland Reserve Amount**”), which Portland Reserve shall be fully funded in cash by the Purchaser on or prior to Closing, subject to paragraph 8 of this Order. The Portland Reserve shall be returned to the Purchaser or paid to Portland, as the case may be,

upon the earlier of: (i) the date upon which the Purchaser and Portland resolve the priority dispute relating to the priority of the advances made under the Portland Mortgage (the “**Priority Dispute**”), (ii) the date upon which this Court makes a determination on the Priority Dispute and the entitlement to amounts held in the Portland Reserve, and (iii) September 30, 2024, in the event Portland fails to file any court materials in respect of the Priority Dispute with this Court, in which case the Portland Reserve shall be paid to the Purchaser.

8. **THIS COURT ORDERS** that the Purchaser may provide letter(s) of credit and/or bond(s) in favour of the Receiver as security for the Portland Reserve equal to all or part of the Portland Reserve Amount, the principal amount of which shall reduce the amount of the Portland Reserve that the Purchaser must fund in cash pursuant to paragraph 7 of this Order, provided that such letter(s) of credit and/or bond(s) are in form and substance satisfactory to the Receiver, acting reasonably.

LIEN CLAIMANTS’ RESERVE

9. **THIS COURT ORDERS** that the Receiver is authorized and directed to establish, hold and maintain a reserve (the “**Lien Claimants’ Reserve**”), which shall be separate from the cash portions of the Purchase Price contemplated by Sections 2.3(1)(a), (b) and (d) of the Sale Agreement, in the amount of \$19,704,333.28 (the “**Lien Claimants’ Reserve Amount**”), which Lien Claimants’ Reserve shall be fully funded in cash by the Purchaser on or prior to Closing, subject to paragraph 10 of this Order.

10. **THIS COURT ORDERS** that the Purchaser may provide letter(s) of credit and/or bond(s) in favour of the Receiver as security for the Lien Claimants’ Reserve equal to all or part of the Lien Claimants’ Reserve Amount, the principal amount of which shall reduce the amount of the Lien Claimants’ Reserve that the Purchaser must fund in cash pursuant to paragraph 9 of this Order, provided that such letter(s) of credit and/or bond(s) are in form and substance satisfactory to the Receiver, acting reasonably.

11. **THIS COURT ORDERS** that any Person with a claim for a Priority Payable (a “**Priority Payables Claim**”) shall provide the Receiver with such supporting evidence as the Receiver, in consultation with the Purchaser, may have requested or requests as of the date hereof, by no later than August 23, 2024.

12. **THIS COURT ORDERS** that the Receiver is authorized and directed to pay from time to time from the Lien Claimants' Reserve any amounts in respect of Priority Payable Claims (in aggregate up to the amount of the Lien Claimants' Reserve) that:

- (a) the Receiver determines is a Priority Payable, with the consent of the Purchaser and the holder of the applicable Priority Payable Claim; or
- (b) is ordered by this Court,

which payments shall be in satisfaction of the portion of the Purchase Price contemplated by Section 2.3(1)(c) of the Sale Agreement.

13. **THIS COURT ORDERS** that, subject to the resolution and/or determination of the Priority Payables Claims pursuant to paragraph 12 of this Order, any amounts remaining in the Lien Claimants' Reserve shall be returned to the Purchaser.

14. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

15. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

APPROVAL OF RECEIVER'S REPORTS AND ACTIVITIES

16. **THIS COURT ORDERS** that each of the First Report and the Second Report, and the actions, conduct and activities of the Receiver referred to therein, be and are hereby approved; provided, however, that only KSV, in its capacity as Receiver and not in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.


17. **THIS COURT ORDERS** that the fees and disbursements of the Receiver up until July 22, 2024, as set out in the Second Report and the Goldstein Affidavit, are hereby approved.

18. **THIS COURT ORDERS** that the fees and disbursements of Osler up until July 26, 2024, as set out in the Second Report and the Rosenblat Affidavit, are hereby approved.

GENERAL

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

20. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.



Justice Cavanagh

TAB 4

Court File No. CV-24-00716511-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

MAPLEVIEW DEVELOPMENTS LTD., PACE MAPLEVIEW LTD and 2552741
ONTARIO INC.

Respondents

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

**FACTUM OF THE RECEIVER
(Motion Returnable September 17, 2024)**

OSLER, HOSKIN & HARCOURT LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Tel: 416.862.4908
Email: mwasserman@osler.com

Dave Rosenblat (LSO# 64586K)
Tel: 416.862.5673
Email: drosenblat@osler.com

Roger Gillott (LSO# 37816L)
Tel: 416.862.6818
Email: rgillott@osler.com

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc., in its
capacity as Receiver

TO: **SERVICE LIST**

PART I - NATURE OF THE MOTION

1. The issue on this motion is whether the Lien Claims have priority over the KingSett Mortgage and constitute Priority Payables under the Sale Agreement (as those terms are defined below). They do not. The Lien Claims only have priority to the extent of any deficiency in the holdback required to be retained under the *Construction Act*.¹

2. This receivership proceeding involves lands in Barrie (the “**Lands**”) that Mapleview Developments Ltd. (“**Mapleview**”) was developing into townhomes. To finance that work, Mapleview borrowed from KingSett Mortgage Corporation (“**KingSett**”) and others, and granted those creditors mortgages over the Lands.

3. The Respondents defaulted on their obligations to KingSett and KSV Restructuring Inc. was appointed as receiver (in that capacity, the “**Receiver**”). Pursuant to a Stalking Horse Agreement of Purchase and Sale dated May 9, 2024 (the “**Sale Agreement**”) and the AVO (defined and described below), the Receiver sold the Lands to Dunsire Homes Inc. (the “**Purchaser**”). The purchase price under the Sale Agreement includes an amount equal to the amount of “Priority Payables” (as defined below).

4. Since December 2023, twenty-one contractors (the “**Lien Claimants**”) have registered claims for lien (“**Lien Claims**”) ² on title to the Lands pursuant to the *Construction Act*. Certain Lien Claimants (the “**Objecting Lien Claimants**”) allege that their *entire* claims have priority over the KingSett Mortgage, and therefore must be paid.

¹ R.S.O. 1990, c C.30 [*Construction Act*].

² See Appendix “A” for a table setting out the details of the Lien Claims.

5. The priority asserted by the Objecting Lien Claimants is fundamentally inconsistent with both the purpose and text of the *Construction Act*. The *Construction Act* is intended to balance the interests of parties involved in construction projects, including lien claimants and mortgagees, which it accomplishes by granting mortgagees priority rights over lien claimants in a number of circumstances, while at the same time granting lien claimants priority over mortgagees in respect of any deficiencies in the statutory holdback. Accepting the unprecedented priority asserted by the Objecting Lien Claimants would disregard the statutory balancing act embodied in the *Construction Act*, and would further disregard the clear and unambiguous priority granted to KingSett pursuant to both s. 78(2) of the *Construction Act*, as the provider of a “building mortgage,” and s. 78(6), as a subsequent mortgagee whose mortgage was registered after the first lien arose, but prior to a lien being preserved or perfected, and who did not receive written notice of a lien prior to advancing funds.

6. The Objecting Lien Claimants’ arguments regarding priority should therefore be rejected, and only the deficiency in the statutory holdback should have priority over the KingSett Mortgage and constitute a Priority Payable.

PART II - SUMMARY OF FACTS

A. Background

7. Prior to the commencement of these receivership proceedings, the Respondents (the “Debtors”) were collectively engaged in developing the Urban North Townhomes project (the “Project”), a residential townhome project that was being developed on the Lands.³ In order to finance the construction of the Project, KingSett and Mapleview entered into several commitment letters (the “Prior Commitment Letters”) and registered related mortgage security. The Prior

³ Second Report of the Receiver dated July 26, 2024 at para. 2.2.1 [Second Report].

TAB 5

Court File No. CV-24-00716511-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

MAPLEVIEW DEVELOPMENTS LTD., PACE MAPLEVIEW LTD and 2552741
ONTARIO INC.

Respondents

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

**REPLY FACTUM OF THE RECEIVER
(Motion Returnable September 17, 2024)**

OSLER, HOSKIN & HARCOURT LLP
100 King Street West
1 First Canadian Place
Suite 6200, P.O. Box 50
Toronto ON M5X 1B8

Marc Wasserman (LSO# 44066M)
Tel: 416.862.4908
Email: mwasserman@osler.com

Dave Rosenblat (LSO# 64586K)
Tel: 416.862.5673
Email: drosenblat@osler.com

Roger Gillott (LSO# 37816L)
Tel: 416.862.6818
Email: rgillott@osler.com

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc., in its
capacity as Receiver

TO: **SERVICE LIST**

1. This Factum is filed by the Receiver in reply to the Responding Factum of Sunbelt Rental of Canada Inc. and Mykon Electric North Ltd., and the Responding Factum of the Fuller Landau Group Inc., each of which was filed September 5, 2024 (collectively, the “**Responding Factums**”). The Receiver continues to rely on the fact and law set out in its Initial Factum dated August 28, 2024 (the “**Initial Factum**”), and terms not defined herein have the same meaning as in the Initial Factum.

2. In their Responding Factums, the Objecting Lien Claimants advance a number of arguments in favour of granting themselves complete priority over the KingSett Mortgage. Among other things, the Objecting Lien Claimants argue that: (i) section 78 of the *Construction Act* is to be interpreted exclusively in favour of lien claimants; (ii) a building mortgagee can never obtain priority over lien claimants under section 78(2) of the *Construction Act*; and (iii) the re-registration of the KingSett Mortgage (as discussed in the Initial Factum) has completely re-ordered priority, such that the lien claimants should obtain an unexpected windfall of over \$10 million.

3. As is set out below, these arguments are fundamentally misconceived and are contrary to both existing jurisprudence and the policy purposes underlying the *Construction Act*. As a result, the KingSett Mortgage continues to enjoy priority over the Lien Claims (except with respect to the holdback) under both sections 78(2) and 78(6).

4. It must be emphasized that the arguments of the Objecting Lien Claimants rest entirely on their assertion that the re-registration of the KingSett Mortgage disentitles KingSett from retaining its existing priority over the Lien Claims, catapulting it from enjoying priority except for the holdback, to being entirely subordinate to the Lien Claims. As is set out in more detail below, the re-registration of the KingSett Mortgage was a procedural step which was executed solely to consolidate the Prior Commitment Letters and, in connection therewith, to charge certain

additional lands. The re-registered mortgage involved the same lender, the same borrower, the same advances and the same intention on the part of the mortgagee, being entirely to fund construction. As established by the uncontroverted evidence filed by the Receiver, this re-registration was required in order to add the additional lands to the charge, as this cannot be completed by way of amending a mortgage, but requires re-registration.¹

5. If the arguments of the Objecting Lien Claimants are accepted, the absurd result would be that a mortgagee would never be able to re-register or amend a mortgage to include additional lands without losing its existing priority position entirely to an unknown, future class of lien claimants who may later lien the project. This simply cannot be the intended result under the *Construction Act*, which as will be shown below is designed to balance the interests of lien claimants and mortgagees by giving lien holders priority over the holdback, while at the same time facilitating construction financing by ensuring that mortgagees retain priority for amounts beyond the holdback. The interpretation advanced by the Objecting Lien Claimants would have the exact opposite effect to this careful balancing, and would introduce substantial uncertainty into the priority position of mortgagees, chilling the ability to amend or refinance construction projects.

6. Further, none of the Objecting Lien Claimants address the central issue of whether the Lien Claims are Priority Payables. Pursuant to paragraph 12 of the AVO, only Priority Payables are entitled to be paid from the Lien Claimants' Reserve. As set out in the Receiver's Factum, the term "Priority Payables" is defined in the Sale Agreement as:

any payables that have priority over the Assumed Mortgages, excluding any Harmonized Sales Tax owing by the Debtors, but including amounts that have priority pursuant to s.78(2) of the Construction Act, RSO 1990, c C30, as

¹ See the Affidavit of Daniel Pollack sworn August 14, 2024 [Pollack Affidavit], at para. 19, in which the affiant states that the re-registration was done on the advice of counsel, who advised that an existing mortgage may not be amended to include additional charged lands. This evidence has not been addressed or refuted by the Objecting Lien Claimants, who did not file responding affidavit evidence, nor cross-examine on the affidavit.

determined by the Receiver in consultation with the Purchaser, both acting reasonably, or as determined by the Court, after application of any amount of cash on hand of the Debtors, excluding the Deposit, immediately prior to Closing.

7. The Assumed Mortgages have priority to the Lien Claims (except with respect to valid holdback claims) pursuant to section 78(6) of the *Construction Act* for the simple reason that they were registered after the time when the first lien arose, and (as acknowledged by the Objecting Lien Claimants) neither of the section 78(6) exceptions applies.

8. Finally, the Responding Factum of Fuller Landau Group Inc. additionally argues that it is somehow inappropriate for the Receiver to have taken a position on this motion. As is set out below, this objection is entirely baseless and is inconsistent with both the role of the Receiver and common practice in receiverships.

A. Section 78 is Intended to Balance the Interests of Lien Claimants and Mortgagees

9. Contrary to the submissions of the Objecting Lien Claimants, section 78 of the *Construction Act* is not intended to be interpreted to favour the interests of lien claimants, to the detriment of all other parties. The text of section 78 contains no such requirement; further, such a requirement would be fundamentally inconsistent with the purpose underlying section 78, which is intended to balance the legitimate interests of all parties, including both contractors and mortgagees.² Rather than being interpreted solely in favour of lien claimants, section 78 should be interpreted in a manner consistent with balancing the interests of all concerned parties.

10. Section 78 balances the interests of lien claimants and mortgagees by providing a general priority for lien claimants under section 78(1), which is in turn subject to a number of exceptions

² *BCIMC Construction Fund Corp. et al. v. 33 Yorkville Residences Inc et al.*, [2022 ONSC 2326](#) at para. 27 [*BCIMC* (SC)], aff'd [2023 ONCA 1](#) [*BCIMC* (CA)].

KINGSETT MORTGAGE CORPORATION

- and -

**MAPLEVIEW DEVELOPMENTS LTD., PACE
MAPLEVIEW LTD. and 2552741 ONTARIO INC.**

Applicant

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Court File No.: CV-24-00716511-00CL

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

Proceedings commenced at Toronto, Ontario

COMPENDIUM OF DUNSIRE HOMES INC.

Thornton Grout Finnigan LLP

100 Wellington Street West
Suite 3200, P.O. Box 329
Toronto, ON M5K 1K7

Robert I. Thornton (LSO# 24266B)

Tel: (416) 304-0560
Email: rthornton@tgf.ca

Alexander Soutter (LSO# 72403T)

Tel: (416) 304-0595
Email: asoutter@tgf.ca

Lawyers for Dunsire Homes Inc.