

File a Notice:

[24-10026-JKS Nexii Building Solutions Inc. and Nexii Building Solutions Inc.](#)

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U.S. Bankruptcy Court**District of Delaware**

Notice of Electronic Filing

The following transaction was received from Colin R. Robinson entered on 1/23/2024 at 12:19 PM EST and filed on 1/23/2024

Case Name: Nexii Building Solutions Inc. and Nexii Building Solutions Inc.

Case Number: [24-10026-JKS](#)

Document Number: [34](#)

Docket Text:

Notice of Service of *Notice of Filing of Conformed Verified Petition, Amended and Restated Initial CCAA Order, KERP Approval Order, and Sale Process and Origin Engagement Order* Filed by Nexii Building Solutions Inc., Nexii Building Solutions Inc. (Attachments: # (1) Exhibit 1 # (2) Exhibit 2 # (3) Exhibit 3 # (4) Exhibit 4) (Robinson, Colin)

The following document(s) are associated with this transaction:

Document description:Main Document

Original filename:4884-8362-3839.v3 Nexii-Notice of Filing CCAA Orders.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=1/23/2024] [FileNumber=18396402-0] [308ae4394a2dcf5da897d6c5462c63af16793fea621585ab7114a6798b4c9bda296ba9b575e27b4cc613af63e3884859eb98b3dc5283a0e0b7fac9104b789e7d]]

Document description: Exhibit 1

Original filename:C:\fakepath\Exh. 1 - Conformed Verified Petition.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=1/23/2024] [FileNumber=18396402-1] [7860d8458394fc410617eeaa442653bcd4933f4343bd8428c4fd6b172581399ed4b7fc05e0182d22fdd99bb3e8b9c1c20e45d38f5c3153989acf70895415725]]

Document description: Exhibit 2

Original filename:C:\fakepath\Exh. 2 - _Entered Amended and Restated Initial Order - January 22, 2024.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=1/23/2024] [FileNumber=18396402-2] [1eeec79ce6af4cf3e57c9ad75e606fa258c33593668642e5278a3bd99c0864b1d13f7e819bf5d49aa72a17f4e1ed4339a3455411e4396d707ee8f202ed65a33c]]

Document description: Exhibit 3

Original filename:C:\fakepath\Exh. 3 - _Entered KERP Approval Order - January 22, 2024.pdf

Electronic document Stamp:

[STAMP bkecfStamp_ID=983460418 [Date=1/23/2024] [FileNumber=18396402-3] [38a5c3680c9c51c0dd06975a3996f468855a27d99cef9d5c54d45c2b07bdc600f5d97339eb1a3131274f470672f1e0bba164731e56f5ac5119ab5d2d295fd439]]

Document description: Exhibit 4

Original filename:C:\fakepath\Exh. 4 - _Entered Sale Process and Origin Engagement Order - January 22, 2024.pdf

Electronic document Stamp:

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

NEXII BUILDING SOLUTIONS INC., et al.,¹

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 24-10026 (JKS)

(Jointly Administered)

**NOTICE OF FILING OF CONFORMED VERIFIED PETITION, AMENDED AND
RESTATED INITIAL CCAA ORDER, KERP APPROVAL ORDER, AND SALE
PROCESS AND ORIGIN ENGAGEMENT ORDER**

PLEASE TAKE NOTICE that, on January 11, 2024, Nexii Building Solutions Inc., as the authorized foreign representative (the “Foreign Representative”) of the above-captioned debtors (collectively, the “Debtors”), which are the subject of jointly-administered proceedings (the “CCAA Proceedings”) under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) in the Supreme Court of British Columbia (the “Canadian Court”) filed the *Motion for Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code* [Docket No. 9] (the “Provisional Relief Motion”).²

PLEASE TAKE FURTHER NOTICE that, on January 17, 2024, the Foreign Representative filed the *Conformed Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* [Docket No. 25] (the “Conformed Verified Petition”). A copy of the Conformed Verified Petition is attached hereto as **Exhibit 1**.

¹ The Debtors in these chapter 15 cases (the “Chapter 15 Cases”), along with the last four digits of each Debtor’s unique identifier, are Nexii Building Solutions Inc. (0911), Nexii Construction Inc. (1333), NBS IP Inc. (9930), and Nexii Holdings Inc. (5873). The Debtors’ service address for purposes of these Chapter 15 Cases is 1455 West Georgia Street, #200, Vancouver, British Columbia V6G 2T3.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Provisional Relief Motion.

PLEASE TAKE FURTHER NOTICE that, on January 17, 2024, the Court entered the *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code* [Docket No. 30] (the “Provisional Relief Order”). Pursuant to the Provisional Relief Order, the Initial CCAA Order was given full force and effect on a provisional basis.

PLEASE TAKE FURTHER NOTICE that, on January 22, 2024, the Canadian Court entered the Amended and Restated Initial CCAA Order, the KERP Approval Order, and Sale Process and Origin Engagement Order.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Provisional Relief Order, the Amended and Restated Initial CCAA Order shall be filed on the docket of these Chapter 15 Cases, served on the Core Notice Parties, and shall be given full force and effect on a provisional basis solely to the extent not inconsistent with the Initial CCAA Order.

PLEASE TAKE FURTHER NOTICE that, attached hereto as **Exhibit 2**, is the Amended and Restated Initial CCAA Order as entered by the Canadian Court; attached hereto as **Exhibit 3**, is the KERP Approval Order as entered by the Canadian Court; and attached hereto as **Exhibit 4**, is the Sale Process and Origin Engagement Order as entered by the Canadian Court.

[Remainder of page intentionally left blank.]

Dated: January 23, 2024

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Colin R. Robinson

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Exhibit 1

Conformed Verified Petition

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

NEXII BUILDING SOLUTIONS INC., et al.,¹

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 24-10026

(Joint Administration Requested)

**CONFORMED VERIFIED PETITION FOR (I) RECOGNITION OF FOREIGN
MAIN PROCEEDINGS, (II) RECOGNITION OF FOREIGN REPRESENTATIVE,
AND (III) RELATED RELIEF UNDER CHAPTER 15 OF THE BANKRUPTCY CODE**

Nexii Building Solutions, Inc., in its capacity as the authorized foreign representative (“NBSI” or the “Foreign Representative”) of the above-captioned debtors (collectively, the “Debtors”), which are the subject of jointly-administered proceedings under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36 (as amended, the “CCAA”) in the Supreme Court of British Columbia (the “CCAA Proceedings”), submits this conformed verified petition (together with the form petitions filed concurrently herewith, the “Conformed Verified Petition”) for recognition of the CCAA Proceedings with respect to each of the Debtors as “foreign main proceedings” and certain related relief pursuant to sections 105(a), 1507, 1510, 1515, 1517, and 1521 of title 11 of the United States Code (the “Bankruptcy Code”).

Relief Requested

1. In support of Conformed Verified Petition, the Foreign Representative has filed contemporaneously herewith (a) the *Declaration of Foreign Representative Pursuant to 11 U.S.C. § 1515 and Rule 1007(a)(4) of the Federal Rules of Bankruptcy Procedure and in Support of Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of*

¹ The Debtors in these chapter 15 cases (the “Chapter 15 Cases”), along with the last four digits of each Debtor’s unique identifier, are Nexii Building Solutions Inc. (0911), Nexii Construction Inc. (1333), NBS IP Inc. (9930), and Nexii Holdings Inc. (5873). The Debtors’ service address for purposes of these Chapter 15 Cases is 1455 West Georgia Street, #200, Vancouver, British Columbia V6G 2T3.

Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code (the “Tucker Declaration”) and (b) the *Declaration of Kibben Jackson in Support of Conformed Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief Under Chapter 15 of the Bankruptcy Code* (the “Jackson Declaration”), each of which are incorporated herein by reference.

Preliminary Statement

2. NBSI, Nexii Construction Inc. (“Nexii Construction”), NBS IP Inc. (“NBS IP”), and Nexii Holdings Inc. (“Nexii US” and, together with Nexii Construction, NBS IP, and NBSI, “Nexii”) are a green construction company that manufacture Nexiite, a proprietary material that is a sustainable alternative to conventional concrete which is formed into panels used in construction projects. Nexiite is strong and lightweight—weighing 15 – 20% less than precast concrete alternatives— in addition to being recyclable, energy efficient, and resistant to fire, water, and mold. Nexiite is a low-carbon alternative to concrete that, since 2010, has been installed in numerous buildings, including new-builds and retrofits of both industrial and commercial structures.

3. The Debtors face significant liquidity constraints and are in default of approximately \$79 million² owing, collectively, to various creditors, including suppliers and their primary secured creditors. The Debtors require immediate additional funding to meet operating expenses, including their next payroll cycle, which is paid in arrears and scheduled to be paid on January 12, 2024. However, the Debtors’ only viable source of funding at this time is from the Senior Secured Lenders (as defined below), who have advised that they are unwilling to advance further funds without a clear path to selling the business through an orderly, court-supervised sale

² Unless otherwise noted, all amounts are provided in U.S. Dollars.

further funds without a clear path to selling the business through an orderly, court-supervised sale process (the “Sale Process”).

4. With the support of the Senior Secured Lenders, the Debtors³ commenced the CCAA Proceedings on January 11, 2024 and these proceedings to obtain financing to meet critical expenses and to facilitate the sale (or sales) of the businesses as a going concern. Doing so will preserve value and, to the extent possible, operations as a going concern, to the benefit of stakeholders in Canada and the United States, including employees, customers, suppliers, and contracting parties.

5. On January 11, 2024, the Debtors commenced the CCAA Proceedings with the Supreme Court of British Columbia (the “Canadian Court”) pursuant to the CCAA with the goal of pursuing the Sale Process and restructuring operations under the protections offered by the CCAA. On January 11, 2024, the Canadian Court entered an interim order (the “Initial CCAA Order”). Among other things, the Initial CCAA Order provides for (i) the appointment of KSV Restructuring Inc. (“KSV” or the “Monitor”) as the monitor with enhanced powers; (ii) a stay of proceedings against the Debtors; (iii) the continued implementation of the Debtors’ cash management system; (iv) the provision of debtor in possession financing from the Senior Secured Lenders (the “DIP Financing”); and (v) various administration and directors’ charges. In addition, the Initial CCAA Order scheduled a further hearing (the “Comeback Hearing”) for January 22, 2024 at 10:00 a.m. (prevailing Pacific time), at which hearing the Debtors will seek the approval of an amended and restated initial order (the “Amended and Restated Initial CCAA Order”),

³ Certain of the Debtors’ affiliates—Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Ltd., Grant & Sinclair Architects Ltd., Omicron Interiors Ltd. and Omicron Construction Ltd. (collectively, the “Omicron Entities”)— are neither petitioners in the CCAA Proceeding nor Debtors in these Chapter 15 Cases. The Omicron Entities are in the business of design, building and construction of large commercial and residential projects in Western Canada. The Omicron Entities were founded in 1998, and NBSI acquired the Omicron Entities in 2021.

approval of procedures to govern the Sale Process, and the approval of a key employee retention plan (“KERP”), among other relief.

6. The Debtors have now commenced these Chapter 15 Cases to facilitate the fair and efficient administration of the CCAA Proceedings and to complete the Sale Process for their assets. These Chapter 15 Cases serve a critical role in effectuating the sale of the Debtors’ business and assets which will be implemented as part of an extensive process conducted through the CCAA Proceedings. Specifically, these Chapter 15 Cases will prevent the Debtors’ stakeholders, many of whom have contacts with the United States and are subject to personal jurisdiction of the Court, from commencing actions in the United States that are more properly the subject of the CCAA Proceedings or that will interfere with the Debtors’ restructuring process. Recognition of the CCAA Proceedings will, among other things, ensure that the Sale Process, as implemented through the CCAA Proceedings, is respected in the United States. For the reasons set forth herein, the Foreign Representative submits that the relief requested in this Conformed Verified Petition is necessary and appropriate for the benefit of the Debtors, their creditors, and other parties in interest.

7. Accordingly, the Foreign Representative respectfully requests entry of an order (the “Order”): (a) granting the Conformed Verified Petition and recognizing the CCAA Proceedings as “foreign main proceedings,” pursuant to section 1517 of the Bankruptcy Code; (b) recognizing the Foreign Representative as a “foreign representative” of the Debtors as defined in section 101(24) of the Bankruptcy Code; (c) recognizing and enforcing the Initial CCAA Order and the Amended and Restated Initial CCAA Order; (d) applying sections 361, 362, and 365(e) of the Bankruptcy Code in these Chapter 15 Cases pursuant to sections 105(a), 1507, and 1521 of the Bankruptcy Code; (e) finding that the Conformed Verified Petition meets the requirements of section 1515 of the Bankruptcy Code; (f) providing that no action taken by the Foreign

Representative in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of the CCAA Proceedings and Sale Process, any order entered in respect of this Conformed Verified Petition, these Chapter 15 Cases, any further order for additional relief in these Chapter 15 Cases, or any adversary proceedings or contested matters in connection therewith, will be deemed to constitute a waiver of any immunity afforded the Foreign Representative, including without limitation pursuant to section 1510 of the Bankruptcy Code; and (g) granting such other relief as the Court deems just and proper.⁴ A proposed form of the Order is attached hereto as **Exhibit A**.

Jurisdiction and Venue

8. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (the “Amended Standing Order”). The Foreign Representative confirms its consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), to the entry of a final order by the Court in connection with the Conformed Verified Petition to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

9. These Chapter 15 Cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code by the filing of petitions for recognition of the CCAA Proceedings under section 1515 of the Bankruptcy Code.

⁴ The Foreign Representative has also filed the *Motion for Provisional Relief Pursuant of Section 1519 of the Bankruptcy Code* (the “Provisional Relief Motion”) concurrently herewith.

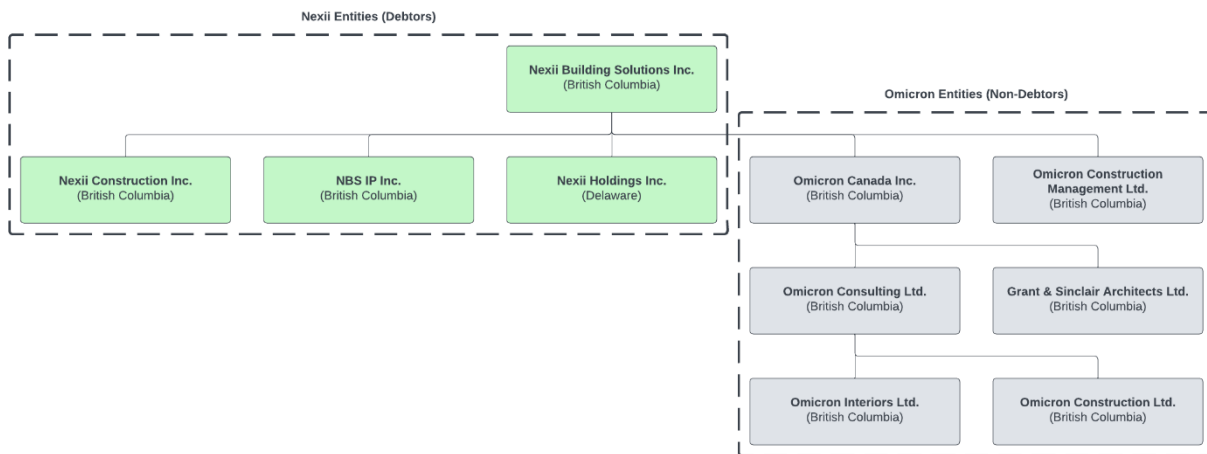
10. Venue is proper pursuant to 28 U.S.C. § 1410(1) and (3). Of the four Debtors, one is incorporated in Delaware, and the Debtors otherwise have property in Delaware in the form of contract rights, corporation stock, and funds on retainer with Delaware counsel or have affiliates whose Chapter 15 Cases are pending in this district.

11. The statutory bases for the relief requested herein are sections 105(a), 1504, 1507, 1510, 1515, 1517, and 1521 of the Bankruptcy Code.

Background

I. The Debtors’ Corporate Structure and Leadership.

12. NBSI, a corporation incorporated in British Columbia, Canada, is the direct parent of each of the other three Debtors. Nexii Construction and NBS IP are corporations incorporated in British Columbia, Canada and Nexii US is a corporation incorporated in Delaware. Nexii US employs Nexii’s five US-based employees, but it does not have significant assets and all US contracts are with NBSI. In addition, NBSI is the direct or indirect parent of six other entities (collectively, the “Omicron Entities”), none of which are petitioners in the CCAA Proceedings or Debtors in these Chapter 15 Cases. The Debtors’ and Omicron Entities’ organizational chart is as follows:



13. NBSI's equity, though not publicly traded, is widely held; as of the Petition Date, there are approximately 1,500 holders of NBSI's common stock.

14. In the months leading to the commencement of the CCAA Proceedings, the Debtors had a number of senior management changes, including the departures of their former Chief Executive Officer, Executive Vice President of Manufacturing, Vice President of Investor Relations, and Vice President of Finance. As of the Petition Date, the senior management of the Debtors are William Tucker (the Acting Chief Executive Officer) and David Bryant (a Senior Executive Advisor).

II. The Debtors' Business Operations.

A. Overview.

15. The Debtors are a green construction company that uses its proprietary material, Nexiite, to manufacture high performance cladding and structural wall panels ("Nexiite Panels") which are used in the construction of high-performance buildings. The Nexiite Panels and their construction configurations are lightweight, more sustainable than concrete, and result in buildings that are recyclable, energy efficient, and resistant to fire, water, and mold. Nexiite is a low-carbon alternative to concrete that, since 2010, has been installed in numerous buildings, including new-builds and retrofits in both commercial and industrial structures.

16. As of the Petition Date, the Debtors have leases for a main office in Vancouver, British Columbia (the "Vancouver Headquarters"), a manufacturing facility in Squamish, British Columbia (the "Squamish Facility"), and a manufacturing facility in Moose Jaw, Saskatchewan (the "Moose Jaw Facility"). Other than the Squamish Facility, the Debtors no longer require these premises as the Debtors no longer perform active operations in the Vancouver Headquarters and Moose Jaw Facility.

17. As of December 20, 2023, Debtor NBSI has 137 employees, 75 of whom work at the Squamish Facility and 62 work at the Vancouver Headquarters. Debtor Nexii US has five employees in the United States, all of whom work remotely. Debtors Nexii Construction and NBS IP have no employees.

B. The Debtors' Assets.

18. In addition to Nexiite Panels and their other operating assets, the Debtors' other assets include intellectual property and various contracts for projects, including use of Nexiite. As of November 30, 2023, Nexii's assets had a total estimated book value of approximately CA\$69 million. Below is the summary from Nexii's most recent balance sheet dated as of November 30, 2023:

Description	Book Value (CAD, \$000s)
Cash	3,163
Accounts receivable	4,579
Inventory	2,595
Prepaid expenses and deposits	2,405
Property, plant and equipment	25,373
Intangible assets	895
Investment	30,662
Other assets	320
Total Assets	69,992
Accounts payable and accrued liabilities	15,416
Contract liabilities, refundable deposits and provisions	4,031
Lease obligations	13,297
Long-term debt	96,173
Net Due to Intercompany	1,462
Preferred shares and subscription deposits	12,930
Derivative liabilities	4,921
Due to related parties	4,408
Total Liabilities	152,638
Equity	(82,646)
Total Liabilities & Equity	69,992

III. The Debtors' Capital Structure.⁵

A. Senior Secured Loans.

19. The Debtors'⁶ primary secured creditors are Powerscourt Investments XXV, LP ("PC LP") as lender, Powerscourt Investments XXV Trust as assignee of PC LP as lender, Trinity Capital Inc. as lender, Horizon Technology Finance Corporation ("Horizon") as lender, Horizon Credit II LLC as assignee of Horizon as lender, Horizon Funding I LLC as assignee of Horizon as lender, and Horizon Funding Trust 2022-1 as assignee of Horizon as lender (collectively, the "Senior Secured Lenders").

20. The Debtors' debt to the Senior Secured Lenders is for loans and credit facilities (collectively, the "Loans") made available pursuant to, among other things, an Amended and Restated Venture Loan and Security Agreement dated as of June 8, 2022 (as amended from time to time, the "Loan Agreement") entered into between Horizon, as collateral agent for and on behalf of the Senior Secured Lenders, each of the Senior Secured Lenders, and the Debtors and Omicron Entities.

21. The Senior Secured Lenders advanced nine loans under the Loan Agreement in the aggregate principal amount of \$60,000,000. Each of the Senior Secured Lenders have advanced Loans, documented in promissory notes. As among the Senior Secured Lenders, there have been various assignments of the right, title, and interest in and to the Loans.

22. The Senior Secured Lenders advanced nine loans under the Loan Agreement in the aggregate principal amount of \$60,000,000. Each of the Senior Secured Lenders have advanced

⁵ The summaries provided herein are qualified in their entirety by the provisions of the relevant credit documents.

⁶ The Omicron Entities are also obligors on the Loans (as defined herein).

Loans, documented in promissory notes. As among the Senior Secured Lenders, there have been various assignments of the right, title, and interest in and to the Loans.

23. Following the failure to pay amounts due and owing under the Loan Agreement, the Senior Secured Lenders noticed events of default under the Loan Agreement and made a formal demand for payment in a letter dated June 21, 2023 to the Debtors (the “Demand”). According to the Demand, the Debtors owed approximately \$66 million in principal and interest to the Senior Secured Lenders as of such date, plus accruing interest and costs (the “Indebtedness”).

24. The Debtors and Senior Secured Lenders entered into an accommodation agreement on June 21, 2023 (the “Accommodation Agreement”). As part of the Accommodation Agreement, the Senior Secured Lenders agreed to make additional funds available to the Debtors in multiple tranches, up to \$5 million, but ultimately advanced an aggregate sum of \$7,000,000 in the form of secured promissory notes. The key terms of the Loan Agreement and the Accommodation Agreement included: (a) interest at a rate of the prime rate published in the Wall Street Journal, plus 7.00% per annum (with a minimum rate of 10.25% per annum); (b) upon an event of default, the interest rate increases by 5.00% per annum; (c) upon an event of default under the Loan Agreement or the Accommodation Agreement, all amounts owing become immediately due and payable; and (d) each of the Debtors and Omicron Entities is joint and severally liable for all obligations owing under the Loan Agreement.

25. Following the expiration of the Accommodation Agreement and related forbearance, the Debtors notified the Senior Secured Lenders of continued, significant liquidity constraints and the inability to continue operations without additional financing. In response, the Senior Secured Lenders advised the Debtors that they were unwilling to advance further funds without a clear path to selling the business through an orderly, court-supervised process.

26. In order to maintain sufficient liquidity and stability, the Debtors and the Senior Secured Lenders entered into an Amended and Restated Accommodation Agreement effective December 15, 2023 (the “A&R Accommodation Agreement”). Pursuant to the A&R Accommodation Agreement, the Senior Secured Lenders agreed to make additional funding available and forbear from exercising their rights and remedies, provided certain conditions were met. These conditions included commencing the CCAA Proceedings in the Canadian Court and a chapter 15 proceeding in the United States for recognition of the CCAA Proceedings thereafter.

27. As of January 2, 2024, the Debtors owe the Senior Secured Lenders approximately \$79 million and are in default under agreements with the Senior Secured Lenders, including: (a) since April 2023, failing to pay amounts owing under the Loan Agreement; and (b) granting unpermitted liens on certain property.

B. Other Secured Liabilities.

28. In addition to the indebtedness owing to the Senior Secured Lenders, the Debtors also have various leased equipment, including vehicles, office equipment, and industrial machinery. Approximately CA\$625,000 remains owing to those creditors.

29. For certain projects, the Debtors are required to obtain project bonding. Accordingly, in March 2023, the Debtors entered into an indemnity agreement in favour of Tokio Marine Canada (“TMC”) in connection with bonds issued by TMC. The indemnity agreement included a security interest in favour of TMC. Nexii also has an indemnity agreement with Trisura Guarantee Insurance Company (“Trisura”) for bonds issued by Trisura. If the Debtors are unable to continue their operations, the bonds would likely be drawn, triggering corresponding liability of the Debtors under the indemnity agreement of approximately CA\$2 million.

C. Unsecured Creditors.

30. The Debtors are behind on approximately CA\$5.6 million owing to various trade creditors and service providers.

31. NBSI is in default of amounts owing to its landlord for the Vancouver head office, with approximately CA\$950,000 owing in base rent arrears.

32. In addition to certain litigation pending against the Debtors in Canada, the following legal actions involving NBSI are pending in the United States:

- a. *Nexii Building Solutions Inc. v. NexUS 1, LLC et al.*, Case No. 1:22-cv-01619-RGA (D. Del. December 22, 2022)
- b. *Nexus 1, LLC et al. v. Sidwell et al.*, Case No. 2:23-cv-00216-KNS (E.D. Pa. January 19, 2023)
- c. *Nexii Building Solutions Inc. v. Nexus 1, LLC et al.*, Case No. 2:23-cv-00398-MMB (E.D. Pa. January 31, 2023)

IV. Prepetition Financial Distress and Ongoing Restructuring Efforts.

33. Beginning in 2021, the Debtors pursued aggressive growth, including expansion of their facilities and operations. The financing from investors and the Senior Secured Lenders funded this expansion.

34. The Debtors' expansion included a license pursuant to a Nexii Certified Manufacturing Agreement for a manufacturing facility in Pennsylvania. The counterparty under this agreement did not pay their initial licensing fee (CA\$5 million) and was unable to perform due to lack of working capital. The agreement ultimately came at significant cost to Nexii. Nexii worked, with no compensation, for over a year, to assist in delivering the contracted business under the Certified Manufacturing Agreement in order to protect the Nexii brand from potential project defaults.

35. Following this expansion effort, Nexii's business grew, but not to the extent

anticipated, and the costs were high relative to revenue. The Debtors were also unable to service their obligations under the Loan Agreement.

36. In 2021, Nexii realized that the product cost structure required significant rework to achieve a competitive price position in the marketplace. Over the past two years, Nexii has performed extensive redesign and testing necessary to reengineer the product so that it was competitive and profitable in the marketplace. Although the company was successful in the reengineering, and the product demonstrated strong profitability in late in 2023, Nexii had consumed significant capital over the prior 24 months.

37. Despite these challenges, senior management believes that Nexii has significant value, and the underlying business has strong potential now that Nexiite has been successfully reengineered. In particular, senior management believes that the proprietary materials and technology have value in today's market, where a premium is being placed on sustainable and environmentally conscious building practices.

38. In response to its financial challenges, Nexii reduced its costs, and began discussions with the Senior Secured Lenders, including to develop a strategy to preserve value. These cost reduction steps included: (a) two staff-level adjustments (in January 2023 and fall 2023) that resulted in the termination of over 40% of NBSI's staff; (b) shutting down operations at the Moose Jaw Facility; and (c) significantly reducing selling, general and administrative expenses.

39. Despite these steps, in or about April 2023, and as described above, the Debtors failed to make the scheduled payment owing under the Loan Agreement, and their defaults have continued through to the present.

40. As noted above, following these missed payments, the Senior Secured Lenders issued the Demand in June 2023. Accordingly, Nexii has been in ongoing discussions with the

Senior Secured Lenders regarding the appropriate next steps and funding requirements. The Senior Secured Lenders have made incremental funding available and entered into the Accommodation Agreement in June 2023 and the A&R Accommodation Agreement in December 2023.

41. Nexii requires additional funding to meet critical obligations (including payroll), which, at this time, will only be available in these proceedings through an interim financing facility (the “Interim Loan”), secured by a charge in the CCAA Proceedings.

42. The Debtors and the Senior Secured Lenders entered into a restructuring support term sheet (the “Support Term Sheet”), pursuant to which the Senior Secured Lenders agreed to support Nexii in commencing the CCAA Proceedings and these Chapter 15 Cases. The Support Term Sheet contemplates, among other things, commencing insolvency proceedings in Canada and the United States and provision of certain interim financing.

43. Such proceedings and financing is necessary because if the Senior Secured Lenders were to enforce their rights under the Loan Agreement, it would likely be destructive to the business and value of the Debtors. In particular, the value and continuity of certain contracts would be jeopardized and at risk in enforcement proceedings.

V. The CCAA Proceedings.

44. On January 11, 2024, with the support of the Senior Secured Lenders, the Debtors commenced the CCAA Proceedings with the Canadian Court pursuant to sections 9, 11, 11.51, 11.52, and 23 of the CCAA with the goal of facilitating an expeditious, orderly Sale Process to facilitate the sale (or sales) of the business as a going concern and maximize the value of the Debtors’ assets for all parties.

A. Overview of Initial Relief Obtained in CCAA Restructuring Process.

45. The Debtors sought the following relief through their initial application in the Canadian Proceeding:

- a. ***Appointment of Monitor and Enhanced Powers.*** The Debtors obtained approval an order appointing KSV Restructuring Inc. (“KSV”) as Monitor of the Debtors in the CCAA Proceedings and for KSV’s powers to include, among other things, the ability to exercise of any powers of the Debtors’ boards of directors and to cause the Debtors’ to perform such functions as KSV considers necessary to facilitate the Sale Process and the ultimate winding-down and liquidation of the Debtors, as applicable.
- b. ***Stay of Proceedings.*** The Debtors obtained a stay of proceedings during the pendency of the CCAA Proceedings both for themselves and for the Omicron Entities.
- c. ***Cash Management System.*** The Debtors were authorized to continue use of their pre-bankruptcy cash management system and fund certain of their ongoing obligations otherwise paid through their existing cash management system.
- d. ***Cash Flow Forecast and Interim Loan Approval.*** The Debtors obtained approval of the Interim Loan on the terms described in the Interim Facility Term Sheet and summarized below:

Summary of Certain Key Terms of the DIP Loan ⁷	
Lenders	Powerscourt Investments XXV Trust, Trinity Capital Inc., Horizon Technology Finance Corporation and Horizon Credit II LLC
Borrowers	The Petitioners, jointly and severally.
Maximum Availability	Maximum Amount: \$4,300,000 (non-revolving) Initial Advance: \$750,000
Interest	15.5% per annum, compounded and calculated weekly; added to the principal amount on the first day of each month
Fees	2% of the Maximum Amount (\$86,000) Payable: \$15,000 from the Initial Advance, and the balance payable from the first advance after the Amended and Restated Initial Order is made authorizing the Maximum Amount

⁷ Capitalized terms used but not defined in this summary chart shall have the meaning given to them in the Support Term Sheet. Copies of the Support Term Sheet will be made available to the Court or appropriate parties in interest upon written request to the Debtors’ counsel. The Support Term Sheet may also be found on the Monitor’s website at www.ksvadvisory.com/experience/case/Nexii.

Summary of Certain Key Terms of the DIP Loan ⁷	
Costs and Expenses	All reasonable and documented fees, costs and expenses of the Interim Lenders, including legal fees and financial advisor, that are incurred in connection with these CCAA proceedings.
Use of Funds	In accordance with cash flow projections, and include costs of the CCAA proceedings, operating expenses and amounts payable under the Interim Facility Term Sheet.
Maturity	April 30, 2024, unless extended by the Interim Lenders (in their discretion) or terminated earlier because of, among other things, an Event of Default, closing of a transaction for all or substantially all of the assets and business of the Borrowers.
Certain Key Conditions Precedent to Initial Advance	<ul style="list-style-type: none"> • Bringing the application for the Initial Order no later than January 11, 2024 • KSV Restructuring Inc. being appointed as Monitor, with powers as are acceptable to the Interim Lenders (in their sole discretion) • The Borrowers engaging the IB prior to the Initial Order to assist in the Sale Process • The Initial Order is made and approves the Initial Advance and grants a charge for the Initial Advance • The Interim Lenders' Charge has priority over all Liens, except the Charges • The Initial Cash Flow Projections shall be acceptable to the Interim Lenders
Certain Key Conditions Precedent to Subsequent Advances	<ul style="list-style-type: none"> • Bringing the application for the Amended and Restated Initial Order no later than January 22, 2024 • The Amended and Restated Initial Order is made and approves the Maximum Advance and increased the charge to secure all amounts owing under the Interim Facility Term Sheet • The Interim Lenders' Charge shall have priority over all Liens, except for the Charges • The amounts requested are consistent with the Updated Cash Flow Projects, unless otherwise agreed by the Interim Lenders in advance • The Sale Process terms and conditions, including milestones, are approved by the Court in form and substance satisfactory to the Monitor and the Interim Lenders • All representations and warranties are true, and there are no events of default • The Borrowers bring a motion to obtain Chapter 15 Recognition of the CCAA proceedings no later than February 2, 2024

Summary of Certain Key Terms of the DIP Loan ⁷	
Events of Default	<p>Events of Default include:</p> <ol style="list-style-type: none"> 1. Failure to pay amounts when due under the Interim Facility Term Sheet or any other breach of covenants 2. If the Sale Process is not made by January 22, 2024 3. If I resign as CEO of Nexii prior to the Maturity Date 4. If the cumulative disbursements and receipts have a variance of greater than 15% of the cumulative budget, measured on a weekly basis 5. If the Interim Facility Term Sheet or related documents cease to be effective or are contested by a Borrower 6. The CCAA Proceedings are terminated or converted into proceedings under the BIA, or an order is made granting relief from the stay of proceedings (unless agreed by the Interim Lenders) 7. The Borrowers make material payments that aren't permitted under the Interim Facility Term Sheet, the Cash Flow Projections or any Court order 8. The Borrowers make any distributions or payments to the Omicron Entities
Security and Interim Lenders' Charge	The Interim Lenders' Charge, covering all the Borrowers' present and future assets, property and undertaking.
Priority of the Interim Lenders' Charge	In priority to all other security interests, encumbrances and charges except for (i) the Administration Charge, (ii) the Directors' Charge, (iii) the KERP Charge, and (iv) the IB Charge.

- e. **Administration Charge.** The Debtors obtained approval of a priority charge over their assets in favor of their counsel, the Monitor, and the Monitor's counsel (the "Administration Charge") in the initial amount of CA\$500,000 as the Debtors require the expertise, knowledge, and continuing participation of their counsel, the Monitor, and the Monitor's counsel in the CCAA Proceedings and these Chapter 15 Cases.
- f. **Directors' Charge.** The Debtors obtained approval of a charge in the amount of CA\$1,040,000 over the Debtors' Property (the "Directors' Charge") to secure the indemnity of the Directors and Officers in respect of obligations and liabilities that they may incur during the CCAA Proceedings in their capacities as Directors and Officers.

46. On January 11, 2024, the Canadian Court entered the Initial CCAA Order. The

Initial CCAA Order includes a "no default" provision as follows:

The granting of this Order, the Application and any affidavits and other materials filed in support of the Application shall not, in in and of themselves, constitute a

default or failure to comply by the Debtors under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.

Initial CCAA Order, ¶ 18.

47. In addition, the Initial CCAA Order expressly requests that courts in the United States recognize the CCAA Proceedings to aid and assist the Canadian Court in carrying out the terms of the Initial CCAA Order. Paragraphs 52 and 53 of the Initial CCAA Order provides, in relevant part:

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

Each of the Petitioners and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and Nexii Business Solutions Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

Id. at ¶¶ 55 – 56.

48. Recognition of the CCAA Proceedings will not undermine the rights that United States creditors typically enjoy in a chapter 11 proceeding, as affected creditors will have the opportunity to the participate in the sales process and the CCAA Proceedings under the supervision of the Canadian Court.

B. Overview of Relief to be Sought at the Comeback Hearing.

49. The Debtors will seek the following relief at the Comeback Hearing before the Canadian Court:

- a. ***Key Employee Retention Plan.*** The Debtors will seek approval of a KERP to assist with the Sale Process and administration of the CCAA Proceedings.
- b. ***Sale Process.*** The Debtors will seek approval of procedures to govern the Sale Process.
- c. ***Financial Advisor.*** The Debtors will seek approval to retain Origin Merchant Partners as their investment banker in connection with the Sale Process and CCAA Proceedings more broadly.

VI. The CCAA Proceedings Are Foreign Main Proceedings.

50. To ensure the effective and economic administration of the Debtors' restructuring efforts, prevent the disruption of business, and recognize the legal effect of the CCAA Proceedings in the United States, the Debtors require the protection afforded to foreign debtors pursuant to chapter 15 of the Bankruptcy Code.

Basis For Relief

51. Chapter 15 of the Bankruptcy Code is designed to protect and maximize the value of a debtor's assets and to facilitate the rehabilitation and reorganization of businesses. The relief afforded to a foreign debtor under chapter 15 is intended to avoid disruptions that could otherwise derail a debtor's restructuring in its home country.

52. Consistent with these principles, the Foreign Representative commenced ancillary proceedings for the Debtors under chapter 15 of the Bankruptcy Code to obtain recognition of the CCAA Proceedings and certain related relief. The Foreign Representative believes that these Chapter 15 Cases will complement the Debtors' primary proceedings in Canada to ensure the effective and economic administration of the Debtors' restructuring efforts and prevent adverse

actions in the United States. Further, the Foreign Representative submits that recognition of the CCAA Proceedings and the related relief requested herein will not undermine the rights that United States creditors typically would enjoy in a chapter 11 proceeding, as creditors will have the right to participate in the CCAA Proceedings.

I. The Debtors Are Eligible for Chapter 15 Relief.

53. Section 109(a) of the Bankruptcy Code provides that “only a person that resides or has a domicile, a place of business, or property in the United States . . . may be a debtor under this title.” Courts have applied section 109(a) of the Bankruptcy Code to chapter 15 eligibility. *See, e.g., Drawbridge Special Opp. Fund LP v. Barnett (In re Barnett)*, 737 F.3d 238, 247 (2d Cir. 2013). Decisions interpreting section 109(a) of the Bankruptcy Code as applied to foreign debtors under other chapters of the Bankruptcy Code unanimously hold that a debtor satisfies the section 109 requirement even when it only has a nominal amount of property in the United States. *See GMAM Inv. Funds Trust I v. Globo Comunicacoes e Participacoes S.A. (In re Globo Comunicacoes e Participacoes S.A.)*, 317 B.R. 235, 249 (S.D.N.Y. 2004) (stating that courts have repeatedly found that there is “‘virtually no formal barrier’ to having federal courts adjudicate foreign debtors’ bankruptcy proceedings”) (citing *In re Aerovias Nacionales de Colombia S.A. (In re Avianca)*, 303 B.R. 1, 9 (Bankr. S.D.N.Y. 2003)); *see also In re Global Ocean Carriers Ltd.*, 251 B.R. 31, 38-39 (Bankr. D. Del. 2000) (holding that approximately \$10,000 in a bank account and the unearned portions of retainers provided to local counsel constituted a sufficient property interest for chapter 15 purposes). Effectively, if a debtor has any property in the United States, section 109(a) of the Bankruptcy Code is satisfied.

54. For purposes of satisfying section 109(a) of the Bankruptcy Code’s requirement that a debtor must have property in the United States in order to be a debtor, courts have held that

contracts governed by United States law, a retainer held by United States counsel, or claims or causes of action against United States entities are each sufficient to allow a foreign entity to be a chapter 15 debtor. *In re Ocean Rig UDW Inc.*, 570 B.R. 687, 699–700 (Bankr. S.D.N.Y. 2017) (“The Foreign Debtors satisfy section 109(a)'s requirement of property in the United States. Each of the four Foreign Debtors paid its New York counsel a separate \$250,000 retainer, for a total of \$1 million, currently held in counsel's client trust account in New York, where they will remain pending final billing in these proceedings.”); *In re Berau Capital Res. Pte Ltd*, 540 B.R. 80, 82 (Bankr. S.D.N.Y. Oct. 28, 2015) (“The Court concludes that the presence of the New York choice of law and forum selection clauses in the [indenture] satisfies the section 109(a) ‘property in the United States’ eligibility requirement.”); *In re Octaviar Admin. Pty Ltd*, 511 B.R. 361, 370 (Bankr. S.D.N.Y. 2014) (“Octaviar possessed property in the form of claims or causes of action sufficient to satisfy section 109(a) of the Bankruptcy Code.”).

55. Each of the Debtors is eligible to be a debtor under section 109(a) of the Bankruptcy Code because they have property in the United States in the form of tangible assets, corporation stock, contract rights, a retainer in counsel’s Delaware trust account, and causes of action arising under United States law. Finally, one of the Debtors is an entity incorporated in the United States with its principal assets located in the United States. For these reasons, the Debtors satisfy the requirements under section 109(a) of the Bankruptcy Code.

II. The CCAA Proceedings Should Be Recognized as Foreign Main Proceedings.

56. Section 1517(a) of the Bankruptcy Code provides that, after notice and hearing, a court shall enter the Order recognizing a foreign proceeding as a foreign main proceeding if (a) such foreign proceeding is a foreign main proceeding within the meaning of section 1502 of the Bankruptcy Code; (b) the foreign representative applying for recognition is a person or body;

and (c) the petition meets the requirements of section 1515 of the Bankruptcy Code. *See* 11 U.S.C. § 1517. As explained below, the CCAA Proceedings, the Foreign Representative, and the Conformed Verified Petition satisfy all of the foregoing requirements.

A. The CCAA Proceedings Are Foreign Proceedings.

57. Section 101(23) of the Bankruptcy Code defines a “foreign proceeding” as:

a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation.

58. Courts have held that a “foreign proceeding” is one:

- a. in which “acts and formalities [are] set down in law so that courts, merchants and creditors can know them in advance, and apply them evenly in practice;”
- b. that has either a judicial or an administrative character;
- c. that is collective in nature, in the sense that the proceeding considers the rights and obligations of all creditors;
- d. that is located in a foreign country;
- e. that is authorized or conducted under a law related to insolvency or the adjustment of debt, even if the debtor that has commenced such proceedings is not actually insolvent;
- f. in which the debtor’s assets and affairs are subject to the control or supervision of a foreign court or other authority competent to control or supervise a foreign proceeding; and
- g. which proceeding is for the purpose of reorganization or liquidation.

See In re Agro Santino, OOD, 653 B.R. 79, 89 (Bankr. S.D.N.Y. 2023) (citing *In re Ashapura Minechem Ltd.*, 480 B.R. 129, 136 (S.D.N.Y. 2012); *see also In re Overnight and Control Comm’n of Avánzit, S.A.*, 385 B.R. 525, 533 (Bankr. S.D.N.Y. 2008) (discussing factors). As set forth in

the Jackson Declaration, the CCAA Proceedings satisfy such requirements and, therefore, qualify as “foreign proceedings” for purposes of section 101(23) of the Bankruptcy Code.

59. **First**, the CCAA Proceedings are proceedings commenced pursuant to the CCAA, a Canadian law that governs corporate reorganizations and provides for an arrangement of a company’s financial obligations. *See* CCAA § 44(a–e). For purposes of chapter 15 recognition, “the hallmark of a ‘proceeding’ is a statutory framework that constrains a company’s actions and that regulates the final distribution of a company’s assets.” *In re Irish Bank Resol. Corp. Ltd.*, 538 B.R. 692, 697 (D. Del. 2015) (quoting *In re Betcorp*, 400 B.R. 266, 278 (Bankr. D. Nev. 2009)). Because the CCAA Proceedings operate under such statutory framework, they satisfy the first factor of section 101(23) of the Bankruptcy Code.

60. **Second**, the CCAA Proceedings are judicial in character. A reorganization proceeding is judicial in character whenever a “court exercises its supervisory powers.” *In re ABC Learning Ctrs. Ltd.*, 445 B.R. 318, 328 (Bankr. D. Del. 2010). Here, the Debtors will petition the Canadian Court for an order approving the Sale Process. After proper notice and hearing, the Canadian Court may then sanction the Sale Process and approve the sale of the Debtors’ assets to the winning bidder, having considered the statutory requirements under the CCAA, including the adequacy of the marketing process and any related objections thereto.

61. **Third**, the CCAA Proceedings are collective in nature in that all affected creditors are allowed to participate. In *Betcorp*, for instance, the bankruptcy court discussed the contrasts between a true collective proceeding, where such proceeding “considers the rights and obligations of all creditors” and a non-collective proceeding, such as a “receivership remedy instigated at the request, and for the benefit, of a single secured creditor.” *See* 400 B.R. at 281. Here, the Debtors have commenced the CCAA Proceedings after consultation with various parties in interest. In

addition, affected creditors are entitled to intervene while the Sale Process is implemented and the Canadian Court considers the sale of the Debtors' assets. Importantly, the CCAA Proceedings will not prohibit the Debtors' creditors from participating in the Debtors' restructuring efforts.

62. **Fourth**, the CCAA Proceedings, including the Canadian Court, are located in a foreign country, namely British Columbia, Canada.

63. **Fifth**, as described above, the CCAA, which governs the CCAA Proceedings, relates to the adjustment of debt. Here, the Debtors intend to implement the Sale Process to satisfy various of their pre-bankruptcy funded indebtedness.

64. **Sixth**, the CCAA Proceedings subject the Debtors' assets and affairs to the supervision of the Canadian Court during the pendency of the proceedings.

65. **Finally**, the objective of the CCAA Proceedings is to effectuate a restructuring. Any sale of the Debtors' business and disbursements of the proceeds therefrom will be overseen by the Canadian Court pursuant to the CCAA and the court-appointed Monitor. Therefore, the Foreign Representative submits that the Debtors have commenced the CCAA Proceedings for the purpose of reorganization, as required by section 101(23) of the Bankruptcy Code.

66. Since the CCAA Proceedings satisfy all of the criteria required by section 101(23) of the Bankruptcy Code, they are foreign proceedings entitled to recognition under chapter 15 of the Bankruptcy Code. United States courts have frequently recognized collective proceedings similar to the CCAA Proceedings as "foreign proceedings." *See, e.g., In re Lighthouse Immersive Inc.*, No. 23-11021 (LSS) (Bankr. D. Del. Jul. 27, 2023); *In re IMV Inc.*, No. 23-10589 (KBO) (Bankr. D. Del. May 8, 2023) (same); *In re Essar Steel Algoma*, No. 14-11730 (KJC) (Bankr. D. Del. Jul. 21, 2014) (same); *In re Mega Brands Inc.*, No. 10-10485 (CSS) (Bankr. D. Del. Mar. 23, 2010) (same).

B. The CCAA Proceedings are Foreign Main Proceedings.

67. The CCAA Proceedings should be recognized as “foreign main proceedings” as defined in section 1502(4) of the Bankruptcy Code. A foreign proceeding must be recognized as a “foreign main proceeding” if it is pending in the country where the debtor has its center of its main interests. 11 U.S.C. § 1517(b). The term “center of main interests” (“COMI”) is not defined in the Bankruptcy Code. COMI, however, has been equated to a debtor’s principal place of business. *See In re Bear Stearns High-Grade Structured Credit Strategies Master Fund, Ltd.*, 374 B.R. 122, 129 (Bankr. S.D.N.Y. 2007), *aff’d*, 389 B.R. 325 (S.D.N.Y. 2008). Courts have identified certain factors that are relevant in determining a debtor’s COMI, including: (a) the location of the debtor’s headquarters; (b) the location of those persons or entities that actually manage the debtor (which, in certain instances, could be the headquarters of a holding company); (c) the location of the debtor’s primary assets; and (d) the location of the majority of the debtor’s creditors or of a majority of the creditors who would be affected by the case. *In re Olinda Star Ltd.*, 614 B.R. 28, 41 (Bankr. S.D.N.Y. 2020) (citation omitted). In the absence of evidence to the contrary, a debtor’s registered office is presumed to be the debtor’s COMI. *See* 11 U.S.C. § 1516(c).

68. Here, under all the relevant criteria, Vancouver, British Columbia, Canada is the Debtors’ COMI. As set forth in the Tucker Declaration:

- a. the Debtors’ operations are overseen by and report to the Chief Executive Officer, located at the Nexii Group’s Vancouver Headquarters;
- b. the Debtors’ senior management team has historically been located Vancouver, British Columbia, Canada and, as of the Petition Date, William Tucker, as Acting Chief Executive Officer, am located in Vancouver, British Columbia, Canada;
- c. all creative, strategic, and key operating decisions and key policy decisions are made by and/or subject to approval from Nexii’s senior management located in Vancouver, British Columbia, Canada;

- d. key human resources decisions pertaining to, *inter alia*, payroll budgets and augmentation or reduction of employee headcount as per the approved budget, are subject to the approval of the Debtors’ senior management located in Vancouver, British Columbia, Canada;
- e. key accounting decisions and all plans, budgets, and financial projections are subject to the approval of the Debtors’ senior management located in Vancouver, British Columbia, Canada;
- f. planning, budgeting, management of tax, treasury, and cash management functions, and preparation of financial projections for the Debtors is done from Vancouver, British Columbia, Canada;
- g. all material and/or long-term contracts and expenses are subject to the approval of senior management located in Vancouver, British Columbia, Canada;
- h. all of Nexii’s contracts are with NBSI and are managed through the Vancouver Headquarters;
- i. marketing and business development initiatives are overseen from the headquarters in Vancouver, British Columbia, Canada;
- j. corporate governance and regulatory compliance for the Debtors is overseen from its management team located in Vancouver, British Columbia, Canada;
- k. meetings for management and senior staff of the Debtors, including board meetings, are regularly held in Vancouver, British Columbia, Canada; and
- l. senior management and all sales, manufacturing, and operations staff report to their respective senior executives, who, ultimately, report to NBSI’s Acting Chief Executive Officer, who is based in Vancouver, British Columbia, Canada.

69. Based on these factors, the Debtors’ COMI is British Columbia, Canada and, as such, the CCAA Proceedings should be recognized as foreign main proceedings.

C. The Chapter 15 Cases Have Been Commenced by a Duly Authorized Foreign Representative.

70. Section 1517 of the Bankruptcy Code provides that a “foreign representative” shall apply for recognition of the foreign proceeding. Section 101(24) of the Bankruptcy Code defines “foreign representative”:

The term “foreign representative” means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of such foreign proceeding.

11 U.S.C. § 101(24).

71. Pursuant to the Initial CCAA Order, the Court authorized the appointment of NBSI as the Foreign Representative, authorized and empowered the Foreign Representative to act as a foreign representative in respect of the CCAA Proceedings, and authorized the Foreign Representative to file these Chapter 15 Cases in the United States for the purpose of having the CCAA Proceedings recognized. Initial CCAA Order, ¶ 56. Accordingly, the Foreign Representative is a proper “foreign representative” within the meaning of section 101(24) of the Bankruptcy Code.

III. The Conformed Verified Petition Satisfies the Requirements under Section 1515 of the Bankruptcy Code.

72. These Chapter 15 Cases were duly and properly commenced by filing the Conformed Verified Petition, accompanied by all fees, documents, and information required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, including: (a) a corporate ownership statement containing the information described in Bankruptcy Rule 7007.1; (b) a list containing (i) the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtors, (ii) all parties to litigation pending in the United States in which the Debtors are a party at the time of the commencement of the Chapter 15 Cases, attached hereto as **Exhibit C**, and (iii) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (c) a statement identifying all of the Debtors’ foreign proceedings that are known to the Foreign Representative; (d) a certified copy of the Initial CCAA Order; and (e) resolutions of the Board of Directors authorizing the commencement of the

CCAA Proceedings and these Chapter 15 Cases, attached hereto as **Exhibit B**.

73. Because the Conformed Verified Petition satisfies section 1517 of the Bankruptcy Code, the Court should recognize the CCAA Proceedings in these Chapter 15 Cases. Moreover, granting recognition will promote the United States public policy of respecting foreign proceedings as articulated in, *inter alia*, sections 1501(a) and 1508 of the Bankruptcy Code and further cooperation between courts to the maximum extent possible as mandated by section 1525(a) of the Bankruptcy Code. Thus, these circumstances satisfy the conditions for mandatory recognition of the CCAA Proceedings under section 1517 of the Bankruptcy Code.

IV. The Discretionary Relief Requested Is Necessary and Appropriate to Effect the Sale Process and Should Be Granted.

74. In connection with recognition of the CCAA Proceedings, the Foreign Representative seeks certain related relief, including enforcement of the Initial CCAA Order and the Amended and Restated Initial CCAA Order in the United States, and application of sections 361, 362, and 365(e) of the Bankruptcy Code in these Chapter 15 Cases. The Foreign Representative respectfully submits that such relief is warranted under sections 105(a), 1507, and 1521 of the Bankruptcy Code and the general principles of comity that underpin chapter 15.

75. Upon recognition of a foreign proceeding, section 1521(a) authorizes the Court to grant “any appropriate relief” at the request of the recognized foreign representative “where necessary to effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors.” Such relief may include:

- a. staying the commencement or continuation of an individual action or proceeding concerning the debtor’s assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a) of the Bankruptcy Code;
- b. staying execution against the debtor’s assets to the extent it has not been

stayed under section 1520(a) of the Bankruptcy Code;

- c. suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a) of the Bankruptcy Code; and
- d. granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a) of the Bankruptcy Code.

The Court may grant relief under section 1521(a) of the Bankruptcy Code if the interests of “the creditors and other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a). Similarly, section 1507 of the Bankruptcy Code provides that, “if recognition is granted,” a court “may provide additional assistance to a foreign representative under this title or under other laws of the United States.” 11 U.S.C. § 1507. Finally, section 105(a) of the Bankruptcy Code provides that the “court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

76. The Foreign Representative requests the Court exercise its discretion under sections 105, 1507, and 1521 to grant the relief requested insofar as such relief exceeds that which is available by recognizing the CCAA Proceedings as a foreign main proceeding and the Foreign Representative as a “foreign representative” as specified in the Bankruptcy Code. The granting of such relief is consistent with the goals of international cooperation and assistance to foreign courts embodied in chapter 15 of the Bankruptcy Code, and is a necessary to effect the CCAA Proceedings and the Sale Process. If granted, such relief would promote all of the legislatively enumerated objectives of section 1501(a) of the Bankruptcy Code.

77. Indeed, by the Initial CCAA Order, the Canadian Court expressly requested the assistance of the courts in the United States in the following provision:

THIS COURT REQUESTS the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court

or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

Each of the Petitioners and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and Nexii Business Solutions Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

Initial CCAA Order, ¶¶ 55–56. Thus, in addition to the reasons set forth above, this Court should give full force and effect in the United States to the Initial CCAA Order in the United States under well-established principles of international comity and specifically pursuant to sections 105(a), 1507, and 1521 of the Bankruptcy Code.

78. Fair and efficient administration of the CCAA Proceedings that protects all parties in interest requires that all creditors be bound by the terms of the CCAA Proceedings and Sale Process as sanctioned by the Canadian Court. *See Victrix S.S. Co., S.A. v. Salen Dry Cargo A.B.*, 825 F.2d 709, 714 (2d Cir. 1987) (“The equitable and orderly distribution of a debtor’s property requires assembling all claims against the limited assets in a single proceeding; if all creditors could not be bound, a plan of reorganization would fail.”); *In re Energy Coal S.P.A.*, 582 B.R. 619, 626–27 (Bankr. D. Del. 2018) (acknowledging the broad principles of comity applied by U.S. courts in both recognition of foreign bankruptcies and post- recognition relief granted to foreign representatives). If the Sale Process for the sale of the Debtors’ assets as contemplated by the

CCAA Proceedings and approved by the Canadian Court, and resulting sale of Debtors' assets thereunder are not fully respected in the United States, there is a risk that certain of the Debtors' creditors and contract or lease counterparties could bring proceedings in the United States against the Debtors or other parties protected by the Initial CCAA Order and the Amended and Restated Initial CCAA Order. If such parties can effectively evade the terms of the Initial CCAA Order and the Amended and Restated Initial CCAA Order, and attempt to derail the resulting sale of Debtors' assets by commencing actions in the United States, the Debtors and others involved in the sale would be required to defend any such proceedings and deplete the resources of the restructured business and prejudice its reorganized value. Therefore, relief requested by the Debtors is required to prevent individual creditors acting to frustrate the purposes of any sale of Debtors' assets by disregarding the binding Initial CCAA Order and Amended and Restated Initial CCAA Order, the foremost of which is the fair and efficient administration of the CCAA Proceedings and Sale Process to maximize value for all creditors.

Conclusion

79. The Foreign Representative respectfully submits that the Conformed Verified Petition satisfies the requirements for the recognition of NBSI as the Debtors' "foreign representative" and the CCAA Proceedings as the Debtors' "foreign main proceedings" and further requests entry of the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein.

Notice

80. The Foreign Representative will provide notice of this Motion consistent with Bankruptcy Rule 2002(q) and Local Rule 9013-1(m). The Foreign Representative proposes to notify all creditors and parties in interest of the filing of the Petitions and the Foreign

Representative's request for entry of the Order in the form and manner set forth in the *Motion for Order Scheduling Recognition Hearing and Specifying Form and Manner of Service of Notice*, filed contemporaneously herewith. The Foreign Representative submits that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

No Prior Request

81. No prior request for the relief sought in this Conformed Verified Petition has been made to this or any other court.

WHEREFORE, the Foreign Representative respectfully requests entry of the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and such other and further relief as is just and proper.

[Remainder of page intentionally left blank.]

Dated: January 17, 2024

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Colin R. Robinson

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alexander.berk@bfkn.com
john.andreasen@bfkn.com

Attorneys for Foreign Representative

VERIFICATION OF PETITION

I, William Tucker, pursuant to 28 U.S.C. § 1746, hereby declare under penalty of perjury under the laws of the United States of America as follows:

I am the Acting Chief Executive Officer of Nexii Building Solutions Inc., the authorized foreign representative for the Debtors. As such, I have full authority to verify the foregoing Verified Petition on behalf of the Foreign Representative.

I have read the foregoing Verified Petition, and I am informed and believe that the factual allegations contained therein are true and accurate to the best of my knowledge, information and belief.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: January 11, 2024
Vancouver, Canada



William Tucker (Jan 10, 2024 19:46 PST)

By: William Tucker
Title: Acting Chief Executive
Officer
Nexii Building Solutions Inc.

EXHIBIT A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

NEXII BUILDING SOLUTIONS INC., et al.,¹

Debtors in a Foreign Proceeding.

Chapter 15

Case No. 24-10026

(Joint Administration Requested)

**ORDER GRANTING CONFORMED PETITION FOR (I) RECOGNITION AS
FOREIGN MAIN PROCEEDINGS, (II) RECOGNITION OF FOREIGN
REPRESENTATIVE, AND (III) RELATED RELIEF
UNDER CHAPTER 15 OF THE BANKRUPTCY CODE**

Upon consideration of the *Conformed Verified Petition for (I) Recognition of Foreign Main Proceedings, (II) Recognition of Foreign Representative, and (III) Related Relief under Chapter 15 of the Bankruptcy Code* (together with the form petitions filed concurrently therewith, the “Conformed Verified Petition”),² filed by the Foreign Representative as the “foreign representative” of the above-captioned debtors (collectively, the “Debtors”); and upon the hearing on the Conformed Verified Petition and this Court’s review and consideration of the Conformed Verified Petition, the Tucker Declaration, and the Jackson Declaration; IT IS HEREBY FOUND AND DETERMINED THAT³:

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for

¹ The Debtors in these chapter 15 cases (the “Chapter 15 Cases”), along with the last four digits of each Debtor’s unique identifier, are Nexii Building Solutions Inc. (0911), Nexii Construction Inc. (1333), NBS IP Inc. (9930), and Nexii Holdings Inc. (5873). The Debtors’ service address for purposes of these Chapter 15 Cases is 1455 West Georgia Street, #200, Vancouver, British Columbia V6G 2T3.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Conformed Verified Petition.

³ The findings and conclusions set forth herein and in the record of the hearing on the Conformed Verified Petition constitute this Court’s findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, as made applicable herein by Rules 7052 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). To the extent any of the findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law herein constitute findings of fact, they are adopted as such.

the District of Delaware, dated February 29, 2012.

2. Venue is proper before this Court pursuant to 28 U.S.C. § 1410. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and this Court may enter a final order consistent with Article III of the United States Constitution.

3. Appropriate notice of the filing of, and the Hearing on, the Conformed Verified Petition was given, which notice is deemed adequate for all purposes, and no other or further notice need be given.

4. No objections or other responses were filed that have not been overruled, withdrawn, or otherwise resolved.

5. These Chapter 15 Cases were properly commenced pursuant to sections 1504, 1509, and 1515 of the Bankruptcy Code.

6. The Debtors have a domicile, principal place of business, and/or property in the United States, and the Debtors are each eligible to be a debtor in a chapter 15 case pursuant to, as applicable, 11 U.S.C. §§ 109 and 1501.

7. The Foreign Representative is a “person” pursuant to section 101(41) of the Bankruptcy Code and is the duly appointed “foreign representative” of the Debtors as such term is defined in section 101(24) of the Bankruptcy Code. The Foreign Representative has satisfied the requirements of section 1515 of the Bankruptcy Code and Bankruptcy Rule 1007(a)(4).

8. The CCAA Proceedings are entitled to recognition by this Court pursuant to section 1517 of the Bankruptcy Code.

9. The CCAA Proceedings are pending in Canada, where the Debtors have the “center of [their] main interests” as referred to in section 1517(b)(1) of the Bankruptcy Code. Accordingly, the CCAA Proceedings are “foreign main proceedings” pursuant to section 1502(4) of the

Bankruptcy Code, and are entitled to recognition as foreign main proceedings pursuant to section 1517(b)(1) of the Bankruptcy Code.

10. The Foreign Representative is entitled to all the relief provided pursuant to sections 1507, 1519, 1520, and 1521(a)(4) and (5) of the Bankruptcy Code without limitation, because those protections are necessary to effectuate the purposes of chapter 15 of the Bankruptcy Code and to protect the assets of the Debtors and the interests of the Debtors' creditors.

11. Good, sufficient, appropriate, and timely notice of the filing of, and the hearing on (to the extent necessary), the Conformed Verified Petition was given, which notice was deemed adequate for all purposes, and no further notice need be given.

12. All creditors and other parties in interest, including the Debtors, are sufficiently protected by the grant of relief ordered hereby in accordance with section 1522(a) of the Bankruptcy Code.

13. The relief granted hereby is necessary to effectuate the purposes and objectives of chapter 15 and to protect the Debtors and their interests of its creditors and other parties in interest, is in the interest of the public and international comity, consistent with the public policy of the United States, and will not cause any hardship to any party in interest that is not outweighed by the benefits of the relief granted. Absent the requested relief, the efforts of the Debtors and the Foreign Representative in conducting the CCAA Proceedings and the Sale Process may be frustrated by the actions of individual creditors, a result contrary to the purposes of chapter 15.

BASED ON THE FOREGOING FINDINGS OF FACT AND AFTER DUE DELIBERATION AND SUFFICIENT CAUSE APPEARING THEREFORE, IT IS HEREBY ORDERED THAT:

14. The Conformed Verified Petition is granted.

15. The CCAA Proceedings are recognized as foreign main proceedings pursuant to section 1517 of the Bankruptcy Code and are entitled to the protections of 11 U.S.C. § 1520(a), including, without limitation, the application of the protection afforded by the automatic stay under 11 U.S.C. § 362 to the Debtors and to the Debtors' property that is within the territorial jurisdiction of the United States.

16. Nexii Building Solutions, Inc. is the duly appointed foreign representative of the Debtors within the meaning of 11 U.S.C. § 101(24), is authorized to act on behalf of the Debtors in these Chapter 15 Cases, and is established as the exclusive representative of the Debtors in the United States.

17. The Initial CCAA Order and the Amended and Restated Initial CCAA Order, including any and all existing and future extensions, amendments, restatements, and/or supplements authorized by the Canadian Court, are hereby given full force and effect, on a final basis, with respect to the Debtors and the Debtors' property that now or in the future is located within the territorial jurisdiction of the United States, including, without limitation staying the commencement or continuation of any actions against the Debtors or its assets (except as otherwise expressly provided herein or therein).

18. All objections, if any, to the Conformed Verified Petition or the relief requested therein that have not been withdrawn, waived, or settled by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits.

19. Upon entry of this order (this "Order"), the CCAA Proceedings and all prior orders of the Canadian Court shall be and hereby are granted comity and given full force and effect in the United States and, among other things:

- a. the protections of sections 361, 362, and 365(e) of the Bankruptcy Code apply to the Debtors;

- b. all persons and entities are enjoined from taking any actions inconsistent with the CCAA Proceedings and the Sale Process, and from seizing, attaching, and enforcing or executing liens or judgments against the Debtors' property in the United States or from transferring, encumbering or otherwise disposing of or interfering with the Debtors' assets or agreements in the United States without the express consent of the Foreign Representative;
- c. all persons and entities are enjoined from commencing or continuing, including the issuance or employment of process of, any judicial, administrative or any other action or proceeding involving or against the Debtors or their assets or proceeds thereof, or to recover a claim or enforce any judicial, quasi-judicial, regulatory, administrative, or other judgment, assessment, order, lien or arbitration award against the Debtors or their assets or proceeds thereof;
- d. all persons and entities are enjoined from commencing any suit, action, or proceeding against the Debtors, the Foreign Representative, or any of their respective successors, directors, officers, agents, employees, representatives, advisors, or attorneys in respect of any claim or cause of action, in law or in equity, arising out of or relating to any action taken or omitted to be taken in connection with these Chapter 15 Cases, the CCAA Proceedings, and the Sale Process; and
- e. all persons and entities are enjoined from terminating or modifying an executory contract or unexpired lease at any time after the commencement of these Chapter 15 Cases solely because of a provision in such contract or lease is conditioned upon the commencement of the CCAA Proceedings or a case under the Bankruptcy Code.

20. The Foreign Representative and the Debtors shall be entitled to the full protections and rights enumerated under section 1521(a)(4) and (5) of the Bankruptcy Code, and accordingly, the Foreign Representative:

- a. is entrusted with the administration or realization of all or part of the Debtors' assets located in the United States; and
- b. has the right and power to examine witnesses, take evidence or deliver information concerning the Debtors' assets, affairs, rights, obligations, or liabilities.

21. All parties who believe they have a claim against any of the Debtors are obligated to file such claim in, and only in, the CCAA Proceedings.

22. All prior relief granted by this Court pursuant to section 1519(a) of the Bankruptcy Code shall be extended, and that certain *Order Granting Provisional Relief Pursuant to Section 1519 of the Bankruptcy Code* [Docket No. ___] (the “Provisional Relief Order”) shall remain in full force and effect. To the extent there is any inconsistency between this Order and the Provisional Relief Order, the language in this Order shall control.

23. The Foreign Representative is hereby established as the representative of the Debtors with full authority to administer the Debtors’ assets and affairs in the United States, including, without limitation, making payments on account of the Debtors’ prepetition and postpetition obligations.

24. The Foreign Representative, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or Local Rules of this Court.

25. No action taken by the Foreign Representative, the Debtors, or their respective successors, agents, representatives, advisors, or counsel in preparing, disseminating, applying for, implementing, or otherwise acting in furtherance of or in connection with the CCAA Proceedings, this Order, these Chapter 15 Cases, or any adversary proceeding herein, or contested matters in connection therewith, will be deemed to constitute a waiver of any immunity afforded the Foreign Representative, including without limitation pursuant to sections 306 or 1510 of the Bankruptcy Code.

26. The banks and financial institutions with which the Debtors maintain bank accounts or on which checks are drawn or electronic payment requests made in payment of prepetition or postpetition obligations are authorized and directed to continue to service and administer the Debtors’ bank accounts without interruption and in the ordinary course and to receive, process, honor and pay any and all such checks, drafts, wires and automatic clearing house transfers issued,

whether before or after the Petition Date and drawn on the Debtors' bank accounts by respective holders and makers thereof and at the direction of the Foreign Representative or the Debtors, as the case may be.

27. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

28. The Foreign Representative, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Bankruptcy Rules or Local Rules of this Court.

29. This Order is without prejudice to the Foreign Representative requesting any additional relief in the Chapter 15 Cases, including seeking recognition and enforcement by this Court of any further orders issued in the CCAA Proceedings.

30. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

31. A copy of this Order shall be served within five business days of entry of this order, by electronic mail to the extent email addresses are available and otherwise by U.S. mail, overnight or first-class postage prepaid, upon the Core Notice Parties (as defined in the *Motion for Order Scheduling Recognition Hearing and Specifying Form and Manner of Service of Notice*) and such other entities as the Court may direct. Such service shall be good and sufficient service and adequate notice for all purposes.

32. This Court shall retain jurisdiction with respect to the enforcement, amendment, or modification of this Order, any requests for additional relief or any adversary proceeding brought in and through these Chapter 15 Cases, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

33. Notwithstanding any applicability of any Bankruptcy Rules, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry and shall constitute a final order within the meaning of 28 U.S.C. § 158(a).

34. This Order applies to all parties in interest in these Chapter 15 Cases and all of their agents, employees, and representatives, and all those who act in concert with them who receive notice of this Order.

Dated: Wilmington, Delaware
_____, 2024

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Board of Directors' Resolutions

**CERTIFIED COPY OF THE RESOLUTIONS OF THE BOARD OF DIRECTORS OF
NEXII BUILDING SYSTEMS INC.
(the “Company”)**

I, PETER J MOGAN, Director and Chairman of the Board of the Company, hereby certify the attached Resolutions of the Directors of the Company to be a true and exact copy of resolutions passed at a meeting of the Directors of the Company duly called and with a quorum present, on the 9th day of January, 2024, which said resolutions have not been amended and are still valid and in full force and effect on the date hereof.

DATED the 9th day of January, 2024.

A handwritten signature in black ink, appearing to read 'Peter J Mogan', is written over a horizontal line.

Name: Peter J Mogan

Title: Director

RESOLUTIONS OF THE BOARD OF DIRECTORS
OF
NEXII BUILDING SOLUTIONS INC.
(the "Corporation")

WHEREAS, the Corporation is having financial difficulties and is no longer able to meet its obligations as they generally fall due.

AND WHEREAS, the directors of the Corporation deem it to be in the best interests of the Corporation to initiate proceedings to restructure its business and affairs under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36* ("**CCAA**").

AND WHEREAS, the directors of the Corporation deem it to be in the best interests of the Corporation to obtain interim financing under the provisions of the CCAA (the "**Interim Financing**").

AND WHEREAS, as security for the obligations of the Corporation in respect of the Interim Financing, the Corporation intends to mortgage, charge, assign, and otherwise transfer and encumber and grant a security interest in all of the Corporation's present and future assets, property and undertaking now or hereafter acquired (the "**Property**")

NOW THEREFORE:

RESOLVED, that the Corporation be, and it hereby is, authorized and directed to (i) initiate proceedings to seek protection from its creditors under the CCAA (the "**Restructuring Proceeding**"), (ii) seek to have the Restructuring Proceeding and all court orders made therein recognized in the United States under Chapter 15, Title 11 of the United States Bankruptcy Code; (iii) take such actions, steps and proceedings as may be necessary or desirable to effect a restructuring of its business and affairs under the CCAA, including, without limitation, the seeking of an initial order under the CCAA and effecting an orderly sale of some or all of its assets or business; and (iv) retain and instruct Fasken Martineau DuMoulin LLP as legal counsel to the Corporation in relation to the Restructuring Proceeding, KSV Restructuring Inc. to act as monitor of the Corporation in the Restructuring Proceeding, and such other legal and other professionals as are necessary to or desirable to give effect to these resolutions.

RESOLVED, that the Corporation be, and it hereby is, authorized and directed to obtain Interim Financing from a lender and on terms acceptable to the Corporation.

RESOLVED, that the Corporation be, and it hereby is, authorized to secure the repayment of the Interim Financing by mortgaging, charging, assigning and otherwise granting a security interest in the Property in favour the lender advancing the Interim Financing (the "**Security**").

RESOLVED, that the Corporation be, and it hereby is, authorized and directed to execute and deliver such documents, affidavits, agreements, certificates, waivers, consents, postponements or instruments as may be contemplated by, or required to give effect to the Restructuring Proceeding and the Interim Financing (collectively, the “**Documents**”).

RESOLVED, that the Chief Executive Officer ("**Authorized Officer**") be, and he hereby is, authorized and empowered to execute and deliver the Documents, including all exhibits and schedules attached thereto, in the name and on behalf of the Corporation with such additions, deletions or changes therein as the Authorized Officer executing the same shall approve (the execution and delivery thereof by any such Authorized Officer to be conclusive evidence of his or her approval of any such additions, deletions or changes).

RESOLVED, that each of the Authorized Officers be, and each of them hereby is, authorized and empowered to take all such further action and to execute and deliver all such further documents, agreements, certificates, waivers, consents, postponements or instruments, amendments, additions or deletions, in the name and on behalf of the Corporation (under its corporate seal or otherwise) as they shall deem necessary, desirable or appropriate to consummate, effectuate, implement, carry out or further the transactions contemplated by the foregoing resolutions.

RESOLUTIONS OF THE BOARD OF DIRECTORS
OF
NEXII HOLDINGS INC.
(the "Corporation")

The undersigned, being all of the directors of the Corporation, acting by written resolution in lieu of a meeting pursuant to the provisions of the Delaware General Corporation Law (the "DGCL") hereby adopt the following resolutions:

WHEREAS, the Corporation is having financial difficulties and is no longer able to meet its obligations as they generally fall due.

AND WHEREAS, all of the directors of the Corporation deem it to be in the best interests of the Corporation to initiate proceedings to restructure its business and affairs under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36* ("CCAA") and to file a petition for recognition before the United States Bankruptcy Court for the District of Delaware in accordance with 11 U.S.C. §1501, *et al.* ("**Chapter 15**") of the United States Code (the "**Bankruptcy Code**").

AND WHEREAS, all of the directors of the Corporation deem it to be in the best interests of the Corporation to obtain interim financing under the provisions of the CCAA (the "**Interim Financing**").

AND WHEREAS, as security for the obligations of the Corporation in respect of the Interim Financing, the Corporation intends to mortgage, charge, assign, and otherwise transfer and encumber and grant a security interest in all of the Corporation's present and future assets, property and undertaking now or hereafter acquired (the "**Property**").

NOW THEREFORE:

RESOLVED, that the Corporation be, and it hereby is, authorized and directed to (i) initiate proceedings to seek protection from its creditors under the CCAA (the "**Restructuring Proceeding**"), (ii) seek to have the Restructuring Proceeding and all court orders made therein recognized in the United States under Chapter 15 of the Bankruptcy Code (the "**Chapter 15 Proceeding**"); (iii) take such actions, steps and proceedings as may be necessary or desirable to effect a restructuring of its business and affairs under the CCAA and the Bankruptcy Code, including, without limitation, the seeking of an initial order under the CCAA and effecting an orderly sale of some or all of its assets or business; (iv) retain and instruct Fasken Martineau DuMoulin LLP as legal counsel to the Corporation in relation to the Restructuring Proceeding, KSV Restructuring Inc. to act as monitor of the Corporation in the Restructuring Proceeding; (v) appoint Nexii Building Solutions, Inc. as the Foreign Representative in the Chapter 15 Proceeding and retain and instruct Barack Ferrazzano Kirschbaum & Nagelberg LLP and Pachulski Stang Ziehl & Jones LLP as legal counsel to the Corporation in the Chapter 15 Proceeding; and (vi) retain and instruct such other legal and other professionals as are necessary to or desirable to give effect to these resolutions.

RESOLVED, that the Corporation be, and it hereby is, authorized and directed to obtain Interim Financing from a lender and on terms acceptable to the Corporation.

RESOLVED, that the Corporation be, and it hereby is, authorized to secure the repayment of the Interim Financing by mortgaging, charging, assigning and otherwise granting a security interest in the Property in favour the lender advancing the Interim Financing (the "**Security**").

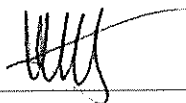
RESOLVED, that the Corporation be, and it hereby is, authorized and directed to execute and deliver such documents, affidavits, agreements, certificates, waivers, consents, postponements or instruments as may be contemplated by, or required to give effect to the Restructuring Proceeding, the Chapter 15 Proceeding and the Interim Financing (collectively, the "**Documents**").

RESOLVED, that the Chief Executive Officer (each such person, an "**Authorized Officer**") be, and each of them hereby is, authorized and empowered to execute and deliver the Documents, including all exhibits and schedules attached thereto, in the name and on behalf of the Corporation with such additions, deletions or changes therein as the Authorized Officer executing the same shall approve (the execution and delivery thereof by any such Authorized Officer to be conclusive evidence of his or her approval of any such additions, deletions or changes).

RESOLVED, that each of the Authorized Officers be, and each of them hereby is, authorized and empowered to take all such further action and to execute and deliver all such further documents, agreements, certificates, waivers, consents, postponements or instruments, amendments, additions or deletions, in the name and on behalf of the Corporation (under its corporate seal or otherwise) as they shall deem necessary, desirable or appropriate to consummate, effectuate, implement, carry out or further the transactions contemplated by the foregoing resolutions.

THE UNDERSIGNED, being all the directors of the Corporation entitled to vote at a meeting, hereby pass these resolutions pursuant to the provisions of the DGCL. These resolutions may be signed in as many counterparts as may be necessary, each of which shall be deemed an original (including those transmitted electronically or by facsimile) and all of which shall be deemed one instrument.

Dated the 10th day of January, 2024



David Bryant,
Senior Executive Advisor
& Secretary

RESOLUTIONS OF THE BOARD OF DIRECTORS
OF
NBS IP INC.
(the "**Corporation**")

The undersigned, being all of the directors of the Corporation, acting by written resolution in lieu of a meeting pursuant to the provisions of the British Columbia *Business Corporations Act* (the "**Act**") hereby adopt the following resolutions:

WHEREAS, the Corporation is having financial difficulties and is no longer able to meet its obligations as they generally fall due.

AND WHEREAS, all of the directors of the Corporation deem it to be in the best interests of the Corporation to initiate proceedings to restructure its business and affairs under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36* ("**CCAA**").

AND WHEREAS, all of the directors of the Corporation deem it to be in the best interests of the Corporation to obtain interim financing under the provisions of the CCAA (the "**Interim Financing**").

AND WHEREAS, as security for the obligations of the Corporation in respect of the Interim Financing, the Corporation intends to mortgage, charge, assign, and otherwise transfer and encumber and grant a security interest in all of the Corporation's present and future assets, property and undertaking now or hereafter acquired (the "**Property**")

NOW THEREFORE:

RESOLVED, that the Corporation be, and it hereby is, authorized and directed to (i) initiate proceedings to seek protection from its creditors under the CCAA (the "**Restructuring Proceeding**"), (ii) seek to have the Restructuring Proceeding and all court orders made therein recognized in the United States under Chapter 15, Title 11 of the United States Bankruptcy Code; (iii) take such actions, steps and proceedings as may be necessary or desirable to effect a restructuring of its business and affairs under the CCAA, including, without limitation, the seeking of an initial order under the CCAA and effecting an orderly sale of some or all of its assets or business; and (iv) retain and instruct Fasken Martineau DuMoulin LLP as legal counsel to the Corporation in relation to the Restructuring Proceeding, KSV Restructuring Inc. to act as monitor of the Corporation in the Restructuring Proceeding, and such other legal and other professionals as are necessary to or desirable to give effect to these resolutions.

RESOLVED, that the Corporation be, and it hereby is, authorized and directed to obtain Interim Financing from a lender and on terms acceptable to the Corporation.

RESOLVED, that the Corporation be, and it hereby is, authorized to secure the repayment of the Interim Financing by mortgaging, charging, assigning and otherwise granting a security interest in the Property in favour the lender advancing the Interim Financing (the "**Security**").

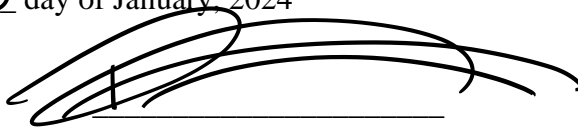
RESOLVED, that the Corporation be, and it hereby is, authorized and directed to execute and deliver such documents, affidavits, agreements, certificates, waivers, consents, postponements or instruments as may be contemplated by, or required to give effect to the Restructuring Proceeding and the Interim Financing (collectively, the “**Documents**”).

RESOLVED, that William Tucker (the "**Authorized Officer**") is hereby authorized and empowered to execute and deliver the Documents, including all exhibits and schedules attached thereto, in the name and on behalf of the Corporation with such additions, deletions or changes therein as the Authorized Officer executing the same shall approve (the execution and delivery thereof by any such Authorized Officer to be conclusive evidence of his or her approval of any such additions, deletions or changes).

RESOLVED, the Authorized Officer is hereby authorized and empowered to take all such further action and to execute and deliver all such further documents, agreements, certificates, waivers, consents, postponements or instruments, amendments, additions or deletions, in the name and on behalf of the Corporation (under its corporate seal or otherwise) as they shall deem necessary, desirable or appropriate to consummate, effectuate, implement, carry out or further the transactions contemplated by the foregoing resolutions.

THE UNDERSIGNED, being all the directors of the Corporation entitled to vote at a meeting, hereby pass these resolutions pursuant to the provisions of the Act. These resolutions may be signed in as many counterparts as may be necessary, each of which shall be deemed an original (including those transmitted electronically or by facsimile) and all of which shall be deemed one instrument.

Dated the 10 day of January, 2024

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

WILLIAM TUCKER

RESOLUTIONS OF THE BOARD OF DIRECTORS
OF
NEXII CONSTRUCTION INC.
(the "**Corporation**")

The undersigned, being all of the directors of the Corporation, acting by written resolution in lieu of a meeting pursuant to the provisions of the British Columbia *Business Corporations Act* (the "**Act**") hereby adopt the following resolutions:

WHEREAS, the Corporation is having financial difficulties and is no longer able to meet its obligations as they generally fall due.

AND WHEREAS, all of the directors of the Corporation deem it to be in the best interests of the Corporation to initiate proceedings to restructure its business and affairs under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c C-36* ("**CCAA**").

AND WHEREAS, all of the directors of the Corporation deem it to be in the best interests of the Corporation to obtain interim financing under the provisions of the CCAA (the "**Interim Financing**").

AND WHEREAS, as security for the obligations of the Corporation in respect of the Interim Financing, the Corporation intends to mortgage, charge, assign, and otherwise transfer and encumber and grant a security interest in all of the Corporation's present and future assets, property and undertaking now or hereafter acquired (the "**Property**")

NOW THEREFORE:

RESOLVED, that the Corporation be, and it hereby is, authorized and directed to (i) initiate proceedings to seek protection from its creditors under the CCAA (the "**Restructuring Proceeding**"), (ii) seek to have the Restructuring Proceeding and all court orders made therein recognized in the United States under Chapter 15, Title 11 of the United States Bankruptcy Code; (iii) take such actions, steps and proceedings as may be necessary or desirable to effect a restructuring of its business and affairs under the CCAA, including, without limitation, the seeking of an initial order under the CCAA and effecting an orderly sale of some or all of its assets or business; and (iv) retain and instruct Fasken Martineau DuMoulin LLP as legal counsel to the Corporation in relation to the Restructuring Proceeding, KSV Restructuring Inc. to act as monitor of the Corporation in the Restructuring Proceeding, and such other legal and other professionals as are necessary to or desirable to give effect to these resolutions.

RESOLVED, that the Corporation be, and it hereby is, authorized and directed to obtain Interim Financing from a lender and on terms acceptable to the Corporation.

RESOLVED, that the Corporation be, and it hereby is, authorized to secure the repayment of the Interim Financing by mortgaging, charging, assigning and otherwise granting a security interest in the Property in favour the lender advancing the Interim Financing (the "**Security**").

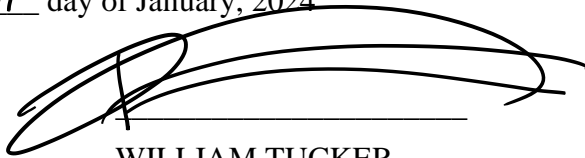
RESOLVED, that the Corporation be, and it hereby is, authorized and directed to execute and deliver such documents, affidavits, agreements, certificates, waivers, consents, postponements or instruments as may be contemplated by, or required to give effect to the Restructuring Proceeding and the Interim Financing (collectively, the “**Documents**”).

RESOLVED, that William Tucker (the "**Authorized Officer**") is hereby authorized and empowered to execute and deliver the Documents, including all exhibits and schedules attached thereto, in the name and on behalf of the Corporation with such additions, deletions or changes therein as the Authorized Officer executing the same shall approve (the execution and delivery thereof by any such Authorized Officer to be conclusive evidence of his or her approval of any such additions, deletions or changes).

RESOLVED, that the Authorized Officer is hereby authorized and empowered to take all such further action and to execute and deliver all such further documents, agreements, certificates, waivers, consents, postponements or instruments, amendments, additions or deletions, in the name and on behalf of the Corporation (under its corporate seal or otherwise) as they shall deem necessary, desirable or appropriate to consummate, effectuate, implement, carry out or further the transactions contemplated by the foregoing resolutions.

THE UNDERSIGNED, being all the directors of the Corporation entitled to vote at a meeting, hereby pass these resolutions pursuant to the provisions of the Act. These resolutions may be signed in as many counterparts as may be necessary, each of which shall be deemed an original (including those transmitted electronically or by facsimile) and all of which shall be deemed one instrument.

Dated the 11 day of January, 2024

A handwritten signature in black ink, appearing to be 'WILLIAM TUCKER', written over a horizontal line. The signature is stylized and somewhat cursive.

WILLIAM TUCKER

EXHIBIT C

Parties to Litigation Pending in the United States

Litigation Counterparty	Debtor	Counterparty Address
NexUS 1, LLC	Nexii Building Solutions Inc.	<p>101 Carleton Avenue Hazleton, PA 18201</p> <p>c/o Silverang Rosenzweig & Haltzman Attn: Mark S. Haltzman and William Carl Katz 900 E. 8th Avenue, Suite 300 King of Prussia, PA 19406 mhaltzman@sanddlawyers.com wkatz@sanddlawyers.com</p> <p>c/o Sullivan Hazeltine Allinson LLC Attn: William D. Sullivan 919 N. Market Street, Suite 420 Wilmington, DE 19801 bsullivan@sha-llc.com</p>
Nex-Stock, LLC	Nexii Building Solutions Inc.	<p>c/o Silverang Rosenzweig & Haltzman Attn: Mark S. Haltzman and William Carl Katz 900 E. 8th Avenue, Suite 300 King of Prussia, PA 19406 mhaltzman@sanddlawyers.com wkatz@sanddlawyers.com</p>
NexUS Manager, LLC	Nexii Building Solutions Inc.	<p>c/o Silverang Rosenzweig & Haltzman Attn: Mark S. Haltzman and William Carl Katz 900 E. 8th Avenue, Suite 300 King of Prussia, PA 19406 mhaltzman@sanddlawyers.com wkatz@sanddlawyers.com</p> <p>c/o Sullivan Hazeltine Allinson LLC Attn: William D. Sullivan 919 N. Market Street, Suite 420 Wilmington, DE 19801 bsullivan@sha-llc.com</p>
John Wolfington	Nexii Building Solutions Inc.	<p>c/o Silverang Rosenzweig & Haltzman</p>

		<p>Attn: Mark S. Haltzman and William Carl Katz 900 E. 8th Avenue, Suite 300 King of Prussia, PA 19406 mhaltzman@sanddlawyers.com wkatz@sanddlawyers.com</p> <p>c/o Sullivan Hazeltine Allinson LLC Attn: William D. Sullivan 919 N. Market Street, Suite 420 Wilmington, DE 19801 bsullivan@sha-llc.com</p>
Daniel Metzler	Nexii Building Solutions Inc.	<p>c/o Silverang Rosenzweig & Haltzman Attn: Mark S. Haltzman and William Carl Katz 900 E. 8th Avenue, Suite 300 King of Prussia, PA 19406 mhaltzman@sanddlawyers.com wkatz@sanddlawyers.com</p> <p>c/o Sullivan Hazeltine Allinson LLC Attn: William D. Sullivan 919 N. Market Street, Suite 420 Wilmington, DE 19801 bsullivan@sha-llc.com</p>

Exhibit 2

Amended and Restated Initial CCAA Order

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

No. S240195
Vancouver Registry

JAN 22 2024

IN THE SUPREME COURT OF BRITISH COLUMBIA

ENTERED

SUPREME COURT
OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, RSC 1985, c C-36, as amended

SEAL
VANCOUVER
REGISTRY

and

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC.

PETITIONERS

ORDER MADE AFTER APPLICATION

(Amended and Restated Initial Order)

BEFORE THE HONOURABLE)
JUSTICE STEPHENS) JANUARY 22, 2024
)

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 22nd day of January, 2024 (the “**Order Date**”); **AND ON HEARING** Lisa Hiebert and Kibben Jackson, counsel for the Petitioners, and those other counsel listed on **Schedule “A”** hereto; **AND UPON READING** the application material filed, including the First Affidavit of William Tucker sworn January 10, 2024 (the “**Tucker Affidavit**”), and the First Report of the Monitor dated January 18, 2024; **AND UPON BEING ADVISED** that the secured creditors who are likely to be affected by the charges created herein were given notice; **AND UPON NOTING** the orders made in these proceedings on January 22, 2024 approving a sale process and related relief (the “**Sale Process Order**”) and approving a key employee retention plan and related relief (the “**KERP Order**”); **AND PURSUANT TO** the *Companies’ Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended (the “**CCAA**”), the *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Petition and materials filed in support of the application for this Order (collectively, the “**Application**”) is hereby abridged such that service of the Application is deemed to be timely and sufficient and the Application is properly returnable today.

JURISDICTION

2. Each of the Petitioners is a company to which the CCAA applies. Although not Petitioners, Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Inc., Grant & Sinclair Architects Ltd., Omicron Interiors Ltd. and Omicron Construction Ltd. (collectively, the “**Omicron Entities**”) shall enjoy certain protections as set out in this Order.

PLAN OF ARRANGEMENT

3. The Petitioners shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the “**Plan**”).

POSSESSION OF PROPERTY AND OPERATIONS

4. Subject to this Order and any further Order of this Court, the Petitioners shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”) and continue to carry on their business (the “**Business**”) in the ordinary course, or as otherwise agreed by the Monitor and the Interim Lenders (as defined below), and in a manner consistent with the preservation of the Business and the Property. The Petitioners shall be authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively, “**Assistants**”) currently retained or employed by them, with liberty to retain such further Assistants as the Petitioners

deem reasonably necessary or desirable in the ordinary course of business or for carrying out the terms of this Order.

5. The Petitioners shall be entitled to continue to utilize the central cash management system currently in place as described in the Tucker Affidavit or, with the prior written consent of the Interim Lenders and the Monitor, replace it with another substantially similar central cash management system (the “**Cash Management System**”), and any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Petitioners of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Petitioners, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, under any Plan with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. The Petitioners shall be entitled but not required to pay the following expenses whether incurred prior to, on, or after the date of this Order, subject to compliance with the Cash Flow Projections (as defined in the Term Sheet, defined below):

- (a) all outstanding wages, salaries, employee and pension benefits (including long and short term disability payments), vacation pay and expenses (but excluding severance pay) payable before or after the Order Date, in each case incurred in the ordinary course of business and consistent with the relevant compensation policies and arrangements existing at the time incurred (collectively “**Wages**”);
- (b) with the consent of the Monitor, amounts owing for goods and services actually supplied to the Petitioners prior to the date of this Order by third party suppliers, if such third party is critical to the Business and ongoing operations of the Petitioners; and

- (c) the fees and disbursements of any Assistants retained or employed by the Petitioners which are related to the Petitioners' restructuring, at their standard rates and charges, including payment of the fees and disbursements of legal counsel retained by the Petitioners, whenever and wherever incurred, in respect of:
 - (i) these proceedings or any other similar proceedings in other jurisdictions in which the Petitioners or any subsidiaries or affiliated companies of the Petitioners are domiciled;
 - (ii) any litigation in which the Petitioners are named as parties or are otherwise involved, whether commenced before or after the Order Date; and
 - (iii) any related corporate matters.

7. Except as otherwise provided herein and subject to the terms of the Term Sheet and Definitive Documents, as each such capitalized term is defined below, the Petitioners shall be entitled to pay all expenses reasonably incurred by the Petitioners in carrying on the Business in the ordinary course following the Order Date, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably incurred and which are necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance), maintenance and security services, provided that any capital expenditure shall be approved by the Monitor;
- (b) all obligations incurred by the Petitioners after the Order Date, including without limitation, with respect to goods and services actually supplied to the Petitioners following the Order Date (including those under purchase orders outstanding at the Order Date but excluding any interest on the Petitioners' obligations incurred prior to the Order Date); and

- (c) fees and disbursements of the kind referred to in paragraph 6(c) which may be incurred after the Order Date.

8. The Petitioners are authorized to remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from Wages, including, without limitation, amounts in respect of (i) employment insurance, (ii) Canada Pension Plan, (iii) Quebec Pension Plan, and (iv) income taxes or any such claims which are to be paid pursuant to Section 6(3) of the CCAA;
- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Petitioners in connection with the sale of goods and services by the Petitioners, but only where such Sales Taxes accrue or are collected after the Order Date, or where such Sales Taxes accrued or were collected prior to the Order Date but not required to be remitted until on or after the Order Date; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal property taxes, municipal business taxes or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors.

9. Until such time as a real property lease is disclaimed in accordance with the CCAA or subject to further Order of this Court, the Petitioners may pay amounts constituting rent or payable as rent under real property leases (including common area maintenance charges, utilities and realty taxes and any other amounts payable as rent to the landlord under the lease, but, for greater certainty, excluding accelerated rent or penalties, fees or other charges arising as a result of the insolvency of the Petitioners or the making of this Order) based on the terms of existing lease arrangements or as otherwise may be negotiated between the Petitioners and the landlord from time to time (“**Rent**”), for the period commencing from and including the Order Date,

twice-monthly in equal payments on the first and fifteenth day of the month in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including Order Date shall also be paid.

10. Except as specifically permitted herein, the Petitioners are hereby directed, until further Order of this Court:

- (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Petitioners to any of their creditors as of the Order Date except as authorized by this Order;
- (b) to make no payments in respect of any financing leases which create security interests;
- (c) to grant no security interests, trusts, mortgages, liens, charges or encumbrances upon or in respect of any of the Property, nor become guarantors or sureties, nor otherwise become liable in any manner with respect to any other person or entity except as authorized by this Order;
- (d) to not grant credit except in the ordinary course of the Business only to their customers for goods and services actually supplied to those customers, provided such customers agree that there is no right of set-off in respect of amounts owing for such goods and services against any debt owing by the Petitioners to such customers as of the Order Date; and
- (e) to not incur liabilities except in the ordinary course of Business.

RESTRUCTURING

11. Each of the Petitioners shall, subject to such requirements as are imposed by the CCAA, this Order, and such covenants as may be contained in the Definitive Documents, have the right (but not the obligation) to operate the Business in the ordinary course pending the return hearing on the Comeback Date (as defined below), subject to disclaimers that may be issued pursuant to section 32 of the CCAA.

12. Subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), the Petitioners shall have the right to:

- (a) permanently or temporarily cease, downsize or shut down all or any part of their Business or operations and commence marketing efforts in respect of any of their redundant or non-material assets and to dispose of redundant or non-material assets not exceeding \$500,000 in any one transaction or \$1,500,000 in the aggregate;
- (b) terminate the employment of such of their employees or temporarily lay off such employees as they deem appropriate; and
- (c) pursue all avenues of refinancing for their Business or Property, in whole or in part; all of the foregoing to permit the Petitioners to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

13. The Petitioners shall provide each of the relevant landlords with notice of the Petitioners’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Petitioners’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors who claim a security interest in the fixtures, such landlord and the Petitioners, or by further Order of this Court upon application by the Petitioners, the landlord or the applicable secured creditors on at least two (2) clear days’ notice to the other parties. If the Petitioners disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, they shall not be required to pay Rent under such lease pending resolution of any dispute concerning such fixtures (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Petitioners’ claim to the fixtures in dispute.

14. If a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then: (a) during the period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours on giving the Petitioners and the Monitor 24 hours' prior written notice; and (b) at the effective time of the disclaimer, the landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims the landlord may have against the Petitioners, or any other rights the landlord might have, in respect of such lease or leased premises and the landlord shall be entitled to notify the Petitioner of the basis on which it is taking possession and gain possession of and re-lease such leased premises to any third party or parties on such terms as the landlord considers advisable, provided that nothing herein shall relieve the landlord of its obligation to mitigate any damages claimed in connection therewith.

15. Pursuant to Section 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c.5 and Section 18(1)(o) of the *Personal Information Protection Act*, S.B.C. 2003, c.63, and any regulations promulgated under authority of either Act, as applicable (the "Relevant Enactment"), the Petitioners, in the course of these proceedings, are permitted to, and hereby shall, disclose personal information of identifiable individuals in its possession or control to stakeholders, their advisors, prospective investors, financiers, buyers or strategic partners (collectively, "Third Parties"), but only to the extent desirable or required to negotiate and complete the Restructuring or to prepare and implement the Plan or transactions for that purpose; provided that the Third Parties to whom such personal information is disclosed enter into confidentiality agreements with the Petitioners binding them in the same manner and to the same extent with respect to the collection, use and disclosure of that information as if they were an organization as defined under the Relevant Enactment, and limiting the use of such information to the extent desirable or required to negotiate or complete the Restructuring or to prepare and implement the Plan or transactions for that purpose, and attorning to the jurisdiction of this Court for the purposes of that agreement. Upon the completion of the use of personal information for the limited purposes set out herein, the Third Parties shall return the personal information to the Petitioner or destroy it. If the Third Parties acquire personal information as part of the Restructuring or the preparation and implementation of the Plan or transactions in furtherance thereof, such Third Parties may, subject to this paragraph and any Relevant

Enactment, continue to use the personal information in a manner which is in all respects identical to the prior use thereof by the Petitioners.

STAY OF PROCEEDINGS, RIGHTS AND REMEDIES

16. Until and including April 30, 2024, or such later date as this Court may order (the “**Stay Period**”), no action, suit or proceeding in any court or tribunal (each, a “**Proceeding**”) against or in respect of the Petitioners, the Omicron Entities or the Monitor, or affecting the Business or the Property of the Petitioners, or affecting the current and future assets, undertakings and properties of every nature and kind and wherever situate, including all proceeds of the Omicron Entities (the “**Omicron Property**”) and the business of the Omicron Entities (the “**Omicron Business**”), shall be commenced or continued except with the written consent of the Petitioners and the Monitor or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Petitioners or affecting the Business or the Property, or in respect of the Omicron Entities or affecting the Omicron Business or the Omicron Property, are hereby stayed and suspended pending further Order of this Court.

17. During the Stay Period, all rights and remedies of any individual, firm, corporation, governmental 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 Petitioners, the Omicron Entities or the Monitor, or affecting the Business or the Property, or the Omicron Property or the Omicron Business, are hereby stayed and suspended except with the written consent of the Petitioners and the Monitor or leave of this Court.

18. Nothing in this Order, including paragraphs 16 and 17, shall: (i) empower the Petitioners or the Omicron Entities to carry on any business which they are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a mortgage, charge or security interest (subject to the provisions of Section 39 of the CCAA relating to the priority of statutory Crown securities); or (iv) prevent the registration or filing of a lien or claim for lien or the commencement of a Proceeding to protect lien or other rights that might otherwise be barred or extinguished by the effluxion of time, provided that no further step

shall be taken in respect of such lien, claim for lien or Proceeding except for service of the initiating documentation on the Petitioners.

19. The granting of this Order, the Application and any affidavits and other materials filed in support of the Application shall not, in and of themselves, constitute a default or failure to comply by the Petitioners under any statute, regulation, licence, permit, contract, permission, covenant, agreement, undertaking or other written document or requirement.

NO INTERFERENCE WITH RIGHTS

20. During the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract or agreement, licence or permit in favour of or held by the Petitioners or the Omicron Entities except with the written consent of the Petitioners, or the Omicron Entities, as applicable, and the Monitor or leave of this Court.

CONTINUATION OF SERVICES

21. During the Stay Period, all Persons having oral or written agreements with the Petitioners or mandates under an enactment for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation, services, utility or other services to the Business or the Petitioners are hereby restrained until further Order of this Court from discontinuing, altering, interfering with, or terminating the supply of such goods or services as may be required by the Petitioners and that the Petitioners shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the Order Date are paid by the Petitioners in accordance with normal payment practices of the Petitioners or such other practices as may be agreed upon by the supplier or service provider and the Petitioners and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

22. Notwithstanding any provision in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the Order Date, nor shall any Person be under any obligation to advance or re-advance any monies or otherwise extend any credit to the Petitioners on or after the Order Date. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

23. During the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against the directors or officers of the Petitioners with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Petitioners whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Petitioners, if one is filed, is sanctioned by this Court or is refused by the creditors of the Petitioners or this Court. Nothing in this Order, including in this paragraph, shall prevent the commencement of a Proceeding to preserve any claim against a director or officer of the Petitioners that might otherwise be barred or extinguished by the effluxion of time, provided that no further step shall be taken in respect of such Proceeding except for service of the initiating documentation on the applicable director or officer.

DIRECTORS AND OFFICERS INDEMNIFICATION AND CHARGE

24. The Petitioners shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Petitioners after the commencement of the within proceedings, except to the extent that, with respect to any director or officer, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

25. The directors and officers of the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the “**Directors’ Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1,315,000, as security for the indemnity provided in paragraph 24 of this Order. The Directors’ Charge shall have the priority set out in paragraphs 43 and 45 herein.

26. Notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors’ Charge, and (b) the Petitioners’ directors and officers shall only be entitled to the benefit of the Directors’ Charge to the extent that they do not have coverage under any directors’ and officers’ insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 24 of this Order.

APPOINTMENT OF MONITOR

27. KSV Restructuring Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Petitioners with the powers and obligations set out in the CCAA or set forth herein, and that the Petitioners and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Petitioners pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

28. The Monitor, in addition to its prescribed rights and obligations under the CCAA and applicable law, and without altering in any way the obligations of the Petitioners in this CCAA proceeding, is hereby empowered, but not required, to:

- (a) exercise any powers which may be properly exercised by a board of directors or any officers of the Petitioners to cause the Petitioners, through the Petitioners’ Assistants (then engaged, if any), to, without limitation:

- (i) take any and all actions and steps, and execute all agreements, documents and writings, on behalf of, and in the name of, the Petitioners in order to facilitate the performance of any of the Petitioners' powers or obligations (collectively, the **"Petitioners' Powers & Obligations"**);
- (ii) engage, retain, or terminate the services of any officer, employee, consultant, agent, representative, advisor, or other persons or entities, as the Monitor deems necessary or appropriate to assist with the exercise of the Monitor's powers and duties and/or the Petitioners' Powers & Obligations. For greater certainty, any such officer, employee, consultant, agent, representative, advisor, or other persons or entities engaged or retained pursuant to this paragraph shall thereafter be deemed to be Assistants under this Order;
- (iii) perform such other functions or duties, and enter into any agreements or incur any obligations, as the Monitor considers necessary or desirable in order to facilitate or assist the winding-down or liquidation of the Petitioner, the realization and/or sale of all of the Petitioners' Property, the distribution of any net proceeds of the Property (the **"Proceeds"**), or any other related activities, including, without limitation, in connection with terminating this CCAA proceeding;
- (iv) exercise any rights of the Petitioners;
- (v) grant the Monitor access to all books and records that are the property of the Petitioners or that are in the Petitioners' possession or control (the **"Books and Records"**);
- (vi) initiate, prosecute, and/or continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Petitioners, the Property, or the Proceeds, and, subject to further Order of this Court, to settle or compromise any

such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (vii) deal with any taxing or regulatory authority, including to execute any appointment or authorization form on behalf of the Petitioners that any taxing or regulatory authority may require, in order to confirm the appointment of an authorized representative of the Petitioners (which may be a representative of the Monitor) for such purposes;
 - (viii) engage, deal, communicate, negotiate and, with further Order of this Court, settle with any creditor or other stakeholder of the Petitioners (including any governmental authority);
 - (ix) claim any and all insurance refunds or tax refunds to which the Petitioners is entitled on behalf of the Petitioners; and
 - (x) file, or take such actions necessary for the preparation and filing of, on behalf of and in the name of the Petitioners, (i) any tax returns, and (ii) the Petitioners' employee-related remittances, T4 statements and records of employments for the Petitioners' former employees, in either case, based solely upon the information in the Applicant's Books and Records and on the basis that the Monitor shall incur no liability or obligation to any person with respect to such returns, remittances, statements, records or other documents;
- (b) monitor the Petitioners' receipts and disbursements;
 - (c) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;

- (d) assist the Petitioners, to the extent required by the Petitioners, in their dissemination to the Interim Lenders (as hereinafter defined) and their counsel on a monthly basis of financial and other information as agreed to between the Petitioners and the Interim Lenders, which may be used in these proceedings including reporting on a basis to be agreed with the Interim Lenders;
- (e) advise the Petitioners in its preparation of the Petitioners' cash flow statements and reporting required by the Interim Lenders, which information shall be reviewed with the Monitor and delivered to the Interim Lenders and their counsel on a periodic basis, but not less than monthly, or as otherwise agreed to by the Interim Lenders;
- (f) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Petitioners, to the extent that is necessary to adequately assess the Petitioners' business and financial affairs or to perform its duties arising under this Order;
- (g) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (h) perform such other duties as are required by this Order or by this Court from time to time; and
- (i) take any steps reasonably incidental to the exercise by the Monitor of the powers listed above or the performance of any statutory obligations

(collectively, the "**Monitor's Powers**").

29. Notwithstanding anything contained in this Order, where the Monitor exercises any of the Monitor's Powers, it shall be the sole Person authorized to exercise such powers, to the exclusion

of all other Persons, and no director or officer of the Petitioners shall incur any liability for any decisions or actions of the Monitor acting under such authority.

30. Notwithstanding anything contained in this Order, the Monitor shall not take possession of the Property or Business and shall not, by fulfilling its obligations hereunder, or by inadvertence in relation to the due exercise of powers or performance of duties under this Order, be deemed to have taken or maintained possession of the Business or Property, or any part thereof, and nothing in this Order shall be construed as resulting in the Monitor being an employer or a successor employer, within the meaning of any statute, regulation or rule of law or equity, for any purpose whatsoever.

31. Nothing herein contained shall require or allow the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Fisheries Act*, the *British Columbia Environmental Management Act*, the *British Columbia Fish Protection Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. For greater certainty, the Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

32. The Monitor shall provide any creditor of the Petitioners and the Interim Lenders with information provided by the Petitioners in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Petitioners is

confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Petitioners may agree.

33. In addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the rights and protections afforded the Monitor by the CCAA or any applicable legislation.

ADMINISTRATION CHARGE

34. The Monitor, counsel to the Monitor and counsel to the Petitioners shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Petitioners as part of the cost of these proceedings. The Petitioners are hereby authorized and directed to pay the accounts of the Monitor, counsel to the Monitor and counsel to the Petitioners on a periodic basis.

35. The Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the British Columbia Supreme Court who may determine the manner in which such accounts are to be passed, including by hearing the matter on a summary basis or referring the matter to a Registrar of this Court.

36. The Monitor, counsel to the Monitor and counsel to the Petitioners shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of \$1,500,000, as security for their respective fees and disbursements incurred at the standard rates and charges of the Monitor and such counsel, both before and after the making of this Order which are related to the Petitioners’ restructuring. The Administration Charge shall have the priority set out in paragraphs 43 and 45 hereof.

INTERIM FINANCING

37. The Petitioners are hereby authorized and empowered to obtain and borrow under an interim credit facility from Powerscourt Investments XXV, LP, Trinity Capital Inc. and Horizon Technology Finance Corporation (collectively, the "**Interim Lenders**") in order to finance the Petitioners' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such interim credit facility shall not exceed US\$4,300,000 unless permitted by further Order of this Court.

38. Such interim credit facility shall be on the terms and subject to the conditions set forth in the debtor-in-possession term sheet between the Petitioners and the Interim Lenders dated as of January 9, 2024 (the "**Term Sheet**") attached as Exhibit K to the Tucker Affidavit.

39. The Petitioners are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (with the Term Sheet, collectively the "**Definitive Documents**"), as are contemplated by the Term Sheet or as may be reasonably required by the Interim Lenders pursuant to the terms thereof, and the Petitioners are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to the Interim Lenders under and pursuant to the Term Sheet and the Definitive Documents (collectively, the "**Interim Financing Obligations**") as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

40. The Interim Lenders shall be entitled to the benefit of and is hereby granted a charge (the "**Interim Lenders' Charge**") on the Property as security for the Interim Financing Obligations, which Interim Lenders' Charge shall be in the aggregate amount of the Interim Financing Obligations outstanding at any given time under the Definitive Documents. The Interim Lenders' Charge shall not secure an obligation that exists before this Order is made. The Interim Lenders' Charge shall have the priority set out in paragraphs 43 and 45 hereof.

41. Notwithstanding any other provision of this Order:

- (a) the Interim Lenders may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Interim Lenders' Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under any of the Definitive Documents or the Interim Lenders' Charge, the Interim Lenders, upon three (3) business days' notice to the Petitioners and the Monitor, may exercise any and all of their rights and remedies against the Petitioners or the Property under or pursuant to the Term Sheet, Definitive Documents and the Interim Lenders' Charge, including without limitation, to cease making advances to the Petitioners and set off and/or consolidate any amounts owing by the Interim Lenders to the Petitioners against the obligations of the Petitioners to the Interim Lenders under the Term Sheet, the Definitive Documents or the Interim Lenders' Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Petitioners and for the appointment of a trustee in bankruptcy of the Petitioners; and
- (c) the foregoing rights and remedies of the Interim Lenders shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Petitioners or the Property.

42. The Interim Lenders, in such capacity, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA, or any proposal filed by the Petitioners under the *Bankruptcy and Insolvency Act* of Canada (the "BIA"), with respect to any advances made under the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

43. The priorities of the Administration Charge, KERP Charge (as provided in the KERP Order), the Monthly Fee Charge (as provided in the Sale Process Order), the Transaction Fee

Charge (as provided in the Sale Process Order), the Directors' Charge and the Interim Lenders' Charge, as among them, shall be as follows:

First – Administration Charge (to the maximum amount of \$1,500,000);

Second – KERP Charge (to the maximum amount of the obligations pursuant to the KERP Order at the relevant time);

Third – Monthly Fee Charge (up to the maximum amount of \$200,000);

Fourth – Transaction Fee Charge (secured only against the proceeds of a sale pursuant to the Sale Process Order made January 22, 2024);

Fifth – Interim Lenders' Charge (to the maximum amount of the Interim Financing Obligations at the relevant time); and

Sixth – Directors' Charge (to the maximum amount of \$1,315,000).

44. Any security documentation evidencing, or the filing, registration or perfection of, the Administration Charge, the Interim Lenders' Charge, the Directors' Charge, the KERP Charge, the Monthly Fee Charge and the Transaction Fee Charge (collectively, the "**Charges**") shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered or perfected subsequent to the Charges coming into existence, notwithstanding any failure to file, register or perfect any such Charges.

45. Each of the Charges shall constitute a mortgage, security interest, assignment by way of security and charge on the Property and such Charges shall rank in priority to all other security interests, trusts, liens, mortgages, charges and encumbrances and claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**"), in favour of any Person, save and except those claims contemplated by section 11.8(8) of the CCAA. As noted above, the Transaction Fee Charge shall be secured only against the proceeds of a transaction or transactions.

46. Except as otherwise expressly provided herein, or as may be approved by this Court, the Petitioners shall not grant or suffer to exist any Encumbrances over any Property that rank in priority to, or *pari passu* with the Charges, unless the Petitioners obtain the prior written consent of the Monitor, the Interim Lenders and the beneficiaries of the Administration Charge and the Director's Charge.

47. The Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the "Chargees") and/or the Interim Lenders shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, mortgage, security agreement, debenture, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Petitioners; and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Term Sheet or the Definitive Documents shall create or be deemed to constitute a breach by the Petitioners of any Agreement to which they are a party;
- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Petitioners entering into the Term Sheet, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) the payments made by the Petitioners pursuant to this Order, the Term Sheet or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue,

oppressive conduct, or other challengeable or voidable transactions under any applicable law.

48. Any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Petitioners' interest in such real property leases.

SERVICE AND NOTICE

49. The Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after Order Date, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Petitioners of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder; provided that the Monitor shall not be required to make the names and addresses of individuals who are creditors publicly available unless otherwise ordered by this Court.

50. The Petitioners and the Monitor are at liberty to serve this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or electronic transmission (including by e-mail) to the Petitioners' creditors or other interested parties at their respective addresses as last shown on the records of the Petitioners and that any such service or notice by courier, personal delivery or electronic transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

51. Any Person that wishes to be served with any application and other materials in these proceedings must deliver to the Monitor by way of ordinary mail, courier, personal delivery or electronic transmission a request to be added to a service list (the "**Service List**") to be maintained by the Monitor. The Monitor shall post and maintain an up to date form of the

Service List on its website at: www.ksvadvisory.com/experience/case/Nexii (the “Case Website”).

52. Any party to these proceedings may serve any court materials in these proceedings by emailing a PDF or other electronic copy of such materials to counsels' email addresses as recorded on the Service List from time to time, and the Monitor shall post a copy of all prescribed materials on the Case Website.

53. Notwithstanding paragraphs 50 and 52 of this Order, service of the Petition, the Notice of Hearing of Petition, any affidavits filed in support of the Petition and this Order shall be made on the Federal and British Columbia Crowns in accordance with the *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, and regulations thereto, in respect of the Federal Crown, and the *Crown Proceeding Act*, R.S.B.C. 1996, c. 89, in respect of the British Columbia Crown.

GENERAL

54. The Petitioners or the Monitor may from time to time apply to this Court for directions in the discharge of its powers and duties hereunder.

55. Nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Petitioners, the Business or the Property.

56. **THIS COURT REQUESTS** the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

57. Each of the Petitioners and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order and Nexii ^{Building} ~~Business~~ Solutions Inc. is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada, including acting as a foreign representative of the Petitioners to apply to the United States Bankruptcy Court for relief pursuant to Chapter 15 of the *United States Bankruptcy Code*, 11 U.S.C. §§ 101-1330, as amended.

58. The Petitioners may (subject to the provisions of the CCAA and the BIA) at any time file a voluntary assignment in bankruptcy or a proposal pursuant to the commercial reorganization provisions of the BIA if the Petitioners determine that such a filing is appropriate.

59. The Petitioners are hereby at liberty to apply for such further interim or interlocutory relief as they deem advisable within the time limited for Persons to file and serve Responses to the Petition.

60. Leave is hereby granted to hear any application in these proceedings on two (2) clear days' notice after delivery to all parties on the Service List of such Notice of Application and all affidavits in support, subject to the Court in its discretion further abridging or extending the time for service.

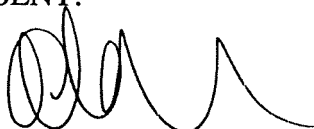
61. Any interested party (including the Petitioners and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to all parties on the Service List and to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order, provided, however, that the Chargees shall be entitled to rely on this Order as granted and on the Charges and priorities set forth in paragraphs 43 and 45 hereof with respect to any fees, expenses and disbursements incurred, as applicable, until the date this Order may be amended, varied or stayed.

62. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.

63. This Order and all its provisions are effective as of 12:01 a.m. local Vancouver time on the Order Date.

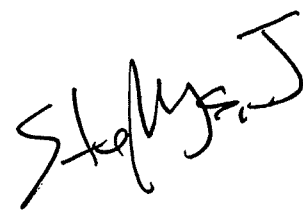
64. Where the relief sought is not opposed or contested, leave is granted for counsel to the Interim Lenders to appear at future hearings in this matter remotely by video.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



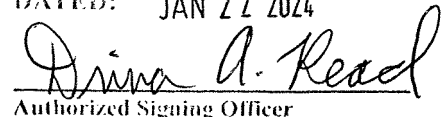
Signature of Lisa Hiebert
 Party Lawyer for the Petitioners

BY THE COURT


REGISTRAR

Certified a true copy according to the records of the Supreme Court at Vancouver, B.C.

DATED: JAN 22 2024



Authorized Signing Officer

DRINA READ



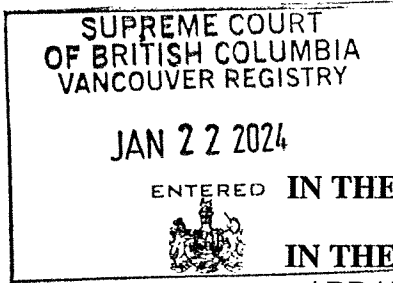
Schedule "A"

Appearance List

Counsel Name	Party Represented
Sean Zweig and Andrew Froh	The Monitor, KSV Restructuring Inc.
Kyle Plunkett and Matilda Lici (by MSTeams)	Powerscourt Investments XXV, LP, Powerscourt Investments XXV Trust, Trinity Capital Inc., Horizon Technology Finance Corporation, Horizon Credit II LLC, Horizon Funding I LLC and Horizon Funding Trust 2022-1
Bill Skelly	AECOM Tishman and ESC Partners
Celine Conly	Tokio Marine + Trisura Group.

Exhibit 3

KERP Approval Order



No. S240195
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA
IN THE MATTER OF THE COMPANIES' CREDITORS
ARRANGEMENT ACT, RSC 1985, c C-36, as amended

and

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC.

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
JUSTICE STEPHENS) JANUARY 22, 2024
)

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 22nd day of January, 2024; AND ON HEARING Lisa Hiebert and Kibben Jackson, counsel for the Petitioners, and those other counsel listed on **Schedule "A"** hereto; AND UPON READING the application material filed, including the First Affidavit of William Tucker sworn January 10, 2024 (the "**First Affidavit**"), the Second Affidavit of William Tucker sworn January 17, 2024 (the "**Second Affidavit**"), the Confidential Fourth Affidavit of William Tucker sworn January 17, 2024 (the "**Confidential Affidavit**"), the first report of KSV Restructuring Inc. (the "**Monitor**") in its capacity as monitor of the Petitioners dated January 18, 2024; AND PURSUANT TO the *Companies' Creditors Arrangement Act*, R.S.C. 1985 c. C-36 as amended, the *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

1. The key employee retention plan (the "**KERP**"), described in the First Affidavit and the Second Affidavit, pursuant to which the Petitioner Nexii Building Solutions Inc. ("**Nexii**") has

agreed to provide compensation to certain key employees (collectively, the “**Key Employees**”) of Nexii and of its subsidiary, Omicron Canada Inc. (“**Omicron**”) in the form attached as Exhibit “B” to Second Affidavit and Exhibit A to the Confidential Affidavit is approved, and Nexii is authorized to enter into letter agreements (a “**Letter Agreement**”) with any or all of the Key Employees on the terms contemplated by the KERP.

2. Nexii and any successor or other person that may be appointed to act on behalf of Nexii, including, without limitation, a trustee, liquidator, receiver, interim receiver, receiver and manager or any other person acting on behalf of such person, is hereby authorized and directed to implement and perform Nexii’s obligations under the KERP and any Letter Agreements entered into with any Key Employees, all in accordance with the terms of the KERP and any such Letter Agreements.

3. Any payments made by Nexii to a Key Employee under the KERP approved by this Order do not and will not constitute a preference, fraudulent conveyance, transfer undervalue, oppressive conduct or other challengeable or voidable transaction under any applicable law, and any Letter Agreement are in lieu of and replace any bonuses to which such Key Employee might otherwise be entitled for 2024, including pursuant to the employment agreements with Nexii or Omicron, as the case may be.

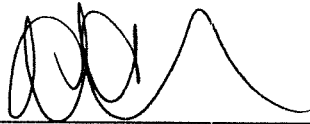
4. The Key Employees are granted a charge (the “**KERP Charge**”) on the Property (as defined in the Amended and Restated Initial Order made on this date in these proceedings (the “**ARIO**”)) as security for all amounts which may become payable to them under the terms of the KERP and any Letter Agreements. The KERP Charge shall have the priority set out in the ARIO.

5. **THIS COURT REQUESTS** the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order,

to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

6. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.

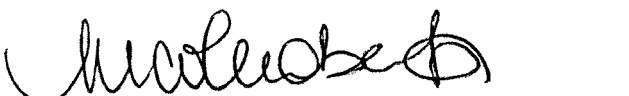
THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:



Signature of Lisa Hiebert
 Party Lawyer for the Petitioners



BY THE COURT



REGISTRAR

Schedule "A"

Appearance List

Counsel Name	Party Represented
Sean Zweig and Andrew Froh	The Monitor, KSV Restructuring Inc.
Kyle Plunkett and Matilda Lici (by MSTeams)	Powerscourt Investments XXV, LP, Powerscourt Investments XXV Trust, Trinity Capital Inc., Horizon Technology Finance Corporation, Horizon Credit II LLC, Horizon Funding I LLC and Horizon Funding Trust 2022-1
Bill Skelly	AECOM Tishman and ESC Partners
Celine Conly	Tokio Marine and Trisure Group

Exhibit 4

Sale Process and Origin Engagement Order

SUPREME COURT
OF BRITISH COLUMBIA
VANCOUVER REGISTRY

JAN 22 2024

ENTERED



IN THE SUPREME COURT OF BRITISH COLUMBIA

IN THE MATTER OF THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, RSC 1985, c C-36, as amended

No. S240195
Vancouver Registry

and

IN THE MATTER OF NEXII BUILDING SOLUTIONS INC.,
NEXII CONSTRUCTION INC, NBS IP INC. and NEXII HOLDINGS INC.

PETITIONERS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE)
JUSTICE STEPHENS) JANUARY 22, 2024
)

ON THE APPLICATION of the Petitioners coming on for hearing at Vancouver, British Columbia, on the 22nd day of January, 2024; **AND ON HEARING** Lisa Hiebert and Kibben Jackson, counsel for the Petitioners, and those other counsel listed on **Schedule "A"** hereto; **AND UPON READING** the application material filed, including the First Affidavit of William Tucker sworn January 10, 2024, the Second Affidavit of William Tucker sworn January 17, 2024, the Confidential Affidavit #3 of William Tucker sworn January 17, 2024 (the "**Confidential Affidavit**"); the first report of KSV Restructuring Inc. (the "**Monitor**") in its capacity as monitor of the Petitioners, dated January 18, 2024; **AND PURSUANT TO** the *Companies' Creditors Arrangement Act, R.S.C. 1985 c. C-36 as amended* (the "**CCAA**"), the *Supreme Court Civil Rules* and the inherent jurisdiction of this Honourable Court;

THIS COURT ORDERS AND DECLARES THAT:

Engagement of Origin

1. The engagement letter (the "**IB Agreement**") dated December 23, 2023 among Origin, Nexii Building Solutions Inc. and Omicron Canada Inc., an unredacted copy of which is attached as Exhibit A to the Confidential Affidavit, is approved.

2. The Petitioners are authorized and directed, without the need for any further order of this Court, to pay Origin, whenever due, all fees, expenses and other amounts contemplated in the IB Agreement, including the Monthly Fee and, if applicable, the Transaction Fee (as each is defined in the IB Agreement).

3. Origin is granted a charge on the Property (as defined in the Amended and Restated Order made January 22, 2024 in these proceedings (the “**ARIO**”)) as security for the monthly fee that is payable to Origin under the terms of the IB Agreement (the “**Monthly Fee Charge**”). The Monthly Fee Charge shall not exceed \$200,000 and shall have the priority set out in the ARIO.

4. Origin is granted a charge on any sale proceeds of any transaction(s) arising from the Sale Process as security for the transaction fee that may become payable to Origin under the terms of the IB Agreement up to the amount of the applicable fee (the “**Transaction Fee Charge**”). The Transaction Fee Charge shall have the priority set out in the ARIO.

5. Origin, in its capacity as financial advisor in the Sale Process, shall be treated as unaffected in any plan of arrangement or compromise filed by the Petitioners under the CCAA or any proposal filed by the Petitioners under the *Bankruptcy and Insolvency Act*, including with respect to the amounts payable to Origin under the IB Agreement.

6. Origin, its affiliates, partners, directors, employees, agents and controlling persons shall incur no liability with respect to any losses, claims, damages or liabilities of any nature or kind to any person in connection with its engagement by the Petitioners or carrying out the mandate contemplated by the IB Agreement, except to the extent such losses, claims, damages or liabilities result from gross negligence or wilful misconduct.

Approval of Sale Process

7. The sale procedures (the “**Sale Process**”), in substantially the form attached as **Schedule “B”** hereto, are approved and the Petitioners and the Monitor are hereby authorized to implement the Sale Process pursuant to the terms thereof.

8. The Monitor, with the assistance of Origin, is authorized and directed to take any and all actions as may be necessary or desirable to implement and carry out the Sale Process in accordance with its terms and this Order.

9. In addition to all protections afforded under the ARIO, the CCAA and at law, each of Origin, the Monitor, the Petitioners and their respective affiliates, partners, directors, employees, agents, consultants, advisors, experts, accountants, counsel and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any Person in connection with or as a result of implementing or otherwise in connection with the Sale Process, except to the extent such losses, claims, damages or liabilities result from their respective gross negligence or wilful misconduct, as applicable, as determined by this Court.

PIPEDA

10. Pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* or Section 18(10)(o) of the *British Columbia Personal Information Protection Act*, the Petitioners, the Monitor and Origin and their respective advisors are authorized and permitted to disclose and transfer to prospective purchasers or bidders, and their advisors, personal information of identifiable individuals, but only to extent desirable or required to negotiate or attempt to complete a transaction pursuant to the Sale Process (a “**Transaction**”). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of a Transaction, and if it does not complete a Transaction, shall return all such information to the Petitioners, the Monitor or Origin, as applicable, or in the alternative, destroy all such information and provide confirmation of its destruction if requested by the Petitioners, the Monitor or Origin. The successful purchaser(s) under the Sale Process shall be entitled to use the personal information provide to it in a manner which is in all material respects identical to the prior use of such information by the Petitioners.

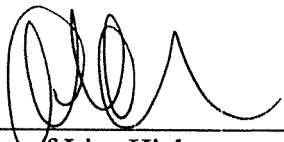
General

11. **THIS COURT REQUESTS** the aid and recognition of other Canadian and foreign Courts, tribunal, regulatory or administrative bodies, including any Court or administrative

tribunal of any federal or State Court or administrative body in the United States of America, to act in aid of and to be complementary to this Court in carrying out the terms of this Order where required. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Petitioners and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Petitioners and the Monitor and their respective agents in carrying out the terms of this Order.

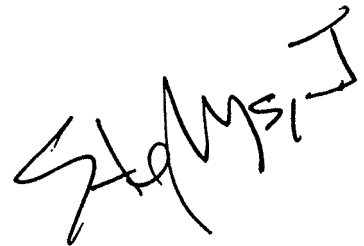
12. Endorsement of this Order by counsel appearing on this application, other than counsel for the Petitioners, is hereby dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

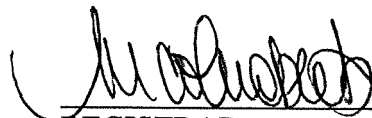


Signature of Lisa Hiebert

Party Lawyer for the Petitioners



BY THE COURT



REGISTRAR



Schedule "A"
Appearance List

Counsel Name	Party Represented
Sean Zweig and Andrew Froh	The Monitor, KSV Restructuring Inc.
Kyle Plunkett (by MSTeams)	Powerscourt Investments XXV, LP, Powerscourt Investments XXV Trust, Trinity Capital Inc., Horizon Technology Finance Corporation, Horizon Credit II LLC, Horizon Funding I LLC and Horizon Funding Trust 2022-1
[●]	[●]
Bill Skelly	AECOM TISHMAN and ESC Partners
Celine Conly	Tokio Marine and Tisura Group

Schedule "B"

See attached - Sale Procedures

SALE PROCEDURES
Nexii Building Solutions Inc., Omicron Canada Inc. and others

INTRODUCTION

1. Nexii Building Solutions Inc., Nexii Construction Inc., NBS IP Inc. and Nexii Holdings Inc. (collectively, the "**Petitioners**") obtained protection under the *Companies' Creditors Arrangement Act* (the "**CCAA**" and the Petitioners' proceedings thereunder, the "**CCAA Proceedings**") pursuant to an order (the "**Initial Order**") made by the Supreme Court of British Columbia (the "**CCAA Court**") on January 11, 2024. The benefits of the stay of proceedings granted in favour of the Petitioners pursuant to the Initial Order was extended to Omicron Canada Inc., Omicron Construction Management Ltd., Omicron Consulting Ltd., Omicron Interiors Ltd., Grant & Sinclair Architects Ltd and Omicron Construction Ltd. (collectively, the "**Non-Petitioner Stay Parties**" and together with the Petitioners, the "**Group**").
2. Pursuant to the Initial Order, KSV Restructuring Inc. was appointed as monitor (in such capacity, the "**Monitor**") of the Petitioners in the CCAA Proceedings with certain enhanced powers.
3. Pursuant to proceedings commenced in the United States Bankruptcy Court for the District of Delaware (the "**US Bankruptcy Court**") under Chapter 15, Title 11, of the United States Code, on January 16, 2024, the Petitioners obtained, among other things, recognition of the CCAA Proceedings.
4. On January 22, 2024, the CCAA Court granted: (i) an order amending and restating the Initial Order (the "**ARIO**"), and (ii) an order (the "**Sale Process Order**") authorizing the Monitor to implement a sale process in respect of the Group and their Business and Property (each as defined below) in accordance with the terms hereof (the "**Sale Process**"). Copies of the ARIO and the Sale Process Order can be found at: www.ksvadvisory.com/experience/cases/Nexii.
5. Powerscourt Investments XXV, LP, Trinity Capital Inc. and Horizon Technology Finance Corporation (collectively, the "**Interim Lenders**") have agreed to provide certain interim financing to the Petitioners pursuant to, and in accordance with, a DIP Facility Term Sheet dated January 9, 2024, between the Interim Lenders and the Petitioners and approved by the CCAA Court (the "**Interim Loan**").
6. The Group have retained Origin Merchant Partners ("**Origin**") to, among other things, carry out the Sale Process with the assistance and under the oversight of the Monitor.
7. The purpose of the Sale Process is to solicit interest in one or more sales of all, substantially all, or components of the Group's assets (the "**Property**"), and/or the Group's business operations (the "**Business**"), as a going concern or otherwise. For greater clarity, this may include separate transactions in respect of the assets or business operations of the Petitioners and the Non-Petitioner Stay Parties.
8. As described below, the various deadlines herein may be extended by Origin and the Monitor with the consent of the Interim Lenders. The Monitor will consider extending

such deadlines in the event that the Monitor determines that such an extension will generally benefit the Group's creditors and other stakeholders.

"AS IS, WHERE IS" BASIS

9. Any transaction involving the Property, the Business or the Group (in each case, a "Transaction") will be subject only to such representations, warranties, covenants, or indemnities as are expressly included in a Binding Final Agreement (as defined in paragraph 20), but will otherwise be on an "as is, where is" basis and without surviving representations, warranties, covenants or indemnities of any kind, nature, or description by the Group, the Monitor or any of their respective agents, estates, advisors, professionals, employees, directors, partners, or otherwise, including, without limitation, Origin.

TIMELINE

10. The Sale Process shall commence immediately following the issuance of the Sale Process Order. The table below sets out subsequent key deadlines in the Sale Process that interested parties should note:

MILESTONE	DATE
Distribution of the Teaser Letter and Confidentiality Agreement (as defined in paragraphs 11 and 12, respectively)	By no later than 5:00 p.m. (Pacific Time) on January 24, 2024
Distribution of CIM (as defined in paragraph 14)	By no later than 5:00 p.m. (Pacific Time) on January 29, 2024
Bid Submission Deadline	By no later than 5:00 p.m. (Pacific Time) on March 7, 2024,
Selection of Successful Bid(s)	By no later than 5:00 p.m. (Pacific Time) on March 18, 2024
Approval Order (as defined below) - <i>required for all bids involving the Petitioners' Property or Business</i>	As soon as practical after selection of Successful Bid(s) and the execution of the Binding Final Agreement
Closing Date(s)	As soon as practical after receipt of Approval Order (if required), but in any event no later than April 30, 2024

SOLICITATION OF INTEREST

11. Prior to the issuance of the Sale Process Order, in consultation with the Group, the Monitor and the Interim Lenders, Origin will prepare a list of potential bidders (the "Known Potential Bidders") who may have interest in a Transaction. Such list will

include both strategic and financial parties who may be interested in acquiring an interest in the Group and/or their assets pursuant to an asset purchase transaction. Concurrently, Origin, in consultation with the Group, the Monitor and the Interim Lenders, will prepare an initial offering summary (the "**Teaser Letter**") notifying the Known Potential Bidders and inviting the Known Potential Bidders to express interest in making a binding bid to acquire an interest in the Group and/or their assets (a "**Binding Bid**").

12. By no later than 5:00 p.m. (Pacific Time) on January 24, 2024, Origin shall distribute to the Known Potential Bidders and any other person that, to the best of Origin's knowledge, has expressed interest in a Transaction, the Teaser Letter, as well as a draft form of confidentiality agreement (the "**Confidentiality Agreement**") that shall inure to the benefit of the person(s) who make(s) a Successful Bid (as defined below) pursuant to the Sale Process. Copies of the Teaser Letter and Confidentiality Agreement shall be provided to any appropriate persons who become known to the Monitor, Origin or the Group after the initial distribution of such documents.
13. Any person (a) who executes a Confidentiality Agreement in form and substance satisfactory to the Monitor and Origin, and (b) whom the Monitor and Origin are satisfied has the financial capabilities and technical expertise to make a viable Binding Bid, shall be deemed to be a qualified bidder (each, a "**Qualified Bidder**").

DUE DILIGENCE

14. Origin will prepare a confidential information memorandum ("**CIM**") by no later than 5:00 p.m. (Pacific Time) on January 29, 2024, describing the opportunity to make a Binding Bid and shall deliver the CIM to each Qualified Bidder as soon as practicable after such person is deemed to be a Qualified Bidder in accordance with the Sale Process.
15. Origin shall provide each Qualified Bidder with information, which may include management presentations, access to an electronic data room, on-site inspections, and other matters or information which a Qualified Bidder may reasonably request from Origin in order to submit a Binding Bid. Origin may designate a representative to coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders and the manner in which such requests must be communicated. Origin, the Monitor and the Group are not obliged to furnish any information relating to the Group, the Property or the Business to any person other than to Qualified Bidders. Further, and for the avoidance of doubt, selected due diligence materials may be withheld from certain Qualified Bidders if the Monitor, in consultation with the Group, determines such information to represent proprietary or sensitive competitive information that should not be disclosed.

SUBMISSION OF BINDING BIDS

16. Any Qualified Bidder may submit a Binding Bid to Origin and the Monitor at the addresses specified in Schedule "A" on or before 5:00 p.m. (Pacific Time) on March 7, 2024, or such later time and date that Origin and the Monitor may determine, with the prior written consent of the Interim Lenders (the "**Bid Submission Deadline**"). Origin and the Monitor shall forthwith provide copies of any Binding Bids received to the Interim Lenders, subject to paragraph 30.

17. A Binding Bid shall be a "Qualified Bid" in the event that:

- (a) for bids requiring Court approval, it includes a letter stating that the bid is irrevocable until the earlier of (i) approval by the CCAA Court and recognition of such approval by the US Bankruptcy Court (if required), and (ii) forty-five (45) days following the Bid Submission Deadline; provided, however, that if such bid is selected as a Successful Bid or the Backup Bid (each as defined below), it shall remain irrevocable until the closing of the Successful Bid or the Backup Bid, as the case may be;
- (b) it includes a duly authorized and executed purchase and sale agreement specifying all consideration payable (including any liabilities to be assumed by the Qualified Bidder), together with all exhibits and schedules, and such ancillary agreements as may be required by the Qualified Bidder with all exhibits and schedules;
- (c) it does not include any request or entitlement to any break fee, expense reimbursement or similar type of payment;
- (d) it indicates the Property included, any of the Property expected to be excluded, and/or any additional assets desired to be included in the Transaction;
- (e) it includes written evidence of a firm, irrevocable commitment for all required funding and/or financing from a creditworthy bank or financial institution to consummate the proposed Transaction, or other evidence of ability to consummate the proposed Transaction that will allow Origin and the Monitor to make a reasonable determination as to the Qualified Bidder's (and its direct and indirect owners and their principals) financial and other capabilities to consummate the Transaction contemplated by the bid;
- (f) is not conditional on (i) the outcome of unperformed due diligence by the Qualified Bidder and/or (ii) obtaining any financing capital and includes an acknowledgment and representation that the Qualified Bidder has had an opportunity to conduct any and all required due diligence prior to making its bid;
- (g) it is not conditional upon any governmental or regulatory approval;
- (h) it fully discloses the identity of each person that is bidding or otherwise that will be sponsoring or participating in the bid, including the identification of the Qualified Bidder's direct and indirect owners and their principals, and the complete terms of any such participation;
- (i) it is accompanied by a refundable cash deposit (the "Deposit") in the form of a wire transfer (to a trust account specified by the Monitor), in an amount equal to ten percent (10%) of the consideration to be paid in respect of the bid, to be held and dealt with in accordance with the Sale Process;
- (j) it contains an allocation of the consideration payable;
- (k) it includes a closing date of no later than April 30, 2024 (subject to the Approval Order having been obtained, if required);

- (l) it contains other information that may be reasonably requested by Origin or the Monitor;
 - (m) it includes an acknowledgement that the bid is made on an "as-is, where- is" basis and that the bidder has had an opportunity to conduct any due diligence it considers necessary or desirable prior to making its bid and has relied solely on its own independent review, investigation and inspection of the documents, assets to be acquired and the liabilities to be assumed; and
 - (n) it is received by no later than the Bid Submission Deadline.
18. Origin may, with the consent of the Monitor, in consultation with the Interim Lenders, waive strict compliance with one or more of the requirements specified in section 17 and deem any Binding Bid(s) to be a Qualified Bid notwithstanding any non-compliance with the terms and conditions of the Sale Process.

REVIEW OF BINDING BIDS AND SELECTION OF SUCCESSFUL BID(S) AND BACKUP BID(S)

19. Binding Bids will be valued based upon numerous factors, including, without limitation, items such as purchase price and the net value provided by such offer, the claims likely to be created by such offer in relation to other offers, the identity, circumstances and ability of the bidder to successfully complete such transactions, the proposed transaction documents, the effects of the bid on the stakeholders of the Group, factors affecting the speed, certainty and value of the transaction (including, but not limited to, third party contractual arrangements or other consents required to close the transaction), the assets included or excluded from the offer, any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Monitor, in consultation with the Group and the Interim Lenders.
20. Origin and the Monitor, in consultation with the Group and the Interim Lenders, shall review all Qualified Bids and may select: (i) one or more highest, best or otherwise most favourable Qualified Bids (each, a "**Successful Bid**"), and (ii) the next highest, best or otherwise most favourable Qualified Bid (each, a "**Backup Bid**"). Subject to the prior written consent of the Monitor and, provided the Successful Bid does not provide for payment in full of the Senior Secured Debt (as defined below), the Interim Lenders, the Group may enter into a definitive agreement or agreements (each a "**Binding Final Agreement**") with the person or persons who submitted Successful Bid(s).
21. Any Qualified Bidder that makes a Successful Bid shall be a "**Successful Bidder**" and any Qualified Bidder that makes a Backup Bid shall be a "**Backup Bidder**". Origin or the Monitor will notify each Successful Bidder and Backup Bidder as soon as reasonably practical of the Group's intention to enter into the Binding Final Agreement and the Backup Bid shall remain open until the consummation of the transaction contemplated by the Successful Bid (and, for greater certainty, the Monitor shall be entitled to continue to hold the Deposit in respect of the Backup Bid until such time as the transaction contemplated by the Successful Bid is consummated).

22. The implementation of any Successful Bid involving the Petitioners' Property or Business shall be subject to approval by the CCAA Court and recognition of such approval by the US Bankruptcy Court (if required).
23. The implementation of any Successful Bid involving the Non-Petitioner Stay Parties' Property or Business may be subject to approval by the CCAA Court.
24. Origin and the Monitor may, provided the proposed Successful Bid does not provide for payment in full of the Senior Secured Debt and with the written consent of the Interim Lenders, aggregate separate Qualified Bids to create one "Successful Bid".
25. The Group, acting through the Monitor, shall have no obligation to enter into a Successful Bid, and may, with the consent of the Monitor and the Interim Lenders, reject any or all Qualified Bids.

SALE APPROVAL

26. Upon execution of a Binding Final Agreement in respect of a Successful Bid, the Petitioners, acting through the Monitor, shall bring an application as soon as reasonably practicable to obtain an order from the CCAA Court approving the Binding Final Agreement (the "**Approval Order**") and may seek recognition of such Sale Process Order from the US Bankruptcy Court (if required). All Qualified Bids, other than the Successful Bid(s), if any, shall be deemed rejected as of the date of approval of the Successful Bid(s) pursuant to the Approval Order and seeking recognition of such Sale Process Order from the US Bankruptcy Court (if required).

CONFIDENTIALITY STAKEHOLDER/BIDDER COMMUNICATION AND ACCESS TO INFORMATION

27. All discussions regarding the Sale Process should be directed through Origin or the Monitor. Under no circumstances should management of the Group or any stakeholder of the Group be contacted directly without the prior written consent of the Monitor. Any such unauthorized contact or communication could result in exclusion of the interested party from the Sale Process. For greater certainty, nothing herein shall preclude a stakeholder from contacting potential bidders, with the agreement of Origin and the Monitor, to advise that the Group have commenced the Sale Process and that they should contact Origin if they are interested in participating in the Sale Process.
28. If it is determined by Origin, in consultation with the Monitor and the Group, that it would be worthwhile to facilitate a discussion between one or more Qualified Bidders and a stakeholder or other third party as a consequence of a condition to closing or potential closing condition identified by such Qualified Bidder, Origin may provide such Qualified Bidder with the opportunity to meet with the relevant stakeholder or third party to discuss such condition or potential condition, with a view to enabling such bidder to seek to satisfy the condition or assess whether the condition is not required or can be waived. Any such meetings or other form of communication will take place on terms and conditions considered appropriate by Origin and the Monitor. Origin and the Monitor must be provided with the opportunity to be present at all such communications or meetings.

ACCESS TO INFORMATION AND CREDIT BIDDING BY INTERIM LENDERS

29. Following the Bid Submission Deadline, copies of the Binding Bids shall be shared by Origin and the Monitor with the Interim Lenders. Should none of the Binding Bids received be acceptable to the Interim Lenders, including because such Binding Bids do not provide for the immediate repayment in cash of all outstanding amounts owing in respect of the senior debt owed to the Interim Lenders, the Monitor and Origin, with the consent of the Interim Lenders, may terminate the Sale Process and accept a credit bid (or such other bid) from the Interim Lenders for any part of the Business and/or the Property.
30. Notwithstanding anything contained herein, Origin, the Monitor and the Group, shall not provide the Interim Lenders with any information relating to the Binding Bids, other than the Subject Information (as defined below), unless and until the Interim Lenders confirm to Origin, the Group and the Monitor in writing that if they submit a credit bid in the Sale Process, such bid shall not be for an amount greater than the Senior Secured Debt. For the purposes of this paragraph, "**Subject Information**" shall mean, subject to the Monitor's determination of whether it is appropriate to disclose: (i) the amount and form of consideration payable in respect of the Senior Secured Debt; (ii) the transaction structure and the material conditions to closing contemplated in any Binding Bid; and (iii) any other information the Monitor considers appropriate.
31. The Group's directors and senior management ("**Management**") shall each confirm to the Monitor that they are not, directly or indirectly (including through affiliates or companies in which they control or have a majority ownership interest) participating in the preparation or submission of any bid pursuant to this Sale Process (the "**Independence Confirmation**"). Members of Management that do not provide the Independence Confirmation are deemed to be potential bidders and are not entitled to receive information under this Sale Process, and shall not to attend meetings with, or otherwise communicate with, Qualified Bidders except with the written consent of the Monitor (which maybe provided by email), which consent may be subject to conditions, including requiring Origin and/or the Monitor to attend such meetings or communications.

DEPOSITS

32. All Deposits paid pursuant to this Sale Process shall be held in trust by the Monitor in a non-interest-bearing account. The Monitor shall hold Deposits paid by each Successful Bidder and Backup Bidder in accordance with the terms of the Binding Final Agreement with the Successful Bidder and the Backup Bidder.
33. If a Deposit is paid pursuant to this Sale Process, and the Group, acting through the Monitor, elect not to proceed to negotiate and settle the terms and conditions of a definitive agreement with the person that paid such Deposit, subject to section 34, the Monitor shall return the Deposit to that person.
34. If a Qualified Bidder: (i) breaches any of its obligations under its Qualified Bid, any Binding Final Agreement or the terms of the Sale Process (including the Confidentiality Agreement); or (ii) breaches its obligations under the terms of the Sale Process (including the Confidentiality Agreement) or under the terms of its Qualified Bid if required by the Group to complete such transaction contemplated by its Qualified Bid, then, in each case,

such Qualified Bidder's Deposit will be forfeited as liquidated damages and not as a penalty.

OTHER MATTERS

35. The Sale Process does not, and will not be interpreted to, create any contractual or other legal relationship between the Group, the Monitor or Origin and any Qualified Bidder or any other party, other than as specifically set forth in a Confidentiality Agreement or a definitive agreement that may be signed with the Group.
36. Participants in the Sale Process are responsible for all costs, expenses and liabilities incurred by them in connection with the submission of any Binding Bid, due diligence activities, and any other negotiations or other actions, whether or not they lead to the consummation of a transaction.
37. Notwithstanding the process and deadlines outlined above with respect to the Sale Process, with the prior consent of the Interim Lenders and the assistance of Origin, the Monitor may, at any time: (i) pause, terminate, amend or modify the Sale Process; (ii) remove any portion of the Business and the Property from the Sale Process; (iii) bring an application to the CCAA Court to seek approval of a sale of, or investment in, all or part of the Property or the Business whether or not such sale or investment is in accordance with the terms or timelines set out in the Sale Process; and (iv) establish further or other procedures for the Sale Process, provided that the service list in the CCAA Proceedings shall be advised of any substantive modification to the procedures set forth herein.

SCHEDULE "A"

Addresses for Deliveries

Any delivery made to Origin pursuant to this Sale Process shall be made to:

Origin Merchant Partners
200 Bay Street, Suite 1300
Toronto, Ontario M5J 2W4

Attention: Andrew Muirhead
Email: andrew.muirhead@originmerchant.com

Any delivery made to the Monitor pursuant to this Sale Process shall be made to:

KSV Restructuring Inc.
220 Bay Street, 13th Floor, PO Box 20,
Toronto, Ontario, M5J 2W4

Attention: Noah Goldstein / Ross Graham
Email: ngoldstein@ksvadvisory.com / rgraham@ksvadvisory.com

With a copy to the Monitor's counsel:

Bennett Jones LLP
100 King Street West, Suite 3400
Toronto, Ontario M5X 1A4

Attention: Sean Zweig / Mike Shakra
Email: zweigs@bennettjones.com / shakram@bennettjones.com

Deliveries pursuant to this Sale Process by email shall be deemed to be received when sent. In all other instances, deliveries made pursuant to this Sale Process shall be deemed to be received when delivered to the address as identified above.

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