

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:



PEAKHILL CAPTIAL INC.

PETITIONER

AND:

SOUTHVIEW GARDENS LIMITED PARTNERSHIP, SOUTHVIEW GARDENS BT LTD.,
SOUTHVIEW GARDENS PROPERTIES LTD., ZHEN YU ZHONG, JUNCHAO MO,
COROMANDEL PROPERTIES (2016) LTD., BAYSHORE PROPERTIES (2016) LTD., AND
COROMANDEL HOLDINGS LTD.

RESPONDENTS

NOTICE OF APPLICATION

NAME OF APPLICANT: KSV Restructuring Inc. ("**KSV**"), in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") of the Property (defined below)

TO: Service List, attached hereto as **Schedule "A"**

TAKE NOTICE that an application will be made by the Receiver to the Honourable Mr. Justice Loo at the courthouse at 800 Smithe Street, Vancouver, British Columbia, on Thursday, March 23, 2023, at 9:00 a.m. for the order set out in Part 1 below.

Part 1: ORDER(S) SOUGHT

1. An order (the "**Sale Process Approval Order**"), substantially in the form attached hereto as **Schedule "B"**:
 - (a) approving and authorizing the Receiver to execute a listing agreement (the "**Listing Agreement**") with CBRE Limited ("**CBRE**") in respect of the Real Property (defined below);
 - (b) a sale process (the "**Sale Process**") in respect of all or substantially all of the Real Property (defined below); and
 - (c) the activities of the Receiver as set out in the First Report of the Receiver dated March 16, 2023 (the "**First Report**").

2. An order (the “**Sealing Order**”), sealing the Confidential Supplement to the First Report of the Receiver dated March 16, 2023 (the “**Confidential Supplement**”), pending the completion of a transaction(s) for the sale of all or substantially all of the Property (defined below) or further order of this Court.

Part 2: FACTUAL BASIS

Background to these Receivership Proceedings

1. On February 16, 2023 this Court pronounced an Order (the “**Receivership Order**”) appointing KSV as the Receiver without security, of all the assets, undertakings, and businesses of Southview Gardens BT Ltd., Southview Gardens Limited Partnership, and Southview Gardens Properties Ltd. (collectively, the “**Debtors**”) as they relate to the land legally described as Lot 14, District Lot 334, Plan 13993, PID 007-982-160 and the buildings thereon (the “**Real Property**” and, collectively, including proceeds thereof, the “**Property**”).
2. The Real Property is approximately 6.58 acres and located in the Champlain Heights neighbourhood in Vancouver, British Columbia. The Debtors operate an 18 building, 140-unit rental property, known as “Southview Gardens”, comprising a series of two- and three-story residential townhouse and apartment units, totalling approximately 141,000 square feet.
3. The Real Property is managed by Bentall Kennedy (Canada) Limited Partnership (“**Bentall**”), which runs day-to-day operations, including collecting rent, corresponding with tenants, arranging for ongoing repairs and maintenance, and paying expenses. Since its appointment, the Receiver has been in frequent communication with Bentall and has developed a communication plan to address tenant inquiries in respect of these receivership proceedings (these “**Receivership Proceedings**”).
4. 138 of the 140 rental units are currently tenanted. The remaining two units are vacant and currently being marketed by Bentall.
5. Given their size and location, the Real Property may have significant development potential. The Receiver has engaged Pooni Group, an urban planning firm with extensive experience in the Vancouver area, and which had previously been engaged by the Debtors, to consider the re-development potential of the Real Property. The Receiver has reviewed a memorandum outlining the Pooni Group’s findings (the “**Pooni Memo**”) and has determined that there is potential to increase creditor recovery if the Real Property is sold as a re-development site rather than on its current use alone. If the Sale Process is approved by this Court, the Pooni Memo will be shared with interested parties after such parties have executed and delivered a confidentiality agreement.
6. There are three mortgages and three assignments of rents registered on title to the Real Property in favour of the following parties:
 - (a) Peakhill Capital Inc. (“**Peakhill**”);
 - (b) Cenyard Pacific Developments Inc. (“**Cenyard**”); and

- (c) Woodbourne Canada IV GP ULC, WB Canada Partners IV (INT) MF Corp., and WB Canada Partners IV MF, LLC (collectively, "**Woodbourne**" and, collectively with Peakhill and Cenyard, the "**Secured Lenders**").
- 7. The Secured Lenders also have registrations in the British Columbia Personal Property Registry in respect of personal property of the Debtors.
- 8. The Secured Lenders have advised the Receiver that they are owed the following amounts by the Debtors:
 - (a) Peakhill: \$51,016,552 as at February 8, 2023;
 - (b) Cenyard: \$22,323,985.40 as at March 8, 2023; and
 - (c) Woodbourne: \$8,436,809.92 as at February 24, 2023.
- 9. The Receiver also has reviewed the books and records of the Debtors and Bentall, which indicate the Debtors owe approximately \$124,000 to unsecured creditors. The Receiver is not currently aware of any claims by Canada Revenue Agency against the Debtors.

Listing Agreement

- 10. The Receiver solicited proposals from six realtor firms with considerable experience in the listing and sale of similar properties in Vancouver to act as listing agent for the Real Property (the "**Request for Proposals**"). The primary consideration for the Receiver in selecting a realtor was its experience marketing and selling development properties. Therefore, the Receiver requested the following information in the proposals:
 - (a) background information regarding the realtor's experience and knowledge of the real estate market in Vancouver and British Columbia more generally;
 - (b) a proposed marketing plan for the Real Property;
 - (c) an estimate of the value of the Real Property; and
 - (d) the realtor's proposed commission structure.
- 11. The Receiver received proposals from all six realtor firms (the "**Realtor Proposals**") and attended multiple discussions with various prospective agents in respect of same. Representatives of Peakhill and Woodbourne also attended these discussions. Cenyard has advised that it is considering submitting a bid in respect of the Real Property. Therefore, the Receiver informed Cenyard that until it confirms that it will not participate in the Sale Process, the Receiver would be unable to share details of, among other things, the Realtor Proposals.
- 12. Ultimately, the Receiver selected CBRE to act as listing agent for the Real Property. In making its determination, the Receiver considered, among other things, CBRE's recent experience with large-scale complex land transactions in the Vancouver and surrounding markets, its assessment of the potential development value of the Real Property, its knowledge of potential buyers, and its commission rate. In addition, both Peakhill and Woodbourne support the retention of CBRE as listing agent.

13. The Receiver is working with CBRE to finalize the Listing Agreement and expects this to be complete prior to the hearing of this Notice of Application. CBRE's proposed commission rate in the Listing Agreement is 0.75% which, based on the Receiver's experience, is a market rate for such services. The Listing Agreement is subject to approval of this Court.

Proposed Sale Process

14. The Receiver has worked with CBRE to develop the proposed Sale Process to market the Real Property. A summary of the key milestones under the proposed Sale Process are as follows:

Milestone	Date
Sale Process Approval Order	March 23, 2023
Marketing and offer solicitation	Weeks 1 – 6
Preliminary letters of intent or purchase and sale agreements	May 11, 2023
Proposal short listing and approval, including 2 nd round bids and further bidding, as applicable	Weeks 7 - 8
Selection of successful bid	Weeks 8-9
Application for approval and vesting order and closing of transaction	As soon as possible, subject to Court availability

15. Other aspects of the Sale Process include:

- (a) the Real Property will be marketed on an "as is, where is" basis;
- (b) to the extent permitted by law, on the closing of one or more transactions in respect of all or substantially all of the Real Property, all of the right, title and interest of the Debtors in and to the Real Property will be sold free and clear of all pledges, liens, security interests, encumbrances and claims, pursuant to an approval and vesting order to be sought by the Receiver;
- (c) the Receiver will be entitled to extend any deadlines in the Sale Process if it considers it appropriate or necessary in the circumstances;
- (d) the Receiver will have the right to reject any and all offers, including the highest dollar value offer(s);
- (e) if, in the Receiver's sole discretion, it will assist to maximize recoveries, the Receiver will have the right to modify and adopt such other procedures (including consideration of a credit bid by a Secured Lender) that will better promote the sale

of the Real Property or increase the aggregate recoveries from same for stakeholders; and

- (f) any transaction will be subject to Court approval.

Sealing Order

16. The Receiver has prepared a summary of the Realtor Proposals (the "**Proposal Summary**") and has attached a copy of same as Appendix "1" to the Confidential Supplement, which is subject to the proposed Sealing Order.
17. The Realtor Proposals and, by extension, the Proposal Summary, contain information regarding the estimated value of the Real Property and other assessments with respect to the Real Property. If made public, this information may adversely influence the value of the offers submitted in the Sale Process. This would pose a serious risk to the interests of the financial stakeholders of the Debtors, including the Secured Lenders, and would potentially hinder the ability of the Receiver to satisfy its duty to maximize the value obtained for the Real Property.
18. The Receiver is not aware of any party that would be prejudiced if this information is sealed at this time pending the closing of a transaction(s) for the sale of all or substantially all of the Property or further order of the Court.

Receiver's Activities

19. As summarized in section 6 of the First Report, since its appointment pursuant to the Receivership Order, the Receiver has:
 - (a) retained and worked with its independent legal counsel regarding all aspects of its mandate;
 - (b) prepared letters to the Debtors, Bentall, and The Bank of Nova Scotia;
 - (c) corresponded with the Debtors to obtain information regarding, among other things, historical financials and tax returns, appraisals, and property insurance;
 - (d) corresponded and met with Peakhill and Woodbourne to discuss the Receiver's mandate and to provide ongoing updates on its activities;
 - (e) corresponded with Cenyard regarding aspects of the Receiver's mandate;
 - (f) reviewed the materials in respect of these Receivership Proceedings, including the Petition, filed February 13, 2023, Affidavit #1 of Remy Caruso filed February 14, 2023, and the Receivership Order;
 - (g) attended at the Real Property with Bentall to discuss Bentall's role and to understand the status of the Real Property;
 - (h) corresponded extensively and attended several meetings with Bentall regarding the management of the Real Property, communication with tenants, and to request information;

- (i) reviewed and approved payments and corresponded with Bentall regarding same;
- (j) reviewed information provided by Bentall including information with respect to, among other things, the budget, rent roll, service agreements, leasing reports and capital expenditures;
- (k) made extensive efforts to obtain insurance coverage in respect of the Real Property, including frequent communication with BFL CANADA Risk and Insurance Services Inc. (the Debtors' insurance broker) and Aon Parizeau Inc.
- (l) prepared the Request for Proposals and corresponded with each of the prospective realtor firms regarding same;
- (m) reviewed and summarized the proposals submitted by the realtors, attended calls and meetings with the realtors, and discussed same with Peakhill and Woodbourne;
- (n) negotiated the Listing Agreement with CBRE;
- (o) drafted and sent to known creditors the Notice and Statement of the Receiver pursuant to subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
- (p) drafted the First Report and the Confidential Supplement and reviewed all materials filed in connection with this application; and
- (q) dealt with other matters pertaining to the administration of the Receiver's mandate.

Part 3: LEGAL BASIS

Approval of Listing Agreement

1. Section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 (the "**BIA**") grants this Court authority to appoint a receiver to "take any other action that the court considers advisable" if it is "just or convenient to do so".

BIA, s 243(1)(c)

2. In addition, the Receivership Order expressly provides that:

2. The Receiver is empowered and authorized [...] to do any of the following where the Receiver considers it necessary or desirable:

[...]

(e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including, without limitation, those conferred by this Order;

[...]

(l) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver considers appropriate;

Receivership Order, s 2(e), (l)

3. Approval of the Listing Agreement is appropriate and necessary in the circumstances because such approval ensures certainty regarding the terms upon which CBRE is to be engaged and remunerated, allowing the Receiver and CBRE to move forward with confidence to implement the Sale Process, if approved.
4. In the Receiver's experience, the commission rate charged by CBRE is consistent with market rates. In addition, CBRE has recent and relevant experience, knowledge of potential purchasers, and national and international reach.
5. Peakhill and Woodbourne have consented to CBRE's engagement.

Approval of Sale Process

6. While the decision to approve a sale process is distinct from the approval of a proposed sale, the reasonableness and adequacy of any sale process proposed by a court-appointed receiver will be considered in light of the factors taken into account when considering the approval of a proposed sale set out in *Royal Bank of Canada v Soundair Corp*, including:
 - (a) the fairness, transparency, and integrity of the proposed process;
 - (b) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver; and
 - (c) whether the sale process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd, 2012 ONSC 1750 at para 6

Walter Energy Canada Holdings Inc, Re, 2016 BCSC 107 at para 20

7. Applying these factors, the Sale Process is appropriate in the circumstances and ought to be approved by this Court. In particular:
 - (a) the Sale Process is a fair, open, and transparent process intended to canvass the market broadly on an orderly basis;
 - (b) the terms of the Sale Process are consistent with other real estate sale processes conducted in the context of receivership proceedings;
 - (c) if approved, the Receiver will commence the Sale Process with alacrity. Subject to this Court's approval, CBRE has been engaged under the Listing Agreement and

has already commenced its underwriting process. In addition, the proposed Sale Process requires interested parties to perform diligence and to submit offers in respect of the Real Property by the preliminary offer deadline of May 11, 2023. Further bids will be sought by the Receiver over the following two weeks, with the intention that the successful bidder will be selected and definitive documents finalized in weeks 8 and 9 of the Sale Process. This will provide sufficient time to provide a reasonable and robust market test of the value of the Real Property, while proceeding efficiently to reduce costs and maximize recovery for stakeholders;

- (d) the Sale Process is flexible in that it contemplates that the Receiver be authorized to modify the Sale Process and adopt other procedures if, in the Receiver's discretion, doing so will maximize recoveries for stakeholders;
- (e) CBRE is well-qualified to market the Real Property, having significant experience selling large-scale properties with development potential in the Vancouver area and national and international reach.

Approval of Receiver's Activities

- 8. Under its inherent jurisdiction, this Court may approve the activities of a court-appointed receiver, provided the receiver has acted reasonably, prudently, and not arbitrarily.

Leslie & Irene Dube Foundation Inc v P218 Enterprises Ltd, 2014 BCSC 1855 at para 54

- 9. Approval of the Receiver's activities is appropriate in the circumstances because such approval will:

- (a) allow the Receiver and other stakeholders to move forward with the next steps in this proceeding;
- (b) bring the Receiver's activities in issue before this Court, providing an opportunity for the concerns of this Court, the Petitioner, and other stakeholders to be addressed, and any problems to be rectified in a timely way;
- (c) enable this Court, tasked with supervising this proceeding, to satisfy itself that the Receiver's court-mandated activities have been conducted in a prudent and diligent manner;
- (d) provide protection for the Receiver, not otherwise provided by statute; and
- (e) protects creditors from delay that would be caused by:
 - (i) re-litigation of steps taken to-date; and
 - (ii) potential indemnity claims by the Receiver.

Target Canada Co (Re), 2015 ONSC 7574 at para 23

Hanfeng Evergreen Inc (Re), 2017 ONSC 7161 at para 15

10. The approval sought by the Receiver is not a general approval of its activities to date. Instead, it is the approval of the specific activities taken by the Receiver as specifically detailed in the First Report and summarized above.
11. The Receiver carried out all activities in good faith and has acted reasonably, prudently, and not arbitrarily in the circumstances.

Sealing Order

12. This Court has discretion to grant a sealing order where:
 - (a) court openness poses a serious risk to a “public interest”, which is not restricted solely to the interests of the parties, but applies at the level of a general principle;
 - (b) such an order is necessary to prevent serious risk to the identified interest, including a commercial interest, in the context of litigation because reasonable alternative measures will not prevent the risk; and
 - (c) as a matter of proportionality, the salutary effects of the confidentiality order, including the effects on the right of civil litigants to a fair trial, outweigh the deleterious effects, including the effects on the right to free expression, which in this context includes the public interest in open and accessible Court proceedings.

Sierra Club of Canada v Canada (Minister of Finance),
2002 SCC 41 at para 53

Sherman Estate v Donovan, 2021 SCC 25
at paras. 38, 41 – 43

13. The Confidential Supplement attaches the Proposal Summary, which includes information regarding the estimated value of the Real Property and other assessments with respect to the Real Property. Public disclosure of this information may adversely influence the value of the offers submitted in the Sale Process. This would pose a serious risk to the interests of the financial stakeholders of the Debtors and potentially hinder the ability of the Receiver to satisfy its duty to maximize the value obtained for the Real Property.
14. There is an important public interest in: (i) protecting the interest of the financial stakeholders of the Debtors and facilitating the maximization of value for the Debtors' assets; and (ii) preserving the integrity of distressed sales processes generally.

e.g., *Ontario Securities Commission v Bridging Finance Inc*, 2021 ONSC 4347 at para 24

15. Finally, the request to seal the Confidential Supplement until the completion of a transaction(s) for the sale of all or substantially all of the Property or further order of this Court is appropriate and proportionate in that it is limited in time to the period during which the interests of the Debtors' financial stakeholders are at risk. Once such a transaction has completed, the risk to those interests will have passed. In the

circumstances, the salutary effects of the Sealing Order outweigh its deleterious effects and it is necessary and appropriate in the circumstances.

Part 4: MATERIAL TO BE RELIED ON

1. First Report of the Receiver dated March 16, 2023.
2. Confidential Supplement to the First Report dated March 16, 2023.

The applicant estimates that the Application will take 30 minutes.

- This matter is within the jurisdiction of a Master.
- This matter is not within the jurisdiction of a Master. This matter is scheduled to be heard by Mr. Justice Loo.

TO THE PERSONS RECEIVING THIS NOTICE OF APPLICATION: If you wish to respond to this Notice of Application, you must, within 5 business days after service of this Notice of Application or, if this Application is brought under Rule 9-7, within 8 business days after service of this Notice of Application,

- (a) file an Application Response in Form 33,
- (b) file the original of every Affidavit, and of every other document, that
 - (i) you intend to refer to at the hearing of this Application, and
 - (ii) has not already been filed in the proceeding, and
- (c) serve on the applicant 2 copies of the following, and on every other party of record one copy of the following:
 - (i) a copy of the filed Application Response;
 - (ii) a copy of each of the filed Affidavits and other documents that you intend to refer to at the hearing of this application and that has not already been served on that person;
 - (iii) if this application is brought under Rule 9-7, any notice that you are required to give under Rule 9-7(9).

Date: March 16, 2023



Signature of lawyer for the applicant
Cassels Brock & Blackwell LLP
(Forrest Finn)

To be completed by the Court only:

Order made

- in the terms requested in paragraphs _____ of Part 1 of this Notice of Application
- with the following variations and additional terms:

Date: _____

Signature of Judge Master

APPENDIX

THIS APPLICATION INVOLVES THE FOLLOWING:

- discovery: comply with demand for documents
- discovery: production of additional documents
- other matters concerning document discovery
- extend oral discovery
- other matter concerning oral discovery
- amend pleadings
- add/change parties
- summary judgment
- summary trial
- service
- mediation
- adjournments
- proceedings at trial
- case plan orders: amend
- case plan orders: other
- experts

SCHEDULE "A"
SERVICE LIST

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PEAKHILL CAPTIAL INC.

PETITIONER

AND:

SOUTHVIEW GARDENS LIMITED PARTNERSHIP, SOUTHVIEW GARDENS BT LTD.,
SOUTHVIEW GARDENS PROPERTIES LTD., ZHEN YU ZHONG, JUNCHAO MO,
COROMANDEL PROPERTIES (2016) LTD., BAYSHORE PROPERTIES (2016) LTD., AND
COROMANDEL HOLDINGS LTD.

RESPONDENTS

SERVICE LIST

As at Feb. 17, 2023

Name of Counsel:	Name of Parties:
<p>Cassels Brock & Blackwell LLP 2200 - 885 West Georgia Street Vancouver, BC V6C 3E8</p> <p>Attention: Vicki Tickle Forrest Finn Hayley Roberts (Assistant)</p> <p>Email: vtickle@cassels.com ffinn@cassels.com hroberts@cassels.com</p> <p>Tel.: (604) 691-6100 Fax: (604) 691-6120</p>	<p><i>KSV Restructuring Inc., in its capacity as the court-appointed receiver</i></p>

Name of Counsel:	Name of Parties:
<p>Osler, Hoskin & Harcourt LLP Suite 1700 Guinness Tower 1055 West Hastings Street Vancouver, BC V6E 2E9</p> <p>Attention: Mary Buttery, Amanda G. Manasterski Christian Garton Elie Laskin</p> <p>E-mail: mbuttery@osler.com amanasterski@osler.com csarton@osler.com elaskin@osler.com</p> <p>Tel: (778) 785-3000 Fax: (778) 785-2745</p>	<p><i>Peakhill Capital Inc.</i></p>
<p>Owen Bird Law Corporation Vancouver Center II 2900-733 Seymour Street, P.O. Box 1 Vancouver, BC V6B-0S6</p> <p>Attention: Alan A. Frydenlund, K.C. Scott Stephens Heather A. Frydenlund</p> <p>Email: afrydenlund@owenbird.com sstephens@owenbird.com hfrydenlund@owenbird.com</p> <p>Tel: (604) 688-0401 Fax: (604) 688-2827</p>	<p><i>Lanyard Investments Inc. as general partner of LFC Alberta21 Limited Partnership, Lanyard Investment Inc. as general partner of LFC KESEF-B21 Limited Partnership, Accountable Mortgage Investment Corp., Blueshore Financial Credit Union, Gulf Cord Fraser Fishermen's Credit Union</i></p>
<p>DLA Piper (Canada) LLP 2800 Park Place 666 Burrard Street Vancouver, BC V6C 2Z7</p> <p>Attention: Colin Brousson Jeffrey D. Bradshaw</p> <p>Email: colin.brousson@dlapiper.com jeffrey.bradshaw@dlapiper.com</p> <p>Tel.: (604) 687-9444 Fax: (604) 687-1612</p>	<p><i>WB Canada Partners IV (INT) MF Corp., WB Canada Partners IV MF, LLC, Woodbourne Canada Partners IV GP ULC, Forgestone Mortgage Fund Limited Partnership, Desjardins Financial Security Life Assurance Company, Desjardins Global Asset Management Inc.</i></p>

Name of Counsel:	Name of Parties:
<p>Dentons Canada LLP 250 Howe Street, 20th Floor Vancouver, BC V6C 3R8</p> <p>Attention: Jordan Schultz Valerie Cross Miriam Dominguez (Paralegal) Chelsea Denton (Assistant)</p> <p>Email: jordan.schultz@dentons.com valerie.cross@dentons.com Miriam.dominguez@dentons.com chelsea.denton@dentons.com</p> <p>Tel.: (604) 687-4460 Fax: (604) 683-5214</p>	<p><i>Cenyard Pacific Developments Inc.</i></p>
<p>Robert A. Millar Law Corporation 5145 Keith Road West Vancouver, BC V7W 2M9</p> <p>Attention: Robert A. Millar</p> <p>Email: rmillarlc@gmail.com</p> <p>Tel: (604) 506-3332 Fax : NA</p>	<p><i>Undisclosed potential purchaser</i></p>
<p>Clark Wilson LLP 900 – 885 West Georgia Street Vancouver, BC V6C 3H1</p> <p>Attention: Christopher J. Ramsay Katie G. Mak Nick Carlson Jaime Landa (Assistant)</p> <p>Email: cramsay@cwilson.com kmak@cwilson.com ncarlson@cwilson.com jlanda@cwilson.com</p> <p>Tel: 604.643.3105 (Christopher) 604.643.3176 (Katie)</p>	<p><i>Southview Gardens BT Ltd., Southview Gardens Limited Partnership, and Southview Gardens Properties Ltd.</i></p>

EMAIL SERVICE LIST:

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SCHEDULE "B"
DRAFT ORDER

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

PEAKHILL CAPTIAL INC.

PETITIONER

AND:

SOUTHVIEW GARDENS LIMITED PARTNERSHIP, SOUTHVIEW GARDENS BT LTD.,
SOUTHVIEW GARDENS PROPERTIES LTD., ZHEN YU ZHONG, JUNCHAO MO,
COROMANDEL PROPERTIES (2016) LTD., BAYSHORE PROPERTIES (2016) LTD., AND
COROMANDEL HOLDINGS LTD.

RESPONDENTS

ORDER MADE AFTER APPLICATION

BEFORE THE HONOURABLE
MR. JUSTICE LOO

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THURSDAY, THE 23RD DAY OF
MARCH, 2023

ON THE APPLICATION of KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "Receiver") of all assets, undertakings, and businesses of Southview Gardens BT Ltd., Southview Gardens Limited Partnership, and Southview Gardens Properties Ltd. as they relate to the land legally described as Lot 14, District Lot 334, Plan 13993, PID 007-982-160 and the buildings thereon (collectively, including proceeds thereof, the "Property"), coming on for hearing at Vancouver, British Columbia on Thursday, March 23, 2023; AND ON HEARING Vicki Tickle and Forrest Finn, counsel for the Receiver, and those other counsel listed in **Schedule "A"** hereto, and no one else appearing although duly served; AND UPON READING the material filed herein, including the First Report of the Receiver dated March 16, 2023 (the "First Report") and the Receiver's Confidential Supplement to the First Report dated March 16, 2023;

THIS COURT ORDERS AND DECLARES THAT:

1. The time for service of the Receiver's Notice of Application (the "Notice of Application") dated March 16, 2023 and the First Report be and is hereby abridged such that the

Notice of Application is properly returnable today and service thereof on any interested party is hereby dispensed with.

2. The Receiver is authorized and empowered to enter into the Listing Agreement dated March 16, 2023 between the Receiver and CBRE Limited (“**CBRE**”) substantially in the form in **Schedule “B”** hereto, *nunc pro tunc*, and with such minor amendments as may be acceptable to the Receiver and CBRE.
3. The sale process (the “**Sale Process**”), substantially as described in the First Report, is approved.
4. The Receiver is authorized and directed to carry out the solicitation process described in the Sale Process, in accordance with the terms thereof and this Order, and is authorized and directed to take such steps as it considers necessary or desirable in exercising its powers and in carrying out its obligations under the Sale Process.
5. The First Report and the activities of the Receiver as set out therein are hereby approved.
6. Endorsement of this order by counsel appearing, other than counsel for the Receiver, 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 Lawyer for KSV Restructuring Inc.
Cassels Brock & Blackwell LLP
(Vicki Tickle)

BY THE COURT

REGISTRAR

SCHEDULE "A"
LIST OF COUNSEL

NAME	PARTY REPRESENTED

SCHEDULE "B"
FORM OF LISTING AGREEMENT
(See Attached)

Re: Listing Agreement (the "**Agreement**") for the land legally described as Lot 14, District Lot334, Plan 13993, PID 007-982-160 (municipally known as 3240 East 58th Avenue, Vancouver, British Columbia) (the "**Property**") between **CBRE Limited** (the "**Listing Brokerage**") and **KSV Restructuring Inc.** (the "**Seller**"), without personal or corporate liability and solely in its capacity as Court-appointed receiver and manager of all the assets, undertakings and business of Southview Gardens BT LTD., Southview Gardens Limited Partnership, and Southview Gardens Properties Ltd., (the "**Debtors**") as they relate to the Property and the buildings thereon.

Notwithstanding anything contained in the Agreement, each of Listing Brokerage, and the Seller acknowledges and agrees as follows:

1. Termination Rights. The Seller may, without penalty or cost to the Seller, terminate the Agreement at any time if the Listing Brokerage is in default hereunder or under any other agreement with the Seller. In addition, this Agreement shall automatically terminate if: (a) the Supreme Court of British Columbia (the "Court") order appointing the Seller and/or the Seller's appointment as receiver and manager of the Property owned by the Debtors is revoked, overturned on appeal, suspended or terminated; and/or (b) the Seller is restricted in or enjoined from dealing with the Property by a court of competent jurisdiction; and/or (c) any of the mortgagees of the Property or any other future lenders are permitted by Court order to enforce their rights and/or remedies against the Property.

2. Price. While it is the Seller's intention to obtain the highest and best offer for the Property, the Listing Brokerage acknowledges and agrees that the Seller need not accept the highest offers and/or the best offers or any offer, and that acceptance by the Seller of any offers for the Property are subject at all times to the Seller's approval in its sole and absolute discretion and as well as approval by the Court. No fee, commission or other compensation is payable to the Listing Brokerage in respect of the Property unless and until the sale of the Property has been completed and the Seller is paid in its entirety (other than any portion of the purchase price to be paid by VTB mortgage or similar post-closing payment arrangement).

3. Holdover Period Commission. Any fee, commission or other compensation payable to the Listing Brokerage in connection with a holdover period, being six months from the termination of the Agreement ("Holdover Period"), shall: (a) only apply to those purchasers who were introduced to the Seller or to the Property by the Listing Brokerage during the Listing Period (as defined below) and who the Listing Brokerage has previously disclosed in writing to the Seller no later than three (3) days following the earlier of the expiration or termination of the Agreement; and (b) be reduced by any fee, commission and/or other compensation paid to another broker or agent for the sale of the Property as the new Listing Brokerage (the "New Agent") on the basis of an agreement with the New Agent entered into with respect to the Holdover Period. If the Listing Brokerage had introduced up to a maximum of two (2) different prospective bona fide purchasers to the Seller during the Listing Period (each being a "Serious Prospect") and said Serious Prospect had entered into material negotiations with the Seller to purchase the Property, but said material negotiations had not resulted in a binding agreement of purchase and sale, to the extent that each of the Listing Brokerage and the Seller agree in writing to designate said prospective purchaser as a Serious Prospect prior to the expiration of the Listing Period, and so long as the Seller is not prohibited from doing so, and provided that the New Agent has agreed to forego its fee should a sale to a Serious Prospect be completed, the Listing Brokerage shall be entitled to its commission in connection with the transaction being completed with the Serious Prospect upon terms and conditions acceptable to the Seller in their sole and absolute discretion, which transaction must be subject to Court approval and a binding and unconditional agreement of purchase and sale executed by each of the parties thereto prior to the expiration of the Holdover Period. During the Holdover Period, the Listing Brokerage will not be entitled to any commission, payment or fee as the Seller's agent if the Listing Team (as defined below) represents the purchaser.

4. Listing Brokerage's Duties. The Listing Brokerage covenants and agrees with the Seller to:

(a) pursuant to the Seller's instructions as outlined below, offer the Property for sale on an unpriced basis (save and except as described in (b) below with respect to the Multiple Listings Service ("MLS"));

(b) if instructed by the Seller, offer the Property for sale on MLS, for which the listed price shall be \$1.00, or as otherwise directed by the Seller, and the commissions to Co-operating Agents (as defined below) shall be negotiated by the Listing Brokerage with the Co-operating Agents but shall be an additional commission agreed to and paid by the Seller in addition to the Listing Fee (as defined below);

(c) unless otherwise agreed by the Seller, diligently market the Property for sale and use commercially reasonable efforts to sell the Property pursuant to the process set out below.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
Phase 1 – Underwriting		
Due diligence	<ul style="list-style-type: none"> ➤ The Listing Brokerage to review all available documents (financial, legal and environmental reports) concerning the Real Property. 	Prior to the March 23, 2023 Court hearing to approve the sale process and retention of the Listing Brokerage
Finalize marketing materials	<ul style="list-style-type: none"> ➤ The Listing Brokerage and the Seller to: <ul style="list-style-type: none"> ○ prepare a marketing brochure; ○ populate an online data room; ○ prepare a Confidentiality Agreement (“CA”); and ○ prepare a Confidential Information Memorandum (“CIM”). 	
Prospect Identification	<ul style="list-style-type: none"> ➤ The Listing Brokerage will qualify and prioritize prospects; and ➤ The Listing Brokerage will also have pre-marketing discussions with targeted prospects. 	
Phase 2 – Marketing and Offer Solicitation		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ offering summary and marketing materials printed; ○ launch of email and social media campaign; ○ publication of the acquisition opportunity in a regional and national newspaper; ○ telephone and email canvass of leading prospects; and ○ meet with and interview bidders. 	Week 1-6
Stage 2	<ul style="list-style-type: none"> ➤ The Listing Brokerage to provide detailed information to qualified prospects that sign the CA, including the CIM and access to the data room; ➤ The Listing Brokerage to facilitate diligence by interested parties; ➤ The Seller and legal counsel will prepare a vendor’s form of Purchase and Sale Agreement (“PSA”) which will be made available in the data room; and 	Week 1-6

	<ul style="list-style-type: none"> ➤ The Listing Brokerage to provide weekly updates to the Seller. 	
Stage 3	<ul style="list-style-type: none"> ➤ Prospective purchasers to submit preliminary letters of intent or PSAs. 	May 11, 2023
Phase 3 – Offer Review and Negotiations		
	<ul style="list-style-type: none"> ➤ Proposal short listing and approval; ➤ 2nd Round bids and further bidding - prospective purchasers may be asked to re-submit PSAs on one or more occasions. 	Week 7-8
Selection of Successful Bids	<ul style="list-style-type: none"> ➤ Select successful bidder and finalize definitive documents, subject to any final diligence to be performed by the purchaser. 	Week 8-9
Due Diligence	<ul style="list-style-type: none"> ➤ Manage and monitor final due diligence process, to the extent required; 	
Phase 4 – Closing		
Sale Approval Application and Closing	<ul style="list-style-type: none"> ➤ Motion for sale approval and close transaction; and ➤ Transaction completed as soon as possible. 	ASAP

(d) co-operate with all licensed real estate brokers and agents in the sale of the Property (collectively the “Co-operating Agents” and each a “Co-operating Agent”), with any commissions or fees of such Co-operating Agents to be paid by the Seller as stated above;

(e) ensure that there is continuity in the assignment of individual staff members and partners to the work performed by the Listing Brokerage under the terms of this engagement. In particular, the Listing Brokerage agrees to ensure that individual staff members originally assigned, including Tony Quattrin Personal Real Estate Corporation, Jim Szabo Personal Real Estate Corporation, Carter Kerzner, Vincent Minichiello, Anthony Liang and Kevin Mak (collectively the “Listing Team”), to perform work in connection with the Listing Brokerage’s engagement, will each be available and will devote the time required to undertake the assignment contemplated herein;

(f) subject to the instructions of the Seller, to assist the Seller in negotiating binding agreements of purchase and sale subject to Court approval with those parties identified by the Seller. Only the Seller shall have authority to accept offers and the Listing Brokerage shall not have any authority whatsoever to enter into any sale, financing or other contract on behalf of the Seller and/or to otherwise bind the Seller in any manner whatsoever;

(g) continue to assist the Seller in connection with the sale of the Property and seeking Court approval after the execution of a binding agreement of purchase and sale with respect to the same until such sale has been successfully concluded; and

(h) unless the Seller’s written consent is provided in advance, to act solely for the benefit of the Seller in connection with the marketing and sale of the Property and not to have any direct or indirect interest in any entity purchasing or proposing to purchase the Property and not to receive any payments or other benefits from said purchasers or potential purchasers.

5. Commission Payable to the Listing Brokerage. The Seller shall pay to the Listing Brokerage upon the successful completion of sale of the Property, a commission payable of 0.75% of the gross selling price (the "Listing Fee"). If Cenyard Pacific Developments Inc., or an entity related to them, is the successful purchaser of the Real Property, the Seller shall pay to the Listing Brokerage upon successful completion of the sale of the Property, a commission payable of 0.375%, which will be the "Listing Fee" as opposed to 0.75%. For greater certainty, if any parties other than Cenyard Pacific Developments Inc. are the successful purchaser, the Listing Fee will be 0.75% of the gross selling price. The Seller acknowledges that payment of GST applies on all commissions payable. As it relates to the commission payable, a sale constitutes a Court approved sale of the Property, share transaction, exercise of first right to purchase, option or other form of sale or transfer of the rights of the Property. The Seller agrees to notify the Listing Brokerage of the successful completion or closing. The Seller hereby instructs its solicitors and agrees to advise the Court to distribute payment to the Listing Brokerage in the amount noted above directly out of the proceeds of sale in accordance with an accepted agreement of purchase and sale and to have same addressed as a closing cost to the transaction.

6. Acknowledgments. The Listing Brokerage acknowledges and agrees in favour of the Seller that: (a) the Property is to be marketed and sold on an "as is, where is" basis and, accordingly, any agreement of purchase and sale shall provide an acknowledgment by such purchaser that the Property is being sold by the Seller on an "as is, where is" basis, and that no representations or warranties have been or will be made by the Seller or anyone acting on its behalf, to the Listing Brokerage or such purchaser as to the condition of the Property or any buildings located thereon; (b) in lieu of a transfer/deed of land for the Property, the Seller will vest title to the Property by way of a vesting order; and (c) the sale of the Property requires the prior approval of the Court in the Court's sole and absolute discretion.

7. Advertisement Expenses & Third Party Consultants. All advertising and sales promotion shall be subject to the approval of the Seller and all such advertisement and promotional material shall be prepared, published and distributed by the Listing Brokerage and shall be at the expense of the Listing Brokerage. All third-party reports and legal service fees requested and/or approved by the Seller shall be at the expense of the Seller.

8. Indemnity. The Listing Brokerage confirms that it owes an obligation to the Seller and its officers, employees and agents (collectively, the "Indemnified Parties") to carry out its activities in a competent and professional manner acting reasonably and in good faith. As such, the Listing Brokerage confirms that it owes an obligation to the Indemnified Parties with respect to claims made by third parties against the Indemnified Parties arising out of work performed by the Listing Brokerage or the Listing Brokerage's failure to comply with its obligations hereunder. This indemnity shall survive the expiration or termination of the Agreement.

9. Confidentiality. The Listing Brokerage shall treat and shall cause its agents to treat as confidential and shall not disclose, during as well as after the rendering of the service contracted herein, any confidential information, records or documents to which the Listing Brokerage becomes privy as a result of its performance of the Agreement and shall take all necessary steps to ensure the confidentiality of information in the Listing Brokerage's possession or control except for disclosure that may be required for the reasonable performance by the Listing Brokerage of its responsibilities hereunder.

10. Assignment. This Agreement shall not be assigned in whole or in part by the Listing Brokerage without the prior written consent of the Seller which consent may be unreasonably and/or arbitrarily withheld and any assignment made without that consent is void and of no effect.

11. Seller's Capacity. Notwithstanding the foregoing or anything else contained herein or elsewhere, the Listing Brokerage acknowledges and agrees that approval of the Seller's contemplated sale process (including the retention of the Listing Brokerage) and any transaction or transactions involving a sale of the Property require the prior approval of the Court in the Court's sole and absolute discretion.

12. Warranty. Subject to Section 11 above and the remainder of this Section 12, the Seller represents and warrants that the Seller has the exclusive authority and power to execute this Agreement and to authorize the Listing Brokerage to offer the Property for sale. Notwithstanding the foregoing, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Property and cannot confirm any third-party interests or claims with respect to the Property such as rights of first refusal, options, easements, mortgages, encumbrances or other otherwise concerning the Property, which may affect the sale of the Property.

13. Facsimile & Counterparts. This Agreement and any other agreement delivered in connection therewith, and any amendments thereto, may be executed by facsimile transmittal facilities, or electronic copy in a portable document format or such similar format and if so executed and transmitted, will be for all purposes as effective as if the parties had delivered an executed original of this

Agreement, or such other agreement or amendment, as the case may be, and shall be deemed to be made when the receiving party confirms this Agreement, or such agreement or amendment, as the case may be, to the requesting party by facsimile or by electronic copy in a portable document format or such similar format. This Agreement may be executed in several counterparts, and each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and, notwithstanding their date of execution, shall be deemed to bear date as of the date first written above.

14. Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the Province of British Columbia. If any provision hereof is invalid or unenforceable in any jurisdiction where this Agreement is to be performed, such provision shall be deemed to be deleted and the remaining portions of this Agreement shall remain valid and binding on the parties hereto.

15. Finder's Fees. The Seller does not consent to the Listing Brokerage or any Cooperating Agents (or their respective affiliates) receiving and retaining, in addition to the commission provided for or otherwise contemplated in this Agreement, a finder's fee for any financing of the Property.

16. Verification of Information. The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Property and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. For greater certainty, none of the Listing Brokerage or the Listing Brokerage's representatives may bind the Seller or execute any documentation on behalf of the Seller. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

17. Listing Period. The term of this Agreement shall begin upon acceptance of this Agreement (the "Commencement Date") and shall expire one minute before midnight on the six month anniversary of the Commencement Date or upon earlier termination as otherwise prescribed herein. Notwithstanding any other provision in this Agreement, the Listing Brokerage shall not advertise the Property on MLS until the Seller provides expressed authority to do so and all marketing materials have been approved. The Listing Brokerage shall have five (5) days following said approval to post the Property on the MLS.

CBRE LIMITED

Per:

Name:

Title:

**KSV RESTRUCTURING INC. SOLELY IN ITS
CAPACITY AS COURT APPOINTED RECEIVER
AND MANAGER OF SOUTHVIEW GARDENS BT
LTD., SOUTHVIEW GARDENS LIMITED
PARTNERSHIP AND SOUTHVIEW GARDENS
PROPERTIES LTD. AND NOT IN ITS PERSONAL
CAPACITY**

Per:

Name: Noah Goldstein

Title: Managing Director