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CV-23-00698637-00CL
CV-23-00699067-00CL

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

BETWEEN

KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION

Applicants

- and -

**STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS) INC.,
STATEVIEW HOMES (ON THE MARK) INC., TLSFD TAURASI HOLDINGS CORP. AND
STATEVIEW HOMES (HIGH CROWN ESTATES) INC.**

Respondents

**ATRIUM MORTGAGE INVESTMENT CORPORATION AND DORR CAPITAL
CORPORATION**

Applicants

- and -

STATEVIEW HOMES (NAO TOWNS II) INC., DINO TAURASI AND CARLO TAURASI

Respondents

DORR CAPITAL CORPORATION

Applicant

- and -

HIGHVIEW BUILDINGS CORP INC.

Respondent

DORR CAPITAL CORPORATION

Applicant

- and -

STATEVIEW HOMES (BEA TOWNS) INC.

Respondent

MERIDIAN CREDIT UNION LIMITED

Applicant

- and -

STATEVIEW HOMES (ELM & CO) INC.

Respondent

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

**FACTUM OF THE RECEIVER
(SALE PROCESS APPROVAL ORDER)**

June 2, 2023

CASSELS BROCK & BLACKWELL LLP

Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4

Ryan Jacobs LSO#: 59510J

Tel: 416.860.6465
rjacobs@cassels.com

Joseph Bellissimo LSO#: 46555R

Tel: 416.860.6572
jbellissimo@cassels.com

Alec Hoy LSO#: 85489K

Tel: 416.860.2976
ahoy@cassels.com

Lawyers for the Receiver (NAO Phase 1, Minu, On
the Mark, High Crown and Taurasi Holdings
Receiverships)

PALIARE ROLAND LLP

155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Jeff Larry LSO#: 44608D

Tel: 416.646.4330
jeff.larry@paliareroland.com

Daniel Rosenbluth LSO#: 71044U

Tel: 416.646.6307
daniel.rosenbluth@paliareroland.com

Lawyers for the Receiver (NAO Phase 2, BEA,
Highview and Elm Receiverships)

TO: SERVICE LIST

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FACTUM OF THE RECEIVER (Sale Process Approval)

PART I - NATURE OF THIS MOTION

1. KSV Restructuring Inc. (“**KSV**”), in its capacity as the Receiver (as defined below) brings this motion to this Court for, *inter alia*, an order (the “**Sale Process Approval Order**”): (i) approving the sale process (the “**Sale Process**”) as set out in Section 5.0 of the First Report of the Receiver dated May 30, 2023 (the “**First Report**”), and authorizing and directing the receiver to conduct the Sale Process, including entering into realtor listing agreements as set out in the Sale Process; and (ii) approving the First Report and the activities of the Receiver as described therein.

PART II - SUMMARY OF FACTS¹

A. OVERVIEW

2. On May 2, 2023, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43, as amended (the “**CJA**”), the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted a series of separate orders (the “**May 2nd Receivership Orders**”), which, among other things, appointed KSV as the receiver and manager (in such capacity, the “**Receiver**”) of the assets, undertakings and properties, including the real property, of:²

- (a) Stateview Homes (Nao Towns II) Inc. (“**Nao Phase II**”), pursuant to an action commenced by Atrium Mortgage Corporation (“**Atrium**”);

¹ Terms and phrases used but not defined in this Factum shall have the meanings given to them in the First Report of the Receiver dated May 30, 2023 [*First Report*].

² First Report at 1.1.

- (b) Stateview Homes (BEA Towns) Inc. (“**BEA**”), pursuant to an application commenced by Dorr Capital Corporation (“**Dorr**”);
- (c) Highview Building Corp Inc. (“**Highview**”), pursuant to an application commenced by Dorr; and
- (d) Stateview Homes (Nao Towns) Inc. (“**Nao Phase I**”), Stateview Homes (Minu Towns) Inc. (“**Minu**”), Stateview Homes (High Crown Estates) Inc. (“**High Crown**”), Stateview Homes (On the Mark) Inc. (“**On the Mark**”) and TLSFD Taurasi Holdings Corp. (“**Taurasi Holdings**”), pursuant to an application commenced by Kingsett Mortgage Corporation (“**Kingsett**”) and Dorr.

3. On May 18, 2023, pursuant to section 243(1) of the *BIA* and section 101 of the *CJA*, the Court granted an order (the “**May 18th Receivership Order**” and together with the May 2nd Receivership Orders, the “**Receivership Orders**”), which, among other things, appointed KSV as the Receiver of the property, assets and undertakings of Stateview Homes (Elm & Co) Inc. (“**Elm**”), including its real property, pursuant to an application by Meridian Credit Union Limited (“**Meridian**” and together with Atrium, Dorr, and Kingsett, the “**Mortgagees**”).³

4. Nao Phase I, Nao Phase II, Minu, High Crown, On the Mark, BEA, Highview, Taurasi Holdings and Elm are collectively referred to as the “**Receivership Companies**”

5. Other than Taurasi Holdings, the Receivership Companies are each owners and developers of real estate development projects (each a “**Project**”, and collectively, the “**Projects**”), pursuant to which each entity owns certain property (the “**Property**”) and real property (the “**Real Property**”). Each of the Receivership Companies is a single-purpose

³ First Report at 1.2.

company that owns a specific Project, except for Taurasi Holdings which owns four industrial properties.⁴

B. THE PROPOSED SALE PROCESS

6. The Receivership Orders authorize the Receiver to market and sell, among other things, the Real Properties.⁵

7. The Receiver is seeking approval of a Sale Process with respect to each of the Receivership Companies, other than On the Mark which the Receiver continues to consider as discussed in the First Report.

8. Pursuant to a realtor selection process by which multiple national real estate brokerages were invited to submit proposals to market for sale the Real Properties (the “**RFP**”), the Receiver selected: (i) Cushman & Wakefield ULC (“**Cushman**”) to sell the NAO Phase II and Elm Projects; (ii) Colliers International (“**Colliers**”) to sell the BEA and Highview Projects; (iii) Jones Lang LaSalle Real Estate Services, Inc. (“**JLL**”) to sell the industrial properties owned by Taurasi Holdings and the High Crown Project; and (iv) CBRE Limited (“**CBRE**” and collectively with Cushman, Colliers and JLL, the “**Realtors**”) to sell the Minu and Nao Phase I Projects.⁶ This decision was based on, among other things, the Realtors’ knowledge of the specific Projects, their

⁴ First Report at 2.3.1.

⁵ *KingSett Mortgage Corporation and Dorr Capital Corporation v. Stateview Homes (Minu Towns) Inc., Stateview Homes (On the Mark) Inc., TLSFD Taurasi Holdings Corp. and Stateview Homes (High Crown Estates) Inc.*, (May 2, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Receivership Order](#)), s 5(k) [*Minu et al Receivership Order*]; *Atrium Mortgage Investment Corporation and Dorr Capital Corporation v. Stateview Homes (Nao Towns II) Inc., Dino Taurasi and Carlo Taurasi*, (May 2, 2023), ONSC (Commercial List), Court File No. CV-23-00698395-00CL ([Receivership Order](#)), s 3(j) [*Nao Phase II et al Receivership Order*]; *Dorr Capital Corporation v. Highview Building Corp Inc.*, (May 2, 2023), ONSC (Commercial List), Court File No. CV-23-00698632-00CL ([Receivership Order](#)), s 3(k) [*Highview Receivership Order*]; *Dorr Capital Corporation v Stateview Homes (BEA Towns) Inc.*, (May 2, 2023), ONSC (Commercial List), Court File No. CV-23-00698637-00CL ([Receivership Order](#)), s 3(k) [*BEA Receivership Order*]; *Meridian Credit Union Limited v Stateview Homes (Elm & Co) Inc.*, (May 18, 2023), ONSC (Commercial List), Court File No. CV-23-00699067-00CL ([Receivership Order](#)), s 3(k) [*Elm Receivership Order*]

⁶ First Report at 5.1.

familiarity with the applicable market, their proposed marketing processes, their commission structures, the experience of their teams and feedback from the Mortgagees.⁷

9. The Receiver has developed the Sale Process in a manner that will realize and maximize the value of the Projects in a timely fashion for the benefit of stakeholders. The details of the proposed Sale Process are detailed in Section 5.0 of the First Report and summarized as follows:⁸

- (a) As soon after the granting of the Sale Process Approval Order as possible, and in any event not later than June 21, 2023, the Realtors will: (a) working with the Receiver, (i) prepare a teaser and confidential information memorandum (“**CIM**”), (ii) populate a virtual data room, and (iii) prepare a confidentiality agreement (“**CA**”), in each case for each Project; and (b) develop prospect lists and engage in pre-marketing discussions with targeted prospects and any other third parties required to prepare each Project for sale;
- (b) During the first four to five weeks following commencement of the Sale Process, the Realtors will market the Real Properties by, among other things: (i) disseminating summary and marketing materials through various mediums determined to be appropriate by the Realtors or Receiver to maximize interest; (ii) engaging in direct canvassing of the most likely prospective bidders; (iii) meeting with prospective bidders to further explain the potential for each Real Property or Project; and (iv) upon execution of the CA, providing access to the applicable data room(s) and CIM(s). During this period, the Receiver with its legal counsel will prepare a Vendor’s form of Purchase and Sale Agreement (the “**PSA**”) which will be made available to prospective bidders in each virtual data room;

⁷ First Report at 5.1.4.

⁸ First Report at 5.2.1.

- (c) The projected bid deadline is expected to be between July 19, 2023 and July 26, 2023 (the “**Bid Deadline**”), based on, inter alia, the date on which the Sale Process launches, market feedback and consultation with the realtors. Prospective purchasers wishing to make an official bid will be required to submit their bid in the form of the PSA, with any changes against the draft PSA blacklined;
- (d) Following the Bid Deadline, the Receiver may ask interested bidders to further modify or improve their offers in one or more rounds of bidding in order to maximize the value of any transaction for the applicable Real Properties. After bidders have been given a reasonable opportunity to improve their bids, the Receiver will select the successful bidder for each project (collectively, the “**Successful Bidders**”) in consideration of several factors, as set out more particularly in the First Report, in consultation with the applicable Mortgagees;
- (e) Successful Bidders will have a period of time (estimated to be between 30-60 days) from the date of the selection of the successful bid to satisfy or waive any conditions to the sale; and
- (f) Within 15 to 30 days from the date the Successful Bidder(s) confirm that all conditions have been satisfied or waived, the Receiver will seek Court approval of the successful offer(s), on not less than seven (7) calendar days’ notice to the service list and registered secured creditors.

10. Additional terms of the proposed Sale Process include:⁹

⁹ First Report at 5.2.2.

- (a) the NAO Phase I and NAO Phase II properties will have the same bid deadline so that interested parties can submit an offer for both Real Properties. Interested parties will be required to provide a value for each Real Property;
- (b) bidders will have the opportunity to submit offers on an *en bloc* basis, provided that they provide separate values for each Real Property (it is possible that the bid dates for all Real Properties may not align and, therefore, in the event that an *en bloc* buyer emerges, which the Receiver considers unlikely, the Receiver will work with the bidder to structure its offer accordingly);
- (c) the Real Properties will be marketed and sold on an “as-is, where-is” basis, with standard representations and warranties for a receivership transaction;
- (d) to the extent permitted by law, all of the right, title and interest of the Receivership Companies in the Real Properties will be sold free and clear of all pledges, liens, security interests, encumbrances and claims, pursuant to approval and vesting orders to be sought by the Receiver;
- (e) to the extent permitted by law, interested parties will not be required to assume the homebuyer purchase agreements;
- (f) the Receiver will have the right to reject any and all offers, including the highest and best offers;
- (g) any Mortgagee will have the right to credit bid the debt owing to them secured by a Real Property at the conclusion of the Sale Process if the offers are not sufficient to repay its mortgages on such Real Property in full;

- (h) if, in the Receiver's sole discretion, it will assist to maximize recoveries, the Receiver will have the right to: (i) waive strict compliance with the terms of the Sale Process, including the right to amend any of the deadlines in the table above by up to four weeks without an order of the Court; and (ii) modify and adopt such other procedures that will better promote the sale of the Real Properties or increase recoveries for stakeholders;
- (i) any material modifications to, or the termination of, the Sale Process for any or all of the Real Properties shall require Court approval, subject to the right to extend bid deadlines as set out in paragraph (h) above; and
- (j) any transaction or transactions entered into by the Receiver shall be subject to Court approval.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

11. The issues on this motion are whether this Court should:

- (a) approve the proposed Sale Process; and
- (b) approve the First Report and the activities of the Receiver described therein.

A. THE SALE PROCESS OUGHT TO BE APPROVED

12. Section 243 of the BIA permits the Court broad discretion as to the powers it grants receivers to exercise control over the property of a company in a receivership and in making orders generally:¹⁰

¹⁰ *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#) s. [243\(1\)](#).

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

13. The Receivership Orders were granted pursuant to Section 243(1) of the BIA and Section 101 of the CJA and explicitly authorize and empower the Receiver to market any and all of the property of the Receivership Companies, which includes the Real Properties and the Projects, including advertising and soliciting offers in respect of the Real Properties and Projects and negotiating such terms and conditions to sale as the Receiver in its discretion may deem appropriate.¹¹

14. The Court of Appeal has recognized that the purpose of a receivership is to enhance and facilitate the preservation and realization of receivership assets for the benefit of creditors, and that this purpose is generally achieved through a liquidation of the debtor's assets.¹² Sale processes are routinely approved and undertaken in receivership proceedings to facilitate such sales.¹³

15. The Court has held that the reasonableness and adequacy of any sales process proposed by a court-appointed receiver must be assessed in light of the factors that the Court will later take

¹¹ *Minu et al Receivership Order*, s 5(k); *Nao Phase II et al Receivership Order*, s 3(j); *Highview Receivership Order*, s 3(k); *BEA Receivership Order*, s 3(k); *Elm Receivership Order*, s 3(k).

¹² *Third Eye Capital Corp v Dianor Resources Inc*, [2019 ONCA 508](#) at para [73](#).

¹³ *2056706 Ontario Inc v Pure Global Cannabis Inc*, [2021 ONSC 5533](#) at para [11](#).

into account when considering the approval of the proposed sale resulting from that sale process.¹⁴

16. In the case of *Royal Bank v. Soundair*, the Ontario Court of Appeal held that a court was to consider the following factors when deciding whether to approve the sale of property subject to a receivership:¹⁵

- (a) whether the receiver has made a sufficient effort to get the best price and has not acted improvidently;
- (b) the efficacy and the integrity of the process by which offers are obtained;
- (c) whether there has been unfairness in the working out of the process; and
- (d) the interests of all parties.

17. In *CCM Master Qualified Fund Ltd v blutip Power Technologies Ltd*, the Court held that the criteria identified in *Soundair* also informs the determination of whether to approve a court-appointed receiver's proposed sale process. Specifically, the Court is to assess:¹⁶

- (a) the commercial efficacy of the proposed process in light of the specific circumstances facing the receiver;
- (b) the fairness, transparency and integrity of the proposed process; and
- (c) whether the sales process will optimize the chances, in the particular circumstances, of securing the best possible price for the assets up for sale.

¹⁴ *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#) at para [6](#) [CCM]; citing *Royal Bank of Canada v Soundair*, [1991 CanLII 2727](#) (ONCA) at para [16](#) [*Soundair*].

¹⁵ *Soundair* at para [16](#).

¹⁶ CCM at para [6](#).

18. Each of the factors outlined in *Soundair* and *CCM* support the approval of the Sale Process at this time:

- (a) Whether the Sale Process is commercially efficient. The Sale Process will be overseen and conducted by the Receiver and the Realtors. The Realtors engagement arises from a competitive solicitation process undertaken by the Receiver, and the Receiver has identified the applicable proposals submitted by the Realtors as those most likely to maximize the value returnable for each applicable Real Property in consideration of a series of factors. The assistance and involvement of the Realtors with the Sale Process will ensure the Sale Process is efficient and maximizes the recovery available.
- (b) Whether the Sale Process is fair and transparent. The Sale Process is a fair, open and transparent process that contemplates a broad public marketing process, pursuant to which the Realtors and the Receiver will engage with prospective purchasers and provide additional information for each Project as appropriate and, upon execution of the CA, provide access to a virtual data room and a CIM for each Project and corresponding Real Property. Further, the Sale Process requires all bids to be submitted in a form that complies with the PSA, thereby ensuring that all considered bids are required to conform with a set of basic criteria. The entering into of any transaction or transactions pursuant to the Sale Process is subject to court approval.
- (c) Whether the Sale Process optimizes the chances of securing the best possible price. The structure of the Sale Process and proposed timeline ensures the Realtors are capable of broadly marketing the sale of the Real Properties. By offering the sale of the Real Properties on an *en bloc* or individual basis, the Sale Process is flexible to accommodate more bids and maximize the value returnable.

The proposed length of the Sale Process is sufficient to ensure the Realtors are capable of broadly marketing the Real Properties, while also being sufficiently succinct to provide interested bidders with the requisite certainty. Further, the Receiver is permitted to engage with any interested bidders after the Bid Deadline to ask them to modify or improve their offers, in one or more rounds, to maximize the value of any transaction for the applicable Real Properties.

19. For the reasons set out above, the Receiver submits that the proposed Sale Process is consistent with the criteria established in *CCM*, in that it will optimize the chance of securing the best possible price for each of the Projects and will promote a disposition of the applicable Receivership Companies' assets that satisfies the *Soundair* criteria. Accordingly, the Receiver submits that the Court should approve the Sale Process.

PART IV - ORDER REQUESTED

20. For the reasons stated herein, the Receiver respectfully requests that the Court grant the Sale Process Approval Order, approving the relief set out herein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 2nd day of June, 2023.



Cassels Brock & Blackwell LLP
Lawyers for the Receiver (NAO Phase 1,
Minu, On the Mark, High Crown and
Taurasi Holdings Receiverships)



Paliare Roland LLP
Lawyers for the Receiver (NAO Phase 2,
BEA, Highview and Elm Receiverships)

SCHEDULE "A"

LIST OF AUTHORITIES

1. *2056706 Ontario Inc v Pure Global Cannabis Inc*, [2021 ONSC 5533](#)
2. *Atrium Mortgage Investment Corporation and Dorr Capital Corporation v. Stateview Homes (Nao Towns II) Inc., Dino Taurasi and Carlo Taurasi*, (May 2, 2023), ONSC (Commercial List), Court File No. CV-23-00698395-00CL ([Receivership Order](#))
3. *CCM Master Qualified Fund v blutip Power Technologies*, [2012 ONSC 1750](#)
4. *Dorr Capital Corporation v. Highview Building Corp Inc.*, (May 2, 2023), ONSC (Commercial List), Court File No. CV-23-00698632-00CL ([Receivership Order](#))
5. *Dorr Capital Corporation v Stateview Homes (Bea Towns) Inc.*, (May 2, 2023), ONSC (Commercial List), Court File No. CV-23-00698637-00CL ([Receivership Order](#))
6. *KingSett Mortgage Corporation and Dorr Capital Corporation v. Stateview Homes (Minu Towns) Inc., Stateview Homes (On the Mark) Inc., TLSFD Taurasi Holdigns Corp. and Stateview Homes (High Crown Estates) Inc.*, (May 2, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Receivership Order](#))
7. *Meridian Credit Union Limited v Stateview Homes (Elm & Co) Inc.*, (May 18, 2023), ONSC (Commercial List), Court File No. CV-23-00699067-00CL ([Receivership Order](#))
8. *Royal Bank of Canada v Soundair*, [1991 CanLII 2727](#) (ONCA)
9. *Third Eye Capital Corp v Dianor Resources Inc*, [2019 ONCA 508](#)

SCHEDULE "B"

TEXT OF STATUTES, REGULATIONS & BY - LAWS

Bankruptcy and Insolvency Act, R.S.C. 1985, c C-36

Court may appoint receiver

243 (1) Subject to subsection (1.1), on application by a secured creditor, a court may appoint a receiver to do any or all of the following if it considers it to be just or convenient to do so:

- (a) take possession of all or substantially all of the inventory, accounts receivable or other property of an insolvent person or bankrupt that was acquired for or used in relation to a business carried on by the insolvent person or bankrupt;
- (b) exercise any control that the court considers advisable over that property and over the insolvent person's or bankrupt's business; or
- (c) take any other action that the court considers advisable.

Restriction on appointment of receiver

(1.1) In the case of an insolvent person in respect of whose property a notice is to be sent under subsection 244(1), the court may not appoint a receiver under subsection (1) before the expiry of 10 days after the day on which the secured creditor sends the notice unless

- (a) the insolvent person consents to an earlier enforcement under subsection 244(2); or
- (b) the court considers it appropriate to appoint a receiver before then.

...

Courts of Justice Act, R.S.O. 1990, c. C.43

Injunctions and receivers

101 (1) In the Superior Court of Justice, an interlocutory injunction or mandatory order may be granted or a receiver or receiver and manager may be appointed by an interlocutory order, where it appears to a judge of the court to be just or convenient to do so.

Terms

(2) An order under subsection (1) may include such terms as are considered just.

IN THE MATTER OF THE RECEIVERSHIP OF STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS) INC., STATEVIEW HOMES (NAO TOWNS II) INC., STATEVIEW HOMES (ON THE MARK) INC., TLSFD TAURASI HOLDINGS CORP., STATEVIEW HOMES (HIGH CROWN ESTATES) INC., HIGHVIEW BUILDING CORP INC., STATEVIEW HOMES (BEA TOWNS) INC., AND STATEVIEW HOMES (ELM&CO) INC.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**FACTUM OF THE RECEIVER
(Sale Process Approval Order)**

CASSELS BROCK & BLACKWELL LLP

Suite 3200, Bay Adelaide Centre – North Tower
40 Temperance St.
Toronto, ON M5H 0B4

Ryan Jacobs LSO#: 59510J

Tel: 416.860.6465
rjacobs@cassels.com

Joseph Bellissimo LSO#: 46555R

Tel: 416.860.6572
jbellissimo@cassels.com

Alec Hoy LSO#: 85489K

Tel: 416.860.2976
ahoy@cassels.com

Lawyers for the Receiver (NAO Phase 1, Minu, On the Mark, High Crown and Taurasi Holdings Receiverships)

PALIARE ROLAND LLP

155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Jeff Larry LSO#: 44608D

Tel: 416.646.4330
jeff.larry@paliareroland.com

Daniel Rosenbluth LSO#: 71044U

Tel: 416.646.6307
daniel.rosenbluth@paliareroland.com

Lawyers for the Receiver (NAO Phase 2, BEA, Highview and Elm Receiverships)