

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) THURSDAY, THE 14TH
)
JUSTICE CAVANAGH) DAY OF SEPTEMBER, 2023

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

**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**

**DISTRIBUTION ORDER
(ON THE MARK)**

THIS MOTION, made by KSV Restructuring Inc. (“**KSV**”) in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of the property, assets and undertakings of each of the above noted Respondents, including their real property, pursuant to the Order (Appointing Receiver) of this Court dated May 2, 2023 (the “**Receivership Order**”) for an order in respect of Stateview Homes (On the Mark) Inc. (“**On the Mark**”), *inter alia*, (i) approving the Second Report of the Receiver dated July 12, 2023 (the “**Second Report**”) and the Third Report of the Receiver dated September 7, 2023 (the “**Third Report**”) and the Receiver’s conduct and activities described therein; (ii) approving the Receiver’s statement of receipts and disbursements attached at Appendix “F” to the Third Report; (iii) approving the fees and disbursements of the Receiver and the Receiver’s counsel, Cassels Brock

& Blackwell LLP (“**Cassels**”), as set out in the Affidavit of Noah Goldstein sworn on September 7, 2023 attached at Appendix “J” to the Third Report (the “**Goldstein Affidavit**”) and the Affidavit of Ryan Jacobs sworn on September 7, 2023 attached at Appendix “K” to the Third Report (the “**Jacobs Affidavit**” and, together with the Goldstein Affidavit, the “**Fee Affidavits**”), respectively; and (iv) authorizing and directing the Receiver to make certain payments and distributions and establish, hold and maintain certain reserves as recommended and described in the Third Report, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

ON READING the Notice of Motion of the Receiver, the Second Report and the Appendices thereto, the Third Report and the Appendices thereto, the Fee Affidavits, and on hearing the submissions of counsel for the Receiver, the Purchaser (as defined below), KingSett Mortgage Corporation (“**KingSett**”), and the other parties listed on the counsel slip, no one appearing for any other party although duly served as appears from the affidavit of service of Alec Hoy sworn September 8, 2023,

SERVICE AND DEFINITIONS

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement between the Receiver and 2077060 Ontario Inc. (the “**Purchaser**”) dated June 30, 2023 attached at Appendix “D” to the Third Report (the “**APA**”) or the Third Report, as applicable.

APPROVAL OF RECEIVER’S REPORTS, R&D AND FEES AND COSTS

3. **THIS COURT ORDERS** that the Second Report and the Third Report, and the activities of the Receiver described therein are hereby approved; provided that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

4. **THIS COURT ORDERS** that the Receiver's statement of receipts and disbursements for the period from May 2, 2023 to August 31, 2023 attached at Appendix "F" to the Third Report is hereby approved.

5. **THIS COURT ORDERS** that, in accordance with paragraph 31(c) of the Receivership Order, the general fees, disbursements and costs incurred by the Receiver and Cassels in connection with this proceeding shall be allocated to each receivership estate in this proceeding on the basis set out in section 10.0 of the Third Report (the "**Allocation Methodology**") and the Receiver shall apply the Allocation Methodology to the allocation of further general fees, disbursements and costs incurred by the Receiver and Cassels in this proceeding.

6. **THIS COURT ORDERS** that the fees and disbursements of the Receiver from April 12, 2023 to and including August 31, 2023 and those of Cassels from April 21, 2023 to and including August 31, 2023, as described in the Third Report and supported by the Fee Affidavits, are hereby approved and such amounts shall be paid from the proceeds of the Transaction (the "**OTM Purchase Proceeds**").

LIEN CLAIMS RESERVE FUND

7. **THIS COURT ORDERS** that the Receiver is authorized and directed to:

- (a) pay from time to time from the Lien Claims Reserve Fund any amounts in respect of Lien Claims (in aggregate up to the remaining amount held in the Lien Claims Reserve Fund and in each case in full and final satisfaction of the priority portion of such Lien Claim):
 - (i) with the written consent of the Purchaser, KingSett and the applicable holder of the Lien Claim; or
 - (ii) that are determined by Final Order to have priority over the security interest of KingSett against the On the Mark Real Property; and

- (b) on the date that is 180 days following Closing of the Transaction pursuant to the APA, return any balance then held in the Lien Claims Reserve Fund to the Purchaser.

RESERVE FOR OTHER PRIORITY CONSTRUCTION LIEN CLAIMS

8. **THIS COURT ORDERS** that no Assumed Trade Creditor shall be entitled to a payment or distribution from the cash proceeds received by the Receiver from the OTM Purchase Proceeds.

9. **THIS COURT ORDERS** that the Receiver is authorized and directed to establish, hold and maintain a reserve from the OTM Purchase Proceeds in the amount of \$50,000 (the “**Other Construction Lien Reserve**”) on account of the estimated maximum amount in respect of any other claims (collectively, the “**Other Lien Claims**” and each an “**Other Lien Claim**”) that could have priority over the security interest of KingSett against the On the Mark Real Property pursuant to section 78(2) of the *Construction Act*, R.S.O. 1990, c. C.30 (the “**Construction Act**”) and the Receiver is authorized and directed to pay from time to time from the Other Construction Lien Reserve any amounts in respect of Other Lien Claims (in aggregate up to the remaining amount held in the Other Construction Lien Reserve and in each case in full and final satisfaction of the priority portion of such claim) according to:

- (a) any such amounts that the Receiver determines, with the consent of KingSett and the applicable holder of the Other Lien Claim, to have priority over the security interest of KingSett against the On the Mark Real Property pursuant to section 78(2) of the *Construction Act*; or
- (b) further order of this Court.

OTM BANKRUPTCY RESERVE

10. **THIS COURT ORDERS** that the Receiver is authorized and directed to (i) reserve from the OTM Purchase Proceeds the amount of \$75,000 (the “**OTM Bankruptcy Reserve**”) and (ii) use the OTM Bankruptcy Reserve to fund the fees and costs of the bankruptcy of On the Mark in accordance with paragraph 4 of the Bankruptcy Order of this Court dated September 14, 2023 (the “**OTM Bankruptcy Order**”).

OTHER RESERVES

11. **THIS COURT ORDERS** that the Receiver is authorized and directed to establish, hold and maintain reserves from the OTM Purchase Proceeds as follows:

- (a) LIUNA Claims Reserve – in the amount of \$39,139.50 on account of the estimated maximum amount of the LIUNA Claim which could have priority over the security interest of KingSett, which may be paid or distributed as determined by the Receiver with the consent of KingSett and LIUNA or upon further order of this Court;
- (b) Realty Taxes Reserve – in the amount of \$63,000 on account of the estimated maximum amount pre-Closing realty taxes which could have priority over the security interest of KingSett, which may be paid or distributed as determined by the Receiver with the consent of KingSett or upon further order of this Court;
- (c) Professional Costs Reserve – in the amount of \$225,000 on account of additional fees, disbursements and costs of the Receiver and its counsel in connection with On the Mark, which may be paid or distributed upon further order of this Court; and
- (d) General Contingency Reserve – in the amount of \$125,000 on account of general operating costs and fees and other claims which may have priority to the security

interest of KingSett, which may be paid or distributed with the consent of KingSett or upon further order of this Court.

TRANSFER TO TLSFD TAURASI HOLDINGS CORP

12. **THIS COURT ORDERS** that, in accordance with section 8.2 of the Third Report, the Receiver is authorized and directed to pay from the OTM Purchase Proceeds the amount of \$171,949.83 to the receivership estate of TLSFD Taurasi Holdings Corp. to be held by the Receiver in trust to the credit of such estate.

KINGSETT DISTRIBUTION

13. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to distribute the balance of the OTM Purchase Proceeds, after deduction for the payments, distributions and reserves provided for in this Order, to KingSett as partial payment of the KingSett Indebtedness owing by On the Mark to KingSett, which shall be applied by KingSett to reduce such KingSett Indebtedness in accordance with the KingSett Mortgage Loan Security Documents.

GENERAL

14. **THIS COURT ORDERS** that notwithstanding anything else contained in this Order, each of the payments and distributions provided for in this Order shall be made free and clear of all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise, including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of the Honourable Justice Steele in the within proceedings dated May 2, 2023; and (ii) all charges,

security interests, liens, trusts, or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property or real property registry system.

15. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and distributions pursuant to this Order shall be entitled to deduct and withhold from any such payment or distribution such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

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

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

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

17. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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

19. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

IN THE MATTER OF THE RECEIVERSHIP OF 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.

**ONTARIO
SUPERIOR COURT OF JUSTICE
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PROCEEDING COMMENCED AT TORONTO

**DISTRIBUTION ORDER
(ON THE MARK)**

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