

**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

**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
(TLSFD AVO, MINU TOWNS AVO, NAO TOWNS AVO, HIGH CROWN AVO & ANCILLARY
MATTERS AND DISTRIBUTION ORDER)**

November 10, 2023

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PART I - NATURE OF THIS MOTION¹

1. 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 Court granted an order (the “**Receivership Order**”) which, among other things, appointed KSV Restructuring Inc. (“**KSV**”) as the receiver and manager (in such capacity, the “**Receiver**”) of the property, assets and undertaking, including the real property, owned by Stateview Homes (Minu Towns) Inc. (“**Minu**”), Stateview Homes (Nao Towns) Inc. (“**Nao**”), Stateview Homes (On the Mark) Inc. (“**On the Mark**”), TLSFD Taurasi Holdings Corp. (“**Taurasi Holdings**”) and Stateview Homes (High Crown Estates) Inc. (“**High Crown**” and collectively, the “**Stateview Receivership Companies**”).²

¹ Capitalized terms not defined in this factum have the meaning set forth below or in the Sixth Report of the Receiver dated November 8, 2023 (the “**Sixth Report**”), as applicable.

² Sixth Report to Court of the Receiver dated November 8, 2023 at 1.0 [*Sixth Report*].

2. On June 5, 2023, this Court granted an order (the “**Sale Process Order**”), *inter alia*, (i) approving a sale process (the “**Sale Process**”) in respect of the property (the “**Property**”) of the Stateview Receivership Companies, except On the Mark, and (ii) authorizing the Receiver to conduct the Sale Process and retain Jones Lang LaSalle Real Estate Services, Inc. (“**JLL**”) to assist with marketing the TLSFD Property and the High Crown Property and CBRE Limited (“**CBRE**” and together with JLL, the “**Realtors**”) to assist with marketing the Minu Property and the Nao Property.³

3. In connection with the Sale Process, the Receiver has entered into the following agreements of purchase and sale for the Property:

- (a) an agreement of purchase and sale between the Receiver and KingSett Real Estate Growth LP No. 8, by its general partner KingSett Real Estate Growth GP No. 8 Inc., (“**KingSett REG LP**”) dated October 18, 2023 (the “**TLSFD APS**”) for the sale of the TLSFD Purchased Assets;⁴
- (b) an amended and restatement agreement of purchase and sale between the Receiver and Delton Acquisitions Inc. (“**Delton**”) dated October 19, 2023 (the “**Minu APS**”) for the sale of the Minu Purchased Assets;⁵
- (c) an amended and restatement agreement of purchase and sale between the Receiver and the Purchaser dated October 19, 2023 (the “**Nao APS**”) for the sale of the Nao Purchased Assets;⁶ and

³ Sixth Report at 1.0 & 5.1.

⁴ Sixth Report at 5.2.1.

⁵ Sixth Report at 5.2.2.

⁶ Sixth Report at 5.2.2.

(d) an amended and restatement agreement of purchase and sale between the Receiver and the Purchaser dated October 19, 2023 (the “**High Crown APS**”) for the sale of the High Crown Purchased Assets.⁷

4. The transactions set out in the TLSFD APS (the “**TLSFD APS**”), Minu APS (the “**Minu Transaction**”), Nao APS (the “**Nao Transaction**”), and High Crown APS (the “**High Crown Transaction**”) and collectively, the “**Transactions**”) were identified by the Receiver, in each case, as the value maximizing transaction for the subject Property and were selected as the Successful Bid in their respective Sale Process.⁸

5. Accordingly, the Receiver seeks the following orders:

(a) an approval and vesting order (“**TLSFD AVO**”), among other things:

(i) approving the TLSFD Transaction;

(ii) following the Receiver’s delivery of the Receiver’s Certificate substantially in the form attached as Schedule “A” to the proposed TLSFD AVO, transferring and vesting all of Taurasi Holding’s right, title and interest in and to the TLSFD Purchased Assets in KingSett REG LP, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances; and

(iii) sealing Confidential Appendices “1” and “5” to the Sixth Report;

(b) an approval and vesting order (“**Minu AVO**”), among other things:

(i) approving the Minu Transaction;

⁷ Sixth Report at 5.2.2.

⁸ Sixth Report at 5.2.1 & 5.2.2.

- (ii) following the Receiver's delivery of the Receiver's Certificate substantially in the form attached as Schedule "A" to the proposed Minu AVO, transferring and vesting all of Minu's right, title and interest in and to the Minu Purchased Assets in Delton, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
 - (iii) authorizing and directing the Receiver to terminate and disclaim the Pre-Sale Purchase Agreements with respect to the Minu Project; and
 - (iv) sealing Confidential Appendices "4" and "8" to the Sixth Report;
- (c) an approval and vesting order ("**Nao AVO**"), among other things:
- (i) approving the Nao Transaction;
 - (ii) following the Receiver's delivery of the Receiver's Certificate substantially in the form attached as Schedule "A" to the proposed Nao AVO, transferring and vesting all of Nao's right, title and interest in and to the Nao Purchased Assets in Delton, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
 - (iii) authorizing and directing the Receiver to terminate and disclaim the Pre-Sale Purchase Agreements with respect to the Nao Project; and
 - (iv) sealing Confidential Appendices "3" and "7" to the Sixth Report;
- (d) an approval and vesting order ("**High Crown AVO**" and together with the TLSFD AVO, Minu AVO and Nao AVO, the "**AVOs**"), among other things:
- (i) approving the High Crown Transaction;

- (ii) following the Receiver's delivery of the Receiver's Certificate substantially in the form attached as Schedule "A" to the proposed High Crown AVO, transferring and vesting all of High Crown's right, title and interest in and to the High Crown Purchased Assets in Delton, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
 - (iii) authorizing and directing the Receiver to terminate and disclaim the Pre-Sale Purchase Agreements with respect to the High Crown Project; and
 - (iv) sealing Confidential Appendices "2" and "6" to the Sixth Report and
- (e) an order (the "**Ancillary Matters and Distribution Order**"), among other things:
- (i) authorizing the Receiver to make certain payments and distributions and maintain certain holdbacks and reserves from the net proceeds from the:
 - (i) TLSFD Transaction (the "**TLSFD Purchase Proceeds**");
 - (ii) Minu Transaction (the "**Minu Purchase Proceeds**");
 - (iii) Nao Transaction (the "**Nao Purchase Proceeds**");
 - and (iv) High Crown Transaction (the "**High Crown Purchase Proceeds**" and collectively, the "**Purchase Proceeds**");
 - (ii) approving the Sixth Report and the Receiver's statement of receipts and disbursements and the Receiver's activities described therein; and
 - (iii) approving the fees and disbursements of the Receiver and its counsel, as detailed in the Sixth Report, and the Affidavit of Noah Goldstein sworn November 8, 2023 and the Affidavit of Ryan Jacobs sworn November 8, 2023 (together, the "**Fee Affidavits**") and approving the allocation of such fees and costs in connection with this proceeding among the Stateview

Receivership Companies in accordance with the Fee Affidavits and the Allocation Methodology.

6. The motion should be granted. As of the date of this Factum, the Receiver is not aware of any opposition to the Motion.

7. The AVOs are appropriate and the *Soundair*⁹ test is met. The process followed to market the Property, in each case, was commercially reasonable and the proposed transaction is the best available option for the stakeholders of each applicable Stateview Receivership Company.¹⁰

8. The Ancillary Matters and Distribution Order is also appropriate. It will enable timely payments from the Purchase Proceeds for (i) distribution to the Stateview Receivership Companies' principal secured creditors, KingSett Mortgage Corporation ("**KingSett**") and Dorr Capital Corporation ("**Dorr**"), as applicable, and (ii) establishing and maintaining reserves to facilitate distributions to potential priority creditors and the administration of the receivership of the applicable Stateview Receivership Companies, as discussed further below.¹¹

PART II - SUMMARY OF FACTS

A. OVERVIEW

9. As noted above, on May 2, 2023, pursuant to the Receivership Order the Receiver was appointed in respect of the Stateview Receivership Companies.¹²

⁹ [1991 CanLII 2727](#) (ONCA) [*Soundair*].

¹⁰ Sixth Report at 5.1 – 5.2, 6.2 & 7.3.

¹¹ Sixth Report at 8.0.

¹² Sixth Report at 1.0.

10. Pursuant to three additional orders granted by the Court on May 2, 2023, and an order granted by the Court on May 18, 2023, KSV was also appointed Receiver of certain other companies within the Stateview Homes group of companies (the “**Stateview Group**”).¹³

11. Taurasi Holdings owns four industrial properties totaling 116,065 square feet of leasable area which is 100% occupied (the “**Industrial Properties**”). The Industrial Properties are managed by a third-party property management company and generate approximately \$130,000 in monthly rent, including HST.¹⁴

12. Minu, Nao and High Crown (collectively the “**Companies**”) are each a single-purpose real estate development company that owns a pre-construction residential development project (each, a “**Project**”, and collectively, the “**Projects**”) located in Southern Ontario. In connection with the operation of their respective Project, Minu, Nao and High Crown each entered into pre-sale purchase agreements (the “**Pre-Sale Purchase Agreements**”) with purchasers (the “**Pre-Sale Purchasers**”) for freehold residential units. As of the date of the Receivership Order, the Minu Project and the Nao Project were in their preliminary stages and each company held a partially service lot of real property. The High Crown Project was in an early development stage and construction was approximately 30% complete.¹⁵

13. On June 5, 2023, pursuant to a series of orders issued by the Court, the Receiver was authorized to conduct a sale process for the Property and real properties of each of the entities in the Stateview Group subject to the receivership orders, with the exception of On the Mark (the “**Sale Process Order**”).¹⁶

¹³ Sixth Report at 1.0.

¹⁴ Sixth Report at 2.2.

¹⁵ Sixth Report at 2.3.

¹⁶ Sixth Report at 1.0.

B. SALE PROCESS

14. The purpose of the Sale Process was to market and sell the property and assets of the Stateview Receivership Companies for the benefit of the stakeholders.

15. In connection with the Sale Process and in accordance with the Sale Process Order, the Receiver retained the Realtors to assist with listing and marketing the Property.¹⁷

16. In each case, the market was widely canvassed. For each Project and the Industrial Properties, with the assistance of the Realtors, the Receiver with the assistance of the Realtors distributed teasers to an extensive list of potentially interested parties and, where applicable, granted access to a virtual data room for the applicable Project or the Industrial Properties upon the applicable interested bidder entering into the requisite confidentiality agreement.¹⁸

17. In each case, the Receiver reviewed the bids for the Property and the Receiver and/or JLL/CBRE, as applicable, engaged in direct discussions with the leading bidders to understand the bids, including their conditionality, financial ability to close and any other outstanding diligence requirements.¹⁹ The Receiver also, in each case, encouraged the leading bidders to participate in one or more additional rounds of bidding in order to maximize the value of the Property for the Stateview Receivership Companies' stakeholders.²⁰

Taurasi Holdings

18. Due to certain unique aspects of one of the Industrial Properties (the "**Oster Property**"), the Receiver has not yet selected a transaction in respect of such property.²¹ The Sale Process

¹⁷ Sixth Report at 1.0.

¹⁸ Sixth Report at 5.1.

¹⁹ Sixth Report at 5.2.1 & 5.2.2.

²⁰ Sixth Report at 5.2.1 & 5.2.2.

²¹ Sixth Report at 5.2.1.

remains in progress in respect of the Oster Property and the TLSFD Transaction is only in respect of the other three Industrial Properties (the “**Bradwick & Rivermede Properties**”).²²

19. The Receiver identified the offer submitted by KingSett REG LP as the value maximizing transaction based upon the Receiver’s determination that:

- (a) KingSett REG LP’s bid provided the greatest purchase price offer and was the sole unconditional offer for a portfolio bid for the Bradwick & Rivermede Properties;²³ and
- (b) in light of pertinent factors such as the minimization of deal risk, length of time to close a transaction and anticipated professional fees to be incurred, a potentially marginal increase in purchase price from selling the Industrial Properties in independent transactions was not sufficient to outweigh the benefits of a portfolio transaction.²⁴

20. Notwithstanding that KingSett REG LP is an affiliate of KingSett, the two entities operate independently with an internal confidentiality wall. KingSett REG LP was only provided with the same information in the Sale Process that was made available to all of the other prospective bidders in the virtual data room. Additionally, the Receiver intentionally did not consult KingSett in evaluation of any of the bids for the Industrial Properties.²⁵

²² Sixth Report at 5.2.1 & 6.2.

²³ Sixth Report at 5.2.1 & 6.2.

²⁴ Sixth Report at 6.2.

²⁵ Sixth Report at 5.2.1.

Minu, Nao & High Crown

21. The terms of the Minu APS, Nao APS and High Crown APS (collectively, the “**APSS**”) are substantially identical, other than the financial terms.²⁶

22. The bid submitted by Delton, in each case, was determined by the Receiver to be the value maximizing transaction based upon the Receiver’s determination that the APSs represented the highest closeable offer for each of the three Projects.²⁷ While the Receiver received two alternative bids with comparable or greater purchase price offers, such competing bids contained grossly insufficient deposit amounts and/or a lack of evidence that the prospective purchaser would be able to obtain adequate financing.²⁸

23. The APSs are each subject to, among other conditions, the condition that: (a) the other two transactions in respect of the Projects close, and (b) until November 10, 2023²⁹, unless extended by the parties by agreement, upon Delton obtaining financing on terms and conditions acceptable to Delton in its sole discretion.³⁰ Delton has obtained conditional financing from KingSett for each of the Minu Transaction, Nao Transaction and High Crown Transaction, however such financing is conditional upon, among other things, the Tarion Priority Motion.³¹

24. Each of the APSs contemplate that the Pre-Sale Purchase Agreements relating to the respective Project will be an “Excluded Contract”.³²

²⁶ Sixth Report at 7.1.

²⁷ Sixth Report at 5.2.2 & 7.3.

²⁸ Sixth Report at 5.2.2.

²⁹ At the request of Delton, the Receiver has agreed to extend this deadline to November 20, 2023.

³⁰ Sixth Report at 7.1.

³¹ Sixth Report at 7.1.

³² Sixth Report at 7.2.

C. PROPOSED PAYMENTS, DISTRIBUTIONS AND RESERVES

25. The Receiver is also seeking authority to, after deduction for the priority payments, distributions, holdbacks and reserves set out in the Sixth Report and summarized below:³³

- (a) distribute the balance of the TLSFD Purchase Proceeds to KingSett on account of the indebtedness owing by Taurasi Holdings to KingSett;
- (b) subject to the Court's determination in the Tarion Priority Motion, distribute the balance of the Minu Purchase Proceeds and the Nao Purchase Proceeds, in each case: (i) to KingSett on account of the indebtedness of Minu and Nao to KingSett, respectively, and (ii) second, if applicable and available, to Dorr on account of the collateral mortgages in favour of Dorr securing the High Crown indebtedness to Dorr; and
- (c) subject to the Court's determination in the Tarion Priority Motion, distribute the balance of the High Crown Purchase Proceeds to Dorr.

26. A summary of the proposed reserves from the Purchase Proceeds is as follows:³⁴

Reserves	TLSFD	High Crown³⁵	Nao	Minu
Construction Lien Claims	-	\$318,884.51	\$4,681.60	\$115,796.26
HST Deemed Trust	\$130,624.22	-	-	-
LIUNA Claims	-	\$21,824.67	-	-
Professional Costs		\$500,000	\$500,000	\$500,000
General Contingency		\$200,000	\$200,000	\$200,000
Total Reserves	\$130,624.22	\$1,040,709.18	\$704,681.60	\$815,796.26

³³ Sixth Report at 8.0.

³⁴ Sixth Report at 8.3.

³⁵ As noted in the Sixth Report, the Receiver does not propose to reserve for alleged source deduction deemed trust claims at this time because it appears that the deemed trust ranks subsequent to the Dorr mortgages.

27. Depending on the outcome of the Tarion Priority Motion, reserves or holdbacks may also be required in connection with certain additional priority claims asserted in the Proposed Class Action.³⁶

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

28. The issues on this motion are:

- (a) whether this Court should grant the AVOs; and
- (b) whether this Court should grant the Ancillary Matters and Distribution Order.

A. THE AVOS SHOULD BE GRANTED

The Agreements of Purchase and Sale and the related Transactions should be approved

29. It is well established that Courts in Ontario consider the following criteria set out in *Soundair* when assessing whether to approve a transaction in the context of a receivership:

- (a) whether the receiver has made a sufficient effort to obtain the best price and has not acted improvidently;
- (b) the interests of all parties;
- (c) the efficacy and integrity of the process by which offers have been obtained; and
- (d) whether there has been unfairness in the working out of the process.³⁷

Taurasi Holdings

30. The *Soundair* test is met on the facts of this case. The Receiver has acted in a fair and reasonable manner and has appropriately conducted the Sale Process in accordance with its

³⁶ Sixth Report at 8.3.3.

³⁷ *Soundair* at para [16](#).

terms.³⁸ The Receiver broadly canvassed the market and undertook significant efforts to obtain the highest and best offer for the Bradwick and Rivermede Properties.³⁹ Additionally, the Receiver took the requisite steps to ensure the Sale Process was conducted equitably amongst all prospective purchasers.⁴⁰ KingSett REG LP's offer was the only unconditional offer and represented the highest purchase price offer in a portfolio bid for the Bradwick and Rivermede Properties.⁴¹ There is no reason to believe that any better price or result could have been obtained for the benefit of the stakeholders.⁴² In addition, the interest of all parties have been considered and furthered in the context of the TLSFD Transaction, including the interests of KingSett as primary secured creditor.

31. The Court should accept the Receiver's recommendation and approve the TLSFD APS and the TLSFD Transaction.

Minu, Nao & High Crown

32. The *Soundair* test is met on the facts of each of the Minu Transaction, Nao Transaction and the High Crown Transaction (collectively, the "**Project Transactions**") in this case. In each case, the Receiver acted in a fair and reasonable manner and conducted the Sale Process in accordance with its terms.⁴³ The Receiver, with the assistance of CBRE/JLL, as applicable, broadly canvassed the market and undertook significant efforts to obtain the highest and best offer for each of the Projects.⁴⁴ The bid submitted by Delton is the value maximizing transaction on the basis that it, among other things, represents the highest closable offer that was

³⁸ Sixth Report at 5.1 & 5.2.1.

³⁹ Sixth Report at 6.2.

⁴⁰ Sixth Report at 5.2.1.

⁴¹ Sixth Report at 5.2.1.

⁴² Sixth Report at 6.2.

⁴³ Sixth Report at 5.1 & 5.2.2.

⁴⁴ Sixth Report at 7.3.

accompanied by evidence of adequate financing.⁴⁵ There is no reason to believe that any better price or result could have been obtained for the benefit of the stakeholders.⁴⁶

33. The Court should accept the Receiver's recommendation and approve the Project APSs and the related Project Transactions.

The Court Should Authorize and Direct the Receiver to Terminate and Disclaim the Pre-Sale Purchase Agreements

34. The Court's jurisdiction to direct a receiver to disclaim pre-sale purchase agreements in the context of receivership sales of real property developments is well established.⁴⁷ Disclaimers are a valuable tool by which a receiver can maximize the value of the assets of the estate for the benefit of the stakeholders.⁴⁸

35. The considerations for determining whether a Court should authorize a receiver to disclaim pre-sale purchase agreements were set out by Justice Fitzpatrick of the Supreme Court of British Columbia in *Forjay Management*:

- (a) the respective legal priority positions as between the competing interests;
- (b) whether a disclaimer would enhance the value of the assets, and, if so, whether a failure to disclaim would amount to a preference in favour of one party; and

⁴⁵ Sixth Report at 5.2.2 & 7.3.

⁴⁶ Sixth Report at 7.3.

⁴⁷ *Forjay Management Ltd v 0981478 BC Ltd*, [2018 BCSC 527](#) at paras [131-132](#) [*Forjay Management*]; *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd*, [2020 BCSC 1013](#) at para [57](#) [*Peoples Trust*]; *Firm Capital Mortgage Fund Inc v 2012241 Ontario Ltd*, [2012 ONSC 4816](#) at paras [31-38](#) [*Firm Capital Mortgage Fund*]; *bcIMC Construction fund Corp. v Chandler Home Street Ventures Ltd*, [2008 BCSC 897](#) at paras [54-58](#) [*bcIMC Construction*]; *bcIMC Construction Fund Corporation et al v The Clover on Yonge Inc. et al*, (September 15, 2020), ONSC (Commercial List) Court File No. CV-20-00637301-00CL ([Approval and Vesting Order](#)) at para 8; see also, *Bankruptcy and Insolvency Act*, [RSC 1985, c B-3](#), s [243\(1\)\(c\)](#).

⁴⁸ *Forjay Management* at para [36](#); *Peoples Trust* at para [25](#).

- (c) if a preference would arise, whether the party seeking to avoid a disclaimer has established that the equities support that result.⁴⁹

36. On August 18, 2023 and on September 14, 2023, this Court authorized the Receiver to disclaim pre-sale purchase agreements relating to Stateview Homes (Hampton Heights) Inc. and On the Mark, respectively, each of which are entities within the Stateview Group.⁵⁰ The circumstances and factors in those receivership proceedings, are analogous to this motion, namely: (i) the entities were single-purpose real estate development companies that operated an incomplete project; (ii) the entities had entered into pre-sale purchase agreements for freehold homes that had not closed; (iii) the disclaimer was necessary to facilitate the transaction identified as the value maximizing transaction; and (iv) no potential transaction or offer existed that provided for the assumption of the entity's obligations under the agreements the court-appointed receiver should authority and direction to disclaim.⁵¹

37. The Pre-Sale Purchase Agreements contain express acknowledgements that (i) the Pre-Sale Purchase Agreement confers a personal right only and not an interest in the applicable

⁴⁹ *Forjay Management* at paras [41-44](#).

⁵⁰ *Firm Capital Mortgage Fund Inc v Stateview Homes (Hampton Heights) Inc et al*, (August 18, 2023), ONSC (Commercial List) Court File No. CV23-00700356-00CL ([Ancillary Relief Order](#)) at para 7; *KingSett Mortgage Corporation and Dorr Capital Corporation v 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*, (September 14, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Sale Approval Orderhttps://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-\(minu-towns\)-inc.-et-al/court-orders/receivership-order---kingsett-mortgage-corporation-and-dorr-capital-corporation---may-2-2023.pdf?sfvrsn=9a7e2c28_5](https://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-(minu-towns)-inc.-et-al/court-orders/receivership-order---kingsett-mortgage-corporation-and-dorr-capital-corporation---may-2-2023.pdf?sfvrsn=9a7e2c28_5)) at para 9.

⁵¹ *Firm Capital Mortgage Fund Inc v Stateview Homes (Hampton Heights) Inc et al*, (August 18, 2023), ONSC (Commercial List) Court File No. CV23-00700356-00CL ([Endorsement](#)) at para 6; *KingSett Mortgage Corporation and Dorr Capital Corporation v 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*, (September 14, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Endorsementhttps://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-\(minu-towns\)-inc.-et-al/court-orders/receivership-order---kingsett-mortgage-corporation-and-dorr-capital-corporation---may-2-2023.pdf?sfvrsn=9a7e2c28_5](https://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-(minu-towns)-inc.-et-al/court-orders/receivership-order---kingsett-mortgage-corporation-and-dorr-capital-corporation---may-2-2023.pdf?sfvrsn=9a7e2c28_5)).

Stateview Receivership Company's Real Property and (ii) the Pre-Sale Purchaser subordinates and postpones their Pre-Sale Purchase Agreement to any mortgages of Minu, Nao or High Crown, as applicable, and any advances under such mortgage. In addition, none of the Pre-Sale Purchase Agreements are registered on title to the applicable Stateview Receivership Company's Real Property. For these reasons, the holders of proprietary and/or priority interests in the Minu, Nao and High Crown Property, including KingSett and Dorr, clearly have priority to the Pre-Sale Purchasers' rights pursuant to the Pre-Sale Purchase Agreements.

38. None of the bids received in the Sale Process for the Minu, Nao or High Crown Properties contemplated an assumption of the Pre-Sale Purchase Agreements.⁵²

39. Authorizing the Receiver to terminate and disclaim the Pre-Sale Purchase Agreements, as applicable, is necessary to facilitate the completion of each of the Minu Transaction, the Nao Transaction, and the High Crown Transaction.⁵³ Requiring completion of the Pre-Sale Purchase Agreements would confer a preference on the Pre-Sale Purchasers.

The Confidential Appendices to the Sixth Report Should be Sealed

40. The Receiver is seeking sealing orders in respect of Confidential Appendices "1" to "8" to the Sixth Report (the "**Confidential Appendices**").⁵⁴ The Confidential Appendices consist of the offer summaries (the "**Offer Summaries**") and unredacted agreements in respect of each of the TLSFD Transaction, the Minu Transaction, the Nao Transaction and the High Crown Transaction. The proposed sealing order would seal the Confidential Appendices, in respect of the TLSFD Transaction, until further order of the Court, and, in respect of the Minu Transaction, Nao Transaction and the High Crown Transaction, as applicable, until the earlier of further order of the Court or the closing of the applicable transaction.⁵⁵

⁵² Sixth Report at 7.2.

⁵³ Sixth Report at 7.2.

⁵⁴ Sixth Report at 7.4.

⁵⁵ Sixth Report at 7.4.

41. The only information sought to be sealed in each of the Minu APS, Nao APS and High Crown APS is the purchase price and the quantum of the deposit(s).⁵⁶

42. In *Sierra Club of Canada v Canada (Minister of Finance)*, the Supreme Court of Canada held that courts should exercise their discretion to grant sealing orders where (i) the order is necessary to prevent a serious risk to an important interest, including a commercial interest; and (ii) the salutary effects of the order outweigh its deleterious effects.⁵⁷

43. In *Sherman Estate v Donovan*, the Supreme Court of Canada held that a party requesting that a court exercise its discretion in a way that limits the 'open court' presumption must establish that: (i) the openness poses a risk to an important interest of the public; (ii) the request sought is necessary to prevent the risk to the identified interest as reasonable alternative measures will not prevent said risk; and (iii) the benefits of the request outweigh the negatives as a matter of proportionality.⁵⁸

44. In the insolvency context, when assets are being sold pursuant to a court process, it is common to seal bids and other commercially sensitive material, such as sale price and the details of competing offers, in the event that a further listing is required should the contemplated proposed transaction not close.⁵⁹

45. In each case, the disclosure of commercially sensitive information set out in the Confidential Appendices would likely have a detrimental impact on any future sale efforts of the Receiver, in the event that any of the Transactions does not close. The Receiver submits that there is no other reasonable way to preserve and ensure the viability and integrity of any future remarketing and sale process. The benefits of the protective order outweigh any deleterious

⁵⁶ Sixth Report at 7.4.

⁵⁷ [2002 SCC 41](#) at para 53.

⁵⁸ [2021 SCC 25](#) at para 38.

⁵⁹ *Romspen Investment Corporation v Hargate Properties Inc*, [2012 ABQB 412](#) at paras 2, 11 and 13.

impact on the “open court” principle.⁶⁰ No stakeholder will be materially prejudiced by any of the sealing orders.

46. Finally, the proposed sealing orders embody the principle of proportionality. The Receiver seeks to protect only the material terms of each of the TLSFD APS, Minu APS, Nao APS and High Crown APS, namely the purchase price and the quantum of deposits, and the details of any competing offers submitted in the Sale Process and not selected as the value maximizing transaction.

47. Further, in respect of Minu, Nao and High Crown, the Receiver only seeks to seal the applicable documents until the closing of the related transaction.⁶¹

48. In the case of the TLSFD Offer Summary and unredacted TLSFD APS, the identity of the bidders and the value of the TLSFD Transaction and the other bids received could adversely impact the ongoing Sale Process in respect of the Oster Property and accordingly the Receiver proposes that such information be sealed until further order of the Court.⁶² The Receiver would intend to deal with the termination of such proposed sealing when it returns to Court to seek approval of any transaction in respect of the Oster Property.

B. THE DISTRIBUTION ORDER SHOULD BE GRANTED

The Receiver Should be Authorized and Directed to Make the Proposed Payments and Distributions and Establish and Maintain the Proposed Reserves

49. The Receiver is seeking authorization and direction to make the proposed payments and distributions and to establish and maintain the proposed reserves from the Purchase Proceeds set out in the Sixth Report.⁶³

⁶⁰ Sixth Report at 7.4.

⁶¹ Sixth Report at 7.4.

⁶² Sixth Report at 7.4.

⁶³ Sixth Report at 8.0.

50. Orders authorizing distributions with a reserve are routinely granted by courts in insolvency proceedings, including receiverships.⁶⁴ For example, in *GE Canada Real Estate Financing Business Property Co v 1262354 Ontario Inc.*, this Court approved an interim distribution by a receiver, subject to the receiver maintaining sufficient reserves to complete the administration of the receivership, to maximize efficiency and avoid the need for further appearances.⁶⁵ Additionally, this Court has previously approved a prior distribution subject to the Receiver maintaining certain approved reserves in these receivership proceedings.⁶⁶

51. In *Abitibowater* the Court considered a number of factors in determining whether an interim distribution should be permitted including, among other things, (i) whether the payee's security was valid and enforceable; (ii) whether the distribution would leave the estate with sufficient liquidity; and (iii) whether the amounts owed to the beneficiary of the distribution far exceed the amount of the proposed distribution.⁶⁷

52. KingSett holds security over all of the assets of Taurasi Holdings to be sold pursuant to the TLSFD APS.⁶⁸ KingSett and Dorr, as first priority and second priority lender, respectively, collectively hold security over all of the assets of Minu and Nao to be sold pursuant to the Minu APS and the Nao APS, respectively.⁶⁹ Dorr holds security over all of the assets of High Crown to be sold pursuant to the High Crown APS.⁷⁰ The Receiver's counsel has provided an opinion that

⁶⁴ *Re Windsor Machine & Stamping Ltd*, [2009 CanLII 39772](#) (ONSC) at paras [8](#) & [13](#); *Abitibowater Inc. (Re)*, [2009 QCCS 6461](#) at paras [70-75](#) [*Abitibowater*].

⁶⁵ [2014 ONSC 1173](#) at para [53](#) [*GE Canada Real Estate*].

⁶⁶ *KingSett Mortgage Corporation and Dorr Capital Corporation v 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*, (September 14, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Distribution Order](https://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-(minu-towns)-inc.-et-al/court-orders/receivership-order---kingsett-mortgage-corporation-and-dorr-capital-corporation--may-2-2023.pdf?sfvrsn=9a7e2c28_5)) [*Distribution Order*].

⁶⁷ *Abitibowater* at para [75](#); see also *GE Canada Real Estate* at para [53](#).

⁶⁸ Sixth Report at 3.1.1.

⁶⁹ Sixth Report at 3.1.1.

⁷⁰ Sixth Report at 3.1.1.

KingSett and Dorr's security is valid and enforceable, subject to standard assumptions and qualifications.⁷¹

53. In each case, the proposed reserves are necessary to ensure the Receiver will, among other things, have sufficient liquidity to fund the remainder of the receivership proceedings and pay certain priority amounts (if applicable).⁷² The reserves are fair and reasonable because they reflect an estimate of the reasonable amounts that may be owed or become owing in priority to the security interest held by KingSett and Dorr, as applicable.

54. The Receiver is not proposing at this time to reserve any amount from the High Crown Purchase Proceeds in respect of an alleged unpaid source deduction deemed trust claim asserted by the Canada Revenue Agency ("CRA") pursuant to section 227(4.1) of the *Income Tax Act* ("ITA")⁷³ given that the mortgages in favour of Dorr constitute a 'prescribed security interest' registered prior to the deemed trust arising, and therefore rank in priority to the deemed trust pursuant to the ITA.⁷⁴

The Court Should Approve the Sixth Report and the Receiver's Statement of Receipts and Disbursements and the Receiver's Activities Described Therein

55. It has become common practice for court officers to bring motions to seek approval of their reports and the activities set out therein.⁷⁵ Court approval, among other things, allows the court officer to bring its activities before the court and presents an opportunity to address concerns of stakeholders, while enabling the court to satisfy itself that the court officer's activities have been conducted in a prudent and diligent matter.⁷⁶

⁷¹ Sixth Report at 3.1.1.

⁷² Sixth Report at 8.3.2.

⁷³ [RSC 1985 c 1](#), s. [227\(4.1\)](#) [ITA]; Sixth Report at 3.1.3.

⁷⁴ Sixth Report at 3.1.3; ITA, s. [227\(4.2\)](#); *Income Tax Regulations*, [CRC c 945](#), s. [2201\(1\)](#).

⁷⁵ *Target Canada Co. (Re)*, [2015 ONSC 7574](#) at para [2](#) [*Target Canada*]; *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#) at paras [65-66](#) [*Triple-I Capital*].

⁷⁶ *Target Canada* at para [23](#); *Triple-I Capital* at paras [65-66](#).

56. The activities of the Receiver described in the Sixth Report were all necessary and undertaken in good faith pursuant to the Receiver's duties and powers set out in the Receivership Order and were in each case in the best interest of the stakeholders of Taurasi Holdings, Minu, Nao or High Crown generally, as applicable.⁷⁷

57. The Receiver also seeks approval of its receipts and disbursements for the period from the commencement of these receivership proceedings to October 31, 2023, attached to the Sixth Report as Appendices "N" to "Q". In the circumstances, approval of the Receiver's receipts and disbursements is simply a recognition of the amounts received and paid to facilitate a proper process.⁷⁸

58. The Receiver therefore respectfully submits that the Sixth Report and the Receiver's statement of receipts and disbursements and the activities described therein should be approved.

The Court Should Approve the Fees and Disbursements of the Receiver and its Counsel and the Allocation of the Fees and Disbursements in Accordance with the Allocation Methodology

59. The Receiver is seeking approval of the professional fees and disbursements incurred by it and its legal counsel through October 31, 2023 as described in the Fee Affidavits attached to the Sixth Report.

60. The Receivership Order provides that the Receiver and its counsel shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts.⁷⁹

⁷⁷ Sixth Report at 9.0.

⁷⁸ *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, [2023 ONSC 832](#) at para [134](#); Sixth Report

⁷⁹ *KingSett Mortgage Corporation and Dorr Capital Corporation v 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*, (May 2, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Receivership Order](#)) at para 20.

61. In determining whether to approve the accounts of a Court-appointed receiver and its counsel, the Court will consider the overall value contributed, taking into account (a) the nature, extent and value of the assets, (b) the complications encountered, (c) the degree of assistance provided by the debtor, (d) the time spent, (e) the receiver's knowledge, experience and skill, (f) the diligence and thoroughness displayed, (g) the responsibilities assumed, (h) the results of the receiver's efforts and (i) the cost of comparable services when performed in a prudent and economical manner.⁸⁰

62. The fees and disbursements are fair and reasonable and have been properly incurred. The hourly rates charged by the Receiver and its counsel are consistent with comparable firms practicing in the area of insolvency in the Toronto market.⁸¹

63. In each case, the amounts set out in the Fee Affidavits have been allocated to Taurasi Holdings, Minu, Nao and High Crown, as applicable, in accordance with the Allocation Methodology previously approved by this Court.⁸²

64. The Receiver respectfully submits that it is appropriate to approve the fees and disbursements of the Receiver and its counsel in the circumstances.

⁸⁰ *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at paras [33](#) and [44-45](#).

⁸¹ Sixth Report at 10.0.

⁸² *Distribution Order* at para 5.

PART IV - ORDER REQUESTED

65. For the reasons stated herein, the Receiver respectfully requests that the Court grant the (i) Taurasi Holdings AVO, (ii) Minu AVO, (iii) Nao AVO, (iv) High Crown AVO and (v) Ancillary Matters and Distribution Order, approving the relief set out herein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 10th day of November, 2023.



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

SCHEDULE "A"

LIST OF AUTHORITIES

1. *Abitibowater Inc. (Re)*, [2009 QCCS 6461](#)
2. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)
3. *bclMC Construction fund Corp. v Chandler Home Street Ventures Ltd*, [2008 BCSC 897](#)
4. *bclMC Construction Fund Corporation et al v The Clover on Yonge Inc. et al*, (September 15, 2020), ONSC (Commercial List) Court File No. CV-20-00637301-00CL ([Approval and Vesting Order](#))
5. *Firm Capital Mortgage Fund Inc v 2012241 Ontario Ltd*, [2012 ONSC 4816](#)
6. *Firm Capital Mortgage Fund Inc v Stateview Homes (Hampton Heights) Inc et al*, (August 18, 2023), ONSC (Commercial List) Court File No. CV23-00700356-00CL ([Endorsement](#))
7. *Firm Capital Mortgage Fund Inc v Stateview Homes (Hampton Heights) Inc et al*, (August 18, 2023), ONSC (Commercial List) Court File No. CV23-00700356-00CL ([Ancillary Relief Order](#))
8. *Forjay Management Ltd v 0981478 BC Ltd*, [2018 BCSC 527](#)
9. *GE Canada Real Estate Financing Business Property Co v 1262354 Ontario Inc.*, [2014 ONSC 1173](#)
10. *KingSett Mortgage Corporation and Dorr Capital Corporation v 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*, (May 2, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Receivership Order](#))
11. *KingSett Mortgage Corporation and Dorr Capital Corporation v 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*, (September 14, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Sale Approval Orderhttps://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-\(minu-towns\)-inc.-et-al/court-orders/receivership-order---kingsett-mortgage-corporation-and-dorr-capital-corporation---may-2-2023.pdf?sfvrsn=9a7e2c28_5](https://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-(minu-towns)-inc.-et-al/court-orders/receivership-order---kingsett-mortgage-corporation-and-dorr-capital-corporation---may-2-2023.pdf?sfvrsn=9a7e2c28_5))
12. *KingSett Mortgage Corporation and Dorr Capital Corporation v 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*, (September 14, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Distribution Orderhttps://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-\(minu-towns\)-inc.-et-al/court-orders/receivership-order---kingsett-mortgage-corporation-and-dorr-capital-corporation---may-2-2023.pdf?sfvrsn=9a7e2c28_5](https://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-(minu-towns)-inc.-et-al/court-orders/receivership-order---kingsett-mortgage-corporation-and-dorr-capital-corporation---may-2-2023.pdf?sfvrsn=9a7e2c28_5))

13. *KingSett Mortgage Corporation and Dorr Capital Corporation v 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*, (September 14, 2023), ONSC (Commercial List), Court File No. CV-23-00698576-00CL ([Endorsementhttps://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-\(minu-towns\)-inc.-et-al/court-orders/receivership-order---kingsett-mortgage-corporation-and-dorr-capital-corporation---may-2-2023.pdf?sfvrsn=9a7e2c28_5](https://www.ksvadvisory.com/docs/default-source/insolvency-case-documents/stateview-homes/receivership-proceedings/kingsett-mortgage-corporation-and-dorr-capital-corporation-vs.-stateview-homes-(minu-towns)-inc.-et-al/court-orders/receivership-order---kingsett-mortgage-corporation-and-dorr-capital-corporation---may-2-2023.pdf?sfvrsn=9a7e2c28_5))
14. *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd*, [2020 BCSC 1013](#)
15. *Romspen Investment Corporation v Hargate Properties Inc*, [2012 ABQB 412](#)
16. *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, [2023 ONSC 832](#)
17. *Royal Bank of Canada v Soundair*, [1991 CanLII 2727](#) (ONCA)
18. *Sherman Estate v Donovan*, [2021 SCC 25](#)
19. *Sierra Club of Canada v Canada (Minister of Finance)*, [2002 SCC 41](#)
20. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
21. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#)
22. *Windsor Machine & Stamping Ltd. (Re)*, [2009 CanLII 39772](#) (ONSC)

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.

Income Tax Act, R.S.C. 1985, c. 1

Trust for moneys deducted

227 (4) Every person who deducts or withholds an amount under this Act is deemed, notwithstanding any security interest (as defined in subsection 224(1.3)) in the amount so deducted or withheld, to hold the amount separate and apart from the property of the person and from property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for the security interest would be property of the person, in trust for Her Majesty and for payment to Her Majesty in the manner and at the time provided under this Act.

Extension of Trust

(4.1) Notwithstanding any other provision of this Act, the *Bankruptcy and Insolvency Act* (except sections 81.1 and 81.2 of that Act), any other enactment of Canada, any enactment of a province or any other law, where at any time an amount deemed by subsection 227(4) to be held by a person in trust for Her Majesty is not paid to Her Majesty in the manner and at the time provided under this Act, property of the person and property held by any secured creditor (as defined in subsection 224(1.3)) of that person that but for a security interest (as defined in subsection 224(1.3)) would be property of the person, equal in value to the amount so deemed to be held in trust is deemed

(a) to be held, from the time the amount was deducted or withheld by the person, separate and apart from the property of the person, in trust for Her Majesty whether or not the property is subject to such a security interest, and

(b) to form no part of the estate or property of the person from the time the amount was so deducted or withheld, whether or not the property has in fact been kept separate and apart from the estate or property of the person and whether or not the property is subject to such a security interest

and is property beneficially owned by Her Majesty notwithstanding any security interest in such property and in the proceeds thereof, and the proceeds of such property shall be paid to the Receiver General in priority to all such security interests.

Meaning of security interest

(4.2) For the purposes of subsections 227(4) and 227(4.1), a security interest does not include a prescribed security interest.

...

Income Tax Regulations, CRC, c 945

Security Interests

...

2201 (1) For the purpose of subsection 227(4.2) of the Act, prescribed security interest, in relation to an amount deemed by subsection 227(4) of the Act to be held in trust by a person, means that part of a mortgage securing the performance of an obligation of the person, that encumbers land or a building, where the mortgage is registered pursuant to the appropriate land registration system before the time the amount is deemed to be held in trust by the person.

(2) For the purpose of subsection (1), where, at any time after 1999, the person referred to in subsection (1) fails to pay an amount deemed by subsection 227(4) of the Act to be held in trust by the person, as required under the Act, the amount of the prescribed security interest referred to in subsection (1) is deemed not to exceed the amount by which the amount, at that time, of the obligation outstanding secured by the mortgage exceeds the total of

(a) all amounts each of which is the value determined at the time of the failure, having regard to all the circumstances including the existence of any deemed trust for the benefit of Her Majesty pursuant to subsection 227(4) of the Act, of all the rights of the secured creditor securing the obligation, whether granted by the person or not, including guarantees or rights of set-off but not including the mortgage referred to in subsection (1), and

(b) all amounts applied after the time of the failure on account of the obligation,

so long as any amount deemed under any enactment administered by the Minister, other than the *Excise Tax Act*, to be held in trust by the person, remains unpaid.

(3) For greater certainty, a prescribed security interest includes the amount of insurance or expropriation proceeds relating to land or a building that is the subject of a registered mortgage interest, adjusted after 1999 in accordance with subsection (2), but does not include a lien, a priority or any other security interest created by statute, an assignment or hypothec of rents or leases, or a mortgage interest in any equipment or fixtures that a mortgagee or any other person has the right absolutely or conditionally to remove or dispose of separately from the land or building.

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
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

**FACTUM
(TLSFD AVO, MINU AVO, NAO AVO, HIGH CROWN AVO
& ANCILLARY MATTERS AND DISTRIBUTION ORDER)**

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