

**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
(ON THE MARK APPROVAL AND VESTING ORDER AND DISTRIBUTION ORDER)**

September 8, 2023

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TO: SERVICE LIST

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**FACTUM OF THE RECEIVER
(ON THE MARK APPROVAL AND VESTING ORDER AND DISTRIBUTION ORDER)**

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., Stateview Homes (Nao Towns) Inc., Stateview Homes (On the Mark) Inc. (“**On the Mark**”), TLSFD Taurasi Holdings Corp. (“**Taurasi Holdings**”) and Stateview Homes (High Crown Estates) Inc. (collectively, the “**Stateview Receivership Companies**”).²

¹ Capitalized terms not defined in this factum have the meaning set forth below or in the Third Report of the Receiver dated September 6, 2023 (the “**Third Report**”), as applicable.

² Third Report to Court of the Receiver dated September 7, 2023 at 1.0 [*Third Report*].

2. On July 19, 2023, this Court granted an order (the “**Sale Process Order**”), *inter alia*, (i) approving a sale process in respect of the On the Mark property (the “**Sale Process**”), (ii) authorizing the Receiver to conduct the Sale Process and (iii) approving the Asset Purchase Agreement between the Receiver and 2077060 Ontario Inc. (the “**Purchaser**”) dated June 30, 2023 (the “**APA**”) for the purpose of acting as a ‘stalking horse bid’ in the Sale Process. No qualified bids (other than the APA as the stalking horse bid) were submitted in the Sale Process prior to the Bid Deadline of August 9, 2023 and as a result the APA was deemed to be the Successful Bid.³

3. Accordingly, the Receiver seeks the following orders:

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

- (i) approving the Transaction in respect of certain of the property of On the Mark contemplated by the APA,
- (ii) following the Receiver’s delivery of the Receiver’s Certificate substantially in the form attached as Schedule “A” to the proposed AVO, transferring and vesting all of On the Mark’s right, title and interest in and to the Purchased Assets (as defined in the APA) in the Purchaser, free and clear of all liens, charges, security interests and encumbrances other than permitted encumbrances;
- (iii) authorizing and directing the Receiver, prior to the closing of the Transaction (“**Closing**”), to terminate and disclaim the Homebuyer agreements held by the Taurasi Spouses; and

³ Third Report at 1.0.

- (iv) authorizing and directing the Receiver, on or as soon as practicable following the Optional Purchase Date, to terminate and disclaim the Homebuyer agreements in respect of Homebuyers that do not execute an amended Optional Purchase Agreement by the Optional Purchase Date;
 - (b) a distribution order (the “**Distribution Order**”), among other things:
 - (i) authorizing the Receiver to make certain payments and distributions and maintain certain reserves from the proceeds from the Transaction (the “**OTM Purchase Proceeds**”);
 - (ii) 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 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 Third Report, and the Affidavit of Noah Goldstein sworn September 7, 2023 and the Affidavit of Ryan Jacobs sworn September 7, 2023 (together, the “**Fee Affidavits**”) and approving the allocation of such fees and costs in connection with this proceeding among the Stateview Receivership Companies as set out in the Third Report (the “**Allocation Methodology**”).
4. The motion should be granted. The Receiver is not aware of any opposition to the Motion.

5. The AVO is appropriate and the *Soundair*⁴ test is met. The process followed to market the On the Mark Project was commercially reasonable and the proposed transaction is the best available option for On the Mark's stakeholders.⁵

6. The Distribution Order is also appropriate. It will enable timely payments from the OTM Purchase Proceeds for (i) distribution to On the Mark's secured creditor and (ii) establishing and maintaining reserves to facilitate distributions to priority creditors and the administration of the receivership and the proposed bankruptcy estate of On the Mark, as discussed further below.⁶

PART II - SUMMARY OF FACTS

A. OVERVIEW

7. As noted above, on May 2, 2023, pursuant to the Receivership Order the Receiver was appointed in respect of the Stateview Receivership Companies.⁷

8. 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**").⁸

9. On the Mark is a single-purpose real estate development company that owns a freehold townhouse project located at 16th Avenue and Woodbine Avenue in Markham, Ontario (the "**On the Mark Project**"). The On the Mark Project is estimated to be approximately 90% complete.⁹

⁴ [1991 CanLII 2727](#) (ONCA) [*Soundair*].

⁵ Third Report at 5.2 – 5.3 & 6.3.

⁶ Third Report at 8.0.

⁷ Third Report at 1.0.

⁸ Third Report at 1.0.

⁹ Third Report at 3.0.

10. The On the Mark Project consists of 70 residential units, 38 of which are completed and closed prior to the commencement of these receivership proceedings. The purchasers of the remaining 32 residential units (the “**Homebuyers**”) have not yet closed on their homes.¹⁰

11. Melissa Taurasi and Nelda Taurasi (the “**Taurasi Spouses**”) each hold Homebuyer agreements in respect of two units in the On the Mark development. The Taurasi Spouses are the spouses of Carlo and Dino Taurasi, the principals of the Stateview Group.¹¹

12. 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 properties of each of the entities in the Stateview Group subject to the receivership orders, with the exception of On the Mark.¹²

13. On July 19, 2023, as described above, the Court granted the Sale Process Order authorizing the Receiver to (i) conduct the Sale Process and (ii) enter into the APA, *nunc pro tunc*, for use as a ‘stalking horse bid’ in the Sale Process.¹³

B. SALE PROCESS

14. The purpose of the Sale Process was to market and sell the property and assets of On the Mark for the benefit of On the Mark’s stakeholders.

15. The market was widely canvassed. The Receiver distributed an interest solicitation letter detailing the acquisition opportunity to 52 potential purchasers. Seven parties executed non-disclosure agreement to gain access to a virtual data room.¹⁴

¹⁰ Third Report at 3.0.

¹¹ Third Report at 2.0 & 6.2.

¹² Third Report at 1.0.

¹³ Third Report at 1.0.

¹⁴ Third Report at 5.2 – 5.3.

16. No Qualified Bids (as defined in the Sale Process Order) were received by the Bid Deadline. In accordance with the terms of the Sale Process, the APA was therefore deemed to be the Successful Bid.¹⁵ The Transaction reflects the highest and best offer received and provides the best recovery available for the stakeholders of On the Mark in the circumstances.¹⁶

17. The material remaining conditions under the APA include, among other things, the AVO being granted by this Court.¹⁷

C. TREATMENT OF HOMEBUYERS

18. Under the APA, the Purchaser has agreed to assume On the Mark's obligations under the agreements of purchase and sale for 30 of the 32 remaining homes at the On the Mark Project (the "**Optional Purchase Agreements**") (which includes all remaining Homebuyers other than the Taurasi Spouses), provided those Homebuyers enter into amended Optional Purchase Agreements within three weeks of the Transaction closing (the "**Optional Purchase Date**").¹⁸ The proposed treatment would allow the Homebuyers, except the Taurasi Spouses, to secure their homes for under market value by paying only an additional \$100,000 (being significantly less than the average \$300,000 increase in the price of these homes since purchased as the majority were bought before April 2020) and agreeing to certain other non-economic changes to their Optional Purchase Agreement.¹⁹

19. The Taurasi Spouses have agreed not to oppose the approval of the Transaction.²⁰

20. The Homebuyer agreements with the Taurasi Spouses and any Optional Purchase Agreement with a Homebuyer that does not execute an amended Optional Purchase Agreement

¹⁵ Third Report at 5.3.

¹⁶ Third Report at 6.3.

¹⁷ Third Report at 6.1.

¹⁸ Third Report at 6.1 – 6.3.

¹⁹ Third Report at 6.2 – 6.3.

²⁰ Third Report at 6.2 – 6.3.

by the Optional Purchase Date (collectively, the “**Excluded Homebuyer Agreements**”) will be excluded from the Purchased Assets under the APA.²¹ The Receiver will therefore need to terminate and disclaim the Excluded Homebuyer Agreements.²²

D. PAYMENTS, DISTRIBUTIONS AND RESERVES

21. KingSett is the principal secured creditor of On the Mark. The Receiver proposes to distribute the balance of the OTM Purchase Proceeds, after deduction for the payments, distributions and reserves as outlined below, to KingSett as partial payment of the KingSett Indebtedness owing by On the Mark to KingSett.²³

22. The proposed payments, distributions, and reserves to be made from the OTM Purchase Proceeds before the remainder of the proceeds are distributed to KingSett are as follows:²⁴

- (a) to pay all amounts incurred through August 31, 2023 that are secured by the Receiver’s Charge (as defined the Receivership Order);
- (b) to repay the receivership estate of Taurasi Holdings for the amount of \$171,949.83 transferred to the On the Mark receivership estate to fund certain operating costs of On the Mark;
- (c) to reserve the amount of \$75,000 to administer the bankruptcy of On the Mark (if authorized by the Court);
- (d) to reserve the amount of \$50,000 on account of the estimated maximum amount in respect of any other lien claims that could have priority over the security interest

²¹ Third Report at 6.1.

²² Third Report at 6.2.

²³ Third Report at 4.1 & 8.0.

²⁴ The distributions recommended by the Receiver assume that the Court grants a motion being brought by KingSett at the same time as this motion for an order authorizing and directing the Receiver to assign On the Mark into bankruptcy, which would reverse the priority of certain harmonized sales tax claims such that those claims are subordinated to KingSett’s security interest in On the Mark; Third Report at 8.0.

of KingSett pursuant to section 78(2) of the *Construction Act*, RSO 1990, c. C 30, to be paid or distributed by the Receiver with the consent of KingSett and the applicable holder of the lien claim or further order of the Court;

- (e) to reserve the amount of \$39,139.50 on account of a maximum amount owing in respect of the asserted priority claim and lien registered by Labourers International Union of North America, Local 183 (“**LIUNA**”) against the On the Mark Real Property for unpaid wages and pension contributions (the “**LIUNA Claim**”), to be paid or distributed by the Receiver with the consent of LIUNA and KingSett or upon further order of the Court;
- (f) to reserve the amount of \$63,000 on account of the estimated maximum amount owing in respect of realty taxes on the On the Mark Property owed for the period prior to closing the Transaction which could have priority over the security interest of KingSett;
- (g) to reserve the amount of \$225,000 on account of potential additional professional costs of the Receiver and its counsel required to complete the administration of the On the Mark receivership proceedings; and
- (h) to reserve the amount of \$125,000 on account of potential estimated additional general operating costs and fees incurred by the Receiver for the On the Mark Project, and other claims which may have priority to the security interest of KingSett.

PART III - STATEMENT OF ISSUES, LAW & AUTHORITIES

23. The issues on this motion are:

- (a) whether this Court should grant the AVO; and

- (b) whether this Court should grant the Distribution Order.

A. THE AVO SHOULD BE GRANTED

The APA and the Transaction Should be Approved

24. 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.²⁵

25. The *Soundair* test is met on the facts of this case. This Court previously approved the form of the APA for its initial use as a 'stalking horse bid' in the Sale Process.²⁶ The Receiver has acted in a fair and reasonable manner and has appropriately conducted the Sale Process in accordance with its terms.²⁷ The Receiver broadly canvassed the market and undertook significant efforts to obtain the highest and best offer for the On the Mark Project.²⁸ There is no reason to believe that any better price or result could have been obtained for the benefit of the stakeholders.²⁹ In addition, the interests of all parties have been considered and furthered in the context of the Transaction, including the interests of KingSett as primary secured creditor, construction lien holders and the Homebuyers.³⁰

²⁵ *Soundair* at para 16.

²⁶ Third Report at 1.0.

²⁷ Third Report at 5.2 & 6.3.

²⁸ Third Report at 5.2.

²⁹ Third Report at 6.3.

³⁰ Third Report at 5.1-5.2 & 6.3.

26. The Court should accept the Receiver's recommendation and approve the APA and the proposed Transaction.

The Court Should Authorize and Direct the Receiver to Terminate and Disclaim the Excluded Homebuyer Agreements

27. 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.³¹ Disclaimers are one tool by which a receiver can maximize the value of the assets of the estate for the benefit of the stakeholders.³²

28. In *Forjay Management*, Justice Fitzpatrick of the Supreme Court of British Columbia set out the following considerations for determining whether a Court should authorize a receiver to disclaim pre-sale purchase agreements:

- (a) the respective legal priority positions as between the competing interests;
- (b) whether a disclaimer would enhance the value of the assets? If so, would a failure to disclaim amount to a preference in favour of one party?; and
- (c) if a preference would arise, has the party seeking to avoid a disclaimer established that the equities support that result?³³

29. Recently, on August 18, 2023, this Court authorized a receiver to terminate pre-sale purchase agreements in a receivership proceeding related to another Stateview Group company

³¹ *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 para [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\(1\)\(c\)](#).

³² *Forjay Management* at para [36](#); *Peoples Trust* at para [25](#).

³³ *Forjay Management* at paras [41-44](#).

in *Firm Capital Mortgage Fund Inc. v Stateview Homes (Hampton Heights) Inc.*³⁴ In endorsement thereof, Justice Conway stated the following:

In particular, I addressed with counsel the termination by the Receiver of the Existing Purchase Agreements. According to the Receiver, there is no prospect for finding a purchaser that would be willing to assume these agreements. The agreements do not give the purchasers any interest in land. Further, the Receiver will work with Tarion to facilitate the process for the purchasers to recover their deposits through Tarion. I note that the purchasers and their counsel have been served with the motion materials and have not opposed this relief.³⁵

30. The Homebuyer agreements contain express acknowledgements that (i) the Homebuyer agreement confers a personal right only and not an interest in the On the Mark Real Property and (ii) the Homebuyer subordinates and postpones their Homebuyer agreement to any mortgages of On the Mark and any advances under those mortgages.³⁶ In addition, none of the Homebuyer agreements are registered on title to the On the Mark Real Property.³⁷ For these reasons, the holders of proprietary and/or priority interests in the On the Mark Property, including KingSett, clearly have priority to the Homebuyers' rights pursuant to the Homebuyer agreements.³⁸

31. Authorizing the Receiver to terminate and disclaim the Excluded Homebuyer Agreements will facilitate the completion of the Transaction. Requiring completion of the Excluded Homebuyer Agreements on their current terms (to the extent possible) would confer a preference on the Homebuyers at the expense of the estate of On the Mark.³⁹

³⁴ *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.

³⁵ *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.

³⁶ Third Report at 6.2.

³⁷ Third Report at 4.1 & 6.2.

³⁸ *Forjay Management* at paras [67-69](#); *bcIMC Construction* at paras [63-65](#); *Pan Canadian Mortgage Group III Inc. v 0859811 BC Ltd.*, [2014 BCCA 113](#) at paras [36](#), [43-51](#) & [58](#); *Firm Capital Mortgage Fund* at paras [26-27](#).

³⁹ 6.2.

32. Each of the Homebuyers has been served with this motion and a notice to the Homebuyers was posted on the Receiver's website informing Homebuyers of this motion.⁴⁰ As of the date of this Factum, the Receiver is not aware of any opposition to this motion from any of the Homebuyers.⁴¹

33. The equities in the circumstances do not support the avoidance of the disclaimer. In fact, the Transaction provides the Optional Purchase Agreement holders with the unusual and beneficial option of preserving the value of the remaining Optional Purchase Agreements for the applicable Homebuyer's own benefit.⁴²

34. While there will be no funds available in the On the Mark estate to reimburse Homebuyer deposits, the Receiver intends to work with Tarion to assist with the deposit claim process for any Homebuyers whose Homebuyer agreements are terminated.

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

35. The Receiver is seeking authorization and direction to make the proposed payments and distributions and to establish and maintain the proposed reserves from the OTM Purchase Proceeds set out above in paragraph 22.

36. Orders authorizing distributions with a reserve are routinely granted by courts in insolvency proceedings, including receiverships.⁴³ 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

⁴⁰ Third Report at 6.2.

⁴¹ Third Report at 6.3.

⁴² Third Report at 6.1.

⁴³ *Re Windsor Machine & Stamping Ltd.*, [2009 CanLII 39772](#) (ONSC) at paras [8](#) & [13](#); *Abitibibowater Inc. (Re)*, [2009 QCCS 6461](#) at paras [70-75](#) [*Abitibibowater*].

administration of the receivership, to maximize efficiency and avoid the need for further appearances.⁴⁴

37. Similarly, 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.⁴⁵

38. KingSett holds security over all of the assets of On the Mark to be sold pursuant to the APA.⁴⁶ The Receiver's counsel has provided an opinion that KingSett's security is valid and enforceable, subject to standard assumptions and qualifications.⁴⁷

39. The proposed reserves are necessary to ensure the Receiver will, among other things, have sufficient liquidity to fund the remainder of the receivership proceedings, pay certain priority amounts (if applicable) and to fund the administration of the proposed bankruptcy of On the Mark.⁴⁸ The reserves are fair and reasonable because they reflect an estimate of the maximum amounts that may be owed or become owing in priority to the security interest held by KingSett.

40. Based on the OTM Purchase Proceeds, KingSett will incur a shortfall on its loans to On the Mark and accordingly the proposed distribution will be significantly less than the KingSett Indebtedness.⁴⁹

⁴⁴ [2014 ONSC 1173](#) at para [53](#) [*GE Canada Real Estate*].

⁴⁵ *Abitibowater* at para [75](#); see also *GE Canada Real Estate* at para [53](#).

⁴⁶ Third Report at 4.1.

⁴⁷ Third Report at 4.1.

⁴⁸ Third Report at 8.3.

⁴⁹ Third Report at 8.0.

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

41. It has become common practice for court officers to bring motions to seek approval of their reports and the activities set out therein.⁵⁰ 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.⁵¹

42. The activities of the Receiver described in the Second Report and the Third 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 On the Mark's stakeholders generally.⁵²

43. The Receiver also seeks approval of its receipts and disbursements for the period from the commencement of these receivership proceedings to September 5, 2023, attached to the Third Report as Appendix "F". 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.⁵³

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

⁵⁰ *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*].

⁵¹ *Target Canada* at para 23; *Triple-I Capital* at paras 65-66.

⁵² Third Report at 9.0.

⁵³ *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, [2023 ONSC 832](#) at para 134; Third Report at 10.0.

The Court Should Approve the Fees and Disbursements of the Receiver and its Counsel

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

46. 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.⁵⁴

47. 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.⁵⁵

48. 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.⁵⁶

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

⁵⁴ *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](#)) at para 20 [*Receivership Order*].

⁵⁵ *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#) at paras [33](#) and [44-45](#).

⁵⁶ Third Report at 10.0.

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

50. The Receiver seeks the Court's approval of the proposed Allocation Methodology, being the allocation of the fees and costs incurred by the Receiver and its counsel in connection with these receivership proceedings.

51. The general principles governing the allocation of receiver's costs were set out by Justice Brown in *Royal Bank of Canada v Atlas Block Co Limited* as follows:

- (a) the allocation of such costs must be done on a case-by-case basis and involve an exercise of discretion by a receiver or trustee;
- (b) costs should be allocated in a fair and equitable manner, one which does not readjust the priorities between creditors, and one which does not ignore the benefit or detriment to any creditor;
- (c) a strict accounting to allocate such costs is neither necessary nor desirable in all cases. To require a receiver to calculate and determine an absolutely fair value for its services for one group of assets vis-à-vis another likely would not be cost-effective and would drive up the overall cost of the receivership;
- (d) a creditor need not benefit "directly" before the costs of an insolvency proceeding can be allocated against that creditor's recovery;
- (e) an allocation does not require a strict cost/benefit analysis or that the costs be borne equally or on a pro rata basis; and

- (f) where an allocation appears *prima facie* as fair, the onus falls on an opposing creditor to satisfy the court that the proposed allocation is unfair or prejudicial.⁵⁷

52. In accordance with paragraph 31(c) of the Receivership Order, the Receiver and its counsel have allocated their fees to a specific Project when their activities relate to a specific Project.⁵⁸ A significant portion of the activities performed by the Receiver and its counsel, however, are of a general nature, and are not specifically allocable to one Project.⁵⁹ The Allocation Methodology of the Receiver and its counsel has been to allocate such time evenly across the relevant receivership companies.⁶⁰ The Receiver is of the view that this is the most practical and reasonable basis to allocate such fees.

53. The proposed Allocation Methodology is fair and equitable and does not prefer any stakeholder to the detriment of others.⁶¹ A strict accounting to allocate costs to each of the Stateview Receivership Companies is not feasible in the circumstances and would significantly increase the cost of these receivership proceedings. The Receiver respectfully submits that it is appropriate to approve the Allocation Methodology in the circumstances.

⁵⁷ [2014 ONSC 1531](#) at para [43](#) [*Atlas Block*]; *Arrangement Relatif a Former XBC inc. (Xebec Adsorption inc.)*, [2023 QCCS 2417](#) at para [44](#); *DBDC Spadina Ltd v Walton*, [2015 ONSC 2550](#) at para [13](#).

⁵⁸ *Receivership Order* at para 31; Third Report at 10.0.

⁵⁹ Third Report at 10.0.

⁶⁰ Third Report at 10.0.

⁶¹ Third Report at 10.0.

PART IV - ORDER REQUESTED

54. For the reasons stated herein, the Receiver respectfully requests that the Court grant the (i) AVO and (ii) Distribution Order, approving the relief set out herein.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 8th day of September, 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. *Arrangement Relatif a Former XBC inc. (Xebec Adsorption inc.)*, [2023 QCCS 2417](#)
3. *Bank of Nova Scotia v Diemer*, [2014 ONCA 851](#)
4. *bclMC Construction fund Corp. v Chandler Home Street Ventures Ltd*, [2008 BCSC 897](#)
5. *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](#))
6. *DBDC Spadina Ltd v Walton*, [2015 ONSC 2550](#)
7. *Firm Capital Mortgage Fund Inc v 2012241 Ontario Ltd*, [2012 ONSC 4816](#)
8. *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](#))
9. *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](#))
10. *Forjay Management Ltd v 0981478 BC Ltd*, [2018 BCSC 527](#)
11. *GE Canada Real Estate Financing Business Property Co v 1262354 Ontario Inc.*, [2014 ONSC 1173](#)
12. *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](#))
13. *Pan Canadian Mortgage Group III Inc. v 0859811 BC Ltd.*, [2014 BCCA 113](#)
14. *Peoples Trust Company v Censorio Group (Hastings & Carleton) Holdings Ltd*, [2020 BCSC 1013](#)
15. *Rose-Isli Corp. v. Frame-Tech Structures Ltd.*, [2023 ONSC 832](#)
16. *Royal Bank of Canada v Atlas Block Co Limited*, [2014 ONSC 1531](#)
17. *Royal Bank of Canada v Soundair*, [1991 CanLII 2727](#) (ONCA)
18. *Target Canada Co. (Re)*, [2015 ONSC 7574](#)
19. *Triple-I Capital Partners Limited v 12411300 Canada Inc.*, [2023 ONSC 3400](#)
20. *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.

Construction Act, R.S.O. 1990, c. C.30

Priority over mortgages, etc.

78 (1) Except as provided in this section, the liens arising from an improvement have priority over all conveyances, mortgages or other agreements affecting the owner's interest in the premises.

Building mortgage

(2) Where a mortgagee takes a mortgage with the intention to secure the financing of an improvement, the liens arising from the improvement have priority over that mortgage, and any mortgage taken out to repay that mortgage, to the extent of any deficiency in the holdbacks required to be retained by the owner under Part IV, irrespective of when that mortgage, or the mortgage taken out to repay it, is registered.

...

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
(ON THE MARK APPROVAL AND VESTING ORDER
AND DISTRIBUTION ORDER)**

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