

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

THE HONOURABLE MR.) WEDNESDAY, THE 27th
)
JUSTICE KOEHNEN) DAY OF OCTOBER, 2021

B E T W E E N :

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

SUNRISE ACQUISITIONS (HWY 7) INC.

Respondent



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

**APPROVAL AND VESTING ORDER
(Remaining Units)**

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**") of all of the assets, undertakings and properties of Sunrise Acquisitions (Hwy 7) Inc. (the "**Company**") acquired for, or used in relation to a business carried on by the Company and the proceeds therefrom, including, without limitation, certain real property owned by the Company in Markham, Ontario, for an order, *inter alia*, authorizing the Receiver to enter into and effect sale transactions for the Remaining Units described in Columns 1 and 2 of **Schedule "B"** hereto (each a "**Transaction**") contemplated by

an agreement of purchase and sale (each a "**Sale Agreement**") in a form substantially similar to that appended to the Third Report of the Receiver dated October 20, 2021 (the "**Third Report**"), and vesting in a purchaser (each a "**Purchaser**") one or more of the Remaining Units as designated and described in the relevant Sale Agreement and confirmed in the Receiver's Certificate (as defined below) (the "**Purchased Assets**"), was heard this day via videoconference due to the COVID-19 pandemic.

ON READING the Third Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Aiden Nelms sworn and filed,

DEFINED TERMS

1. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein have the meaning ascribed to them in the Sale Agreement or the Third Report, as applicable.

APPROVAL AND VESTING

2. **THIS COURT ORDERS AND DECLARES** that the execution of any Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of any Transaction and for the conveyance of the particular Purchased Assets to the particular Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the particular Purchaser substantially in the form attached as **Schedule "A"** hereto (the "**Receiver's Certificate**"), the Purchased Assets described and confirmed in the Receiver's Certificate shall vest absolutely in the particular Purchaser described and confirmed in the Receiver's Certificate, free and clear of and from any and 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 (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by any Order made in these proceedings; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed in Column 3 of **Schedule "B"** hereto pertaining to the relevant particular Purchased Assets (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed in Column 4 of **Schedule "B"** hereto pertaining to the relevant particular Purchased Assets (the "**Permitted Encumbrances**")) and, for greater certainty, this Court orders that all of the Encumbrances (other than the Permitted Encumbrances) affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

4. **THIS COURT ORDERS** that upon the registration in The Land Registry Office for the Land Titles Division of York Region (No. 65) ("**LRO**") of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, together with the Receiver's Certificate, the LRO is hereby directed to enter the Purchaser as set out in the Receiver's

Certificate as the owner of the subject real property identified in the Receiver's Certificate (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in Column 3 of **Schedule "B"** hereto pertaining to the Real Property.

5. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the relevant particular Purchased Assets shall stand in the place and stead of the relevant particular Purchased Assets, and that from and after the delivery of the Receiver's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the relevant particular Purchased Assets with the same priority as they had with respect to the relevant particular Purchased Assets immediately prior to the sale, as if the relevant particular Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

6. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

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

- i. the pendency of these proceedings;
- ii. any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Company and any bankruptcy order issued pursuant to any such applications; and
- iii. any assignment in bankruptcy made in respect of the Company,

the vesting of the relevant particular Purchased Assets in any Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Company and shall not be void or voidable by creditors of the Company, 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 it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

WAIVER OF ONHWPA NOTICE AND TARIION AUTHORIZATION

8. **THIS COURT ORDERS** that the Receiver is hereby authorized, but not required, to waive all applicable statutory documentary and other notice and vendor repair steps and periods (collectively, "**Applicable Notice**"), if any, to which it or the Company may be entitled under the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c. 0.31, as amended, and the regulations promulgated thereunder (together, the "**ONHWPA**"), in respect of any warranty claims made in respect of the relevant particular Purchased Assets, and that any such Applicable Notice be and is hereby waived until such time as the Receiver provides further notice in writing to Tarion Warranty Corporation ("**Tarion**").

9. **THIS COURT ORDERS** that in the event of a waived Applicable Notice, Tarion is entitled, in its discretion, to take action and remediate any defects in respect of the relevant particular Purchased Assets that are warranted under the ONHWPA, notwithstanding any applicable notice or vendor repair periods in favour of a vendor prescribed by the ONHWPA, provided that: (i) the ONHWPA shall otherwise apply to all such remedial action taken by Tarion;

and (ii) nothing in this Order shall affect Tarion's determination of whether or not a defect is covered by the ONHWPA.

10. **THIS COURT ORDERS** that the Receiver is hereby authorized and directed to provide to Tarion copies of any: (i) Pre-Delivery Inspection Forms; and (ii) Certificates of Completion and Possession/Warranty Certificates, in respect of the relevant particular Purchased Assets.

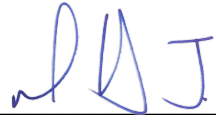
APPLICATION OF ONHWPA AND CONDOMINIUM LEGISLATION

11. **THIS COURT ORDERS** that, for greater certainty, all claims that a Purchaser of the relevant particular Purchased Assets might otherwise be entitled to bring from time to time against the Company or any other vendor of the relevant particular Purchased Assets pursuant to the provisions of the *Condominium Act*, 1998, S.O. 1998, c. 19, as amended, and the regulations promulgated thereunder (together, the "**Condominium Act**") or the ONHWPA, including without limitation with respect to any defects of the relevant particular Purchased Assets that are warrantied under the ONHWPA, or with respect to any disclosure requirements prescribed by the Condominium Act, are non-enforceable and non-binding as against the Receiver.

GENERAL

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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 agents in carrying out the terms of this Order.



A handwritten signature in blue ink, consisting of stylized initials that appear to be 'DAJ', positioned above a horizontal line.

SCHEDULE "A"
FORM OF RECEIVER'S CERTIFICATE

Court File No. CV-21-00663051-00CL

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SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

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RECEIVER'S CERTIFICATE

RECITALS

I. Pursuant to an Order of the Honourable Mr. Justice Wilton-Siegel of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated June 9, 2021 (the "**Receivership Order**"), KSV Restructuring Inc. was appointed as receiver and manager (in such capacity, the "**Receiver**") of all of the assets, undertakings and properties of Sunrise Acquisitions (Hwy 7) Inc. (the "**Company**") acquired for, or used in relation to a business carried on by the Company and the proceeds therefrom, including, without limitation certain real property owned by the Company in Markham, Ontario.

II. Pursuant to an Order of the Court dated October 27, 2021, the Court approved the Receiver, on behalf of the Company, entering into an agreement of purchase and sale (the "**Sale Agreement**") between the Receiver and [●] (the "**Purchaser**"), and provided for the vesting in the Purchaser of all the Company's right, title and interest in and to the property described in the Sale Agreement (the "**Purchased Assets**"), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the name of the Purchaser to which title is to be vested; (ii) the legal description of the Purchased Assets to be vested; (iii) the payment by the Purchaser of the purchase price for the Purchased Assets; (iv) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Receiver.

III. Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

THE RECEIVER CERTIFIES the following:

The Purchaser to whom title the Purchased Assets is to be vested is hereby confirmed to be:	The legal description of the Purchased Assets which are to be vested is hereby confirmed to be:
[●]	[●]

1. The Purchaser has paid and the Receiver has received, the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;

2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser in accordance with their terms;
3. The transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., solely in its capacity as court-appointed receiver, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

SCHEDULE "B"
PURCHASED ASSETS

<u>Column 1</u> <i>Municipal Address</i>	<u>Column 2</u> <i>Legal Description</i>	<u>Column 3</u> <i>Claims to be deleted and expunged from title</i>	<u>Column 4</u> <i>Permitted Encumbrances, Easements and Restrictive Covenants</i>
4150 Highway 7 East, Markham, Ontario	PIN 02985-0598 (LT): PART OF BLOCK 3, PLAN 65M4539 BEING PART 33 ON PLAN 65R37967; SUBJECT TO AN EASEMENT IN GROSS AS IN YR2639573; SUBJECT TO AN EASEMENT IN GROSS AS IN YR2652084; T/W AN UNDIVIDED COMMON INTEREST IN YORK REGION COMMON ELEMENTS CONDOMINIUM PLAN NO. 1420; SUBJECT TO AN EASEMENT IN FAVOUR OF YORK REGION COMMON ELEMENTS CONDOMINIUM PLAN NO. 1420 AS IN YR3009447; CITY OF MARKHAM	See Exhibit "A"	See Exhibit "B"
4148 Highway 7 East, Markham, Ontario	PIN 02985-0597 (LT): PART OF BLOCK 3, PLAN 65M4539 BEING PART 32 ON PLAN 65R37967; SUBJECT TO AN EASEMENT IN GROSS AS IN YR2639573; SUBJECT TO AN EASEMENT IN GROSS AS IN YR2652084 ; T/W AN UNDIVIDED COMMON INTEREST IN	See Exhibit "A"	See Exhibit "B"

	<p>YORK REGION COMMON ELEMENTS CONDOMINIUM PLAN NO. 1420; SUBJECT TO AN EASEMENT IN FAVOUR OF YORK REGION COMMON ELEMENTS CONDOMINIUM PLAN NO. 1420 AS IN YR3009447; CITY OF MARKHAM</p>		
<p>4144 Highway 7 East, Markham, Ontario</p>	<p>PIN 02985-0595 (LT): PART OF BLOCK 3, PLAN 65M4539 BEING PART 30 ON PLAN 65R37967; SUBJECT TO AN EASEMENT IN GROSS AS IN YR2639573; SUBJECT TO AN EASEMENT IN GROSS AS IN YR2652084 ; T/W AN UNDIVIDED COMMON INTEREST IN YORK REGION COMMON ELEMENTS CONDOMINIUM PLAN NO. 1420; SUBJECT TO AN EASEMENT IN FAVOUR OF YORK REGION COMMON ELEMENTS CONDOMINIUM PLAN NO. 1420 AS IN YR3009447; CITY OF MARKHAM</p>	<p>See Exhibit "A"</p>	<p>See Exhibit "B"</p>
<p>4146 Highway 7 East, Markham, Ontario</p>	<p>PIN 02985-0596 (LT): PART OF BLOCK 3, PLAN 65M4539 BEING PART 31 ON PLAN 65R37967; SUBJECT TO AN EASEMENT IN GROSS AS IN YR2639573; SUBJECT TO AN EASEMENT IN GROSS AS IN YR2652084 ; T/W AN UNDIVIDED</p>	<p>See Exhibit "A"</p>	<p>See Exhibit "B"</p>

	COMMON INTEREST IN YORK REGION COMMON ELEMENTS CONDOMINIUM PLAN NO. 1420; SUBJECT TO AN EASEMENT IN FAVOUR OF YORK REGION COMMON ELEMENTS CONDOMINIUM PLAN NO. 1420 AS IN YR3009447; CITY OF MARKHAM		
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EXHIBIT "A"

INSTRUMENTS TO BE DELETED

Registration No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
YR2299146	2015/06/02	Charge	\$31,981,940	Sunrise Acquisitions (Hwy 7) Inc.	Kingsett Mortgage Corporation
YR2299147	2015/06/02	No Assgn Rent Gen	n/a	Sunrise Acquisitions (Hwy 7) Inc.	Kingsett Mortgage Corporation
YR2340877	2015/08/18	Charge	\$8,000,000	Sunrise Acquisitions (Hwy 7) Inc.	Sorrenti Law Professional Corporation
YR2341683	2015/08/19	Transfer of Charge	\$8,000,000	Sorrenti Law Professional Corporation	Sorrenti Law Professional Corporation
YR2352867	2015/09/08	Transfer of Charge	\$8,000,000	Sorrenti Law Professional Corporation	Sorrenti Law Professional Corporation
YR2380504	2015/10/29	Transfer of Charge	\$8,000,000	Sorrenti Law Professional Corporation	Sorrenti Law Professional Corporation – 97.87% Olympia Trust Company – 2.13%
YR2386283	2015/11/06	Transfer of Charge	\$8,000,000	Sorrenti Law Professional Corporation Olympia Trust Company	Sorrenti Law Professional Corporation – 91.8% Olympia Trust Company – 8.2%
YR2398064	2015/12/01	Transfer of Charge	\$8,000,000	Sorrenti Law Professional Corporation	Sorrenti Law Professional Corporation

				Olympia Trust Company	Corporation – 86.56% Olympia Trust Company – 13.44%
YR2415581	2016/01/13	Transfer of Charge	\$8,000,000	Sorrenti Law Professional Corporation Olympia Trust Company	Sorrenti Law Professional Corporation - 81.85% Olympia Trust Company – 18.15%
YR2421491	2016/01/26	Transfer of Charge	\$8,000,000	Sorrenti Law Professional Corporation Olympia Trust Company	Sorrenti Law Professional Corporation – 80.51% Olympia Trust Company – 19.49%
YR2442481	2016/03/11	Transfer of Charge	\$8,000,000	Sorrenti Law Professional Corporation Olympia Trust Company	Sorrenti Law Professional Corporation – 79.14% Olympia Trust Company – 20.86%
YR2481743	2016/06/03	Transfer of Charge	\$8,000,000	Sorrenti Law Professional Corporation Olympia Trust Company	Sorrenti Law Professional Corporation – 77.82% Olympia Trust Company – 22.18%
YR2543312	2016/09/15	Notice	\$9,873,262	Sunrise Acquisition (Hwy 7) Inc	Sorrenti Law Professional Corporation Olympia Trust Company

YR2572486	2016/11/03	Charge	\$1,648,879	Sunrise Acquisition (Hwy 7) Inc.	Kingsett Mortgage Corporation
YR2582279	2016/11/22	Postponement	n/a	Sorrenti Law Professional Corporation Olympia Trust Company	Kingsett Mortgage Corporation
YR2623638	2017/02/09	Postponement	n/a	Kingsett Mortgage Corporation	The Corporation of the City of Markham
YR2623639	2017/02/09	Postponement	n/a	Kingsett Mortgage Corporation	The Corporation of the City of Markham
YR2623640	2017/02/09	Postponement	n/a	Sorrenti Law Professional Corporation Olympia Trust Company	The Corporation of the City of Markham
YR2652085	2017/04/10	Postponement	n/a	Kingsett Mortgage Corporation	Alectra Utilities Corporation
YR2652086	2017/04/10	Postponement	n/a	Kingsett Mortgage Corporation	Alectra Utilities Corporation
YR2652087	2017/04/10	Postponement	n/a	Sorrenti Law Professional Corporation Olympia Trust Company	Alectra Utilities Corporation
YR2664318	2017/05/05	Postponement	n/a	Kingsett Mortgage Corporation	The Corporation of the City of Markham

YR2664319	2017/05/05	Postponement	n/a	Kingsett Mortgage Corporation	The Corporation of the City of Markham
YR2664320	2017/05/05	Postponement	n/a	Sorrenti Law Professional Corporation Olympia Trust Company	The Corporation of the City of Markham
YR2720530	2017/08/21	Notice	\$4,000,000	Sunrise Acquisitions (Hwy 7) Inc.	Kingsett Mortgage Corporation
YR2782817	2018/01/12	Restrictions - Land	n/a	Sunrise Acquisitions (Hwy 7) Inc.	
YR2872432	2018/09/12	Notice	\$5,500,000	Sunrise Acquisitions (Hwy 7) Inc.	Kingsett Mortgage Corporation
YR2872560	2018/09/12	Postponement	n/a	Sorrenti Law Professional Corporation Olympia Trust Company	Kingsett Mortgage Corporation
YR3012090	2019/09/24	Notice	n/a	Sunrise Acquisitions (Hwy 7) Inc.	Kingsett Mortgage Corporation
YR3015611	2019/10/02	Application Court Order	n/a	Ontario Superior Court of Justice	Faan Mortgage Administrators Inc.
YR3267063	2021/06/16	Apl Court Order	n/a	Ontario Superior Court of Justice (Commercial List)	KSV Restructuring Inc.

YR3292147	2021/08/03	Construction Lien	\$669,602		Rivervalley Masonry Group Ltd.
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Exhibit "B"

PERMITTED ENCUMBRANCES

Registration No.	Registration Date	Instrument Type	Amount	Parties From	Parties To
R488826	1988/11/15	Notice – Airport Zoning Regulations	n/a		
YR688132	2005/08/22	Notice – Pickering Airport Site Zoning Regulations	n/a	Her Majesty the Queen in right of Canada as represented by The Minister of Transport	
65M4539	2017/02/02	Plan Subdivision	n/a		
YR2623637	2017/02/09	No Sub Agreement	n/a	The Corporation of the City of Markham	Sunrise Acquisitions (Hwy 7) Inc.
YR2623649	2017/02/09	Application to Annex Restrictive Covenants	n/a	Sunrise Acquisitions (Hwy 7) Inc.	
YR2639573	2017/03/16	Transfer Easement	n/a	Sunrise Acquisitions (Hwy 7) Inc.	Enbridge Gas Distribution Inc.
YR2640297	2017/03/17	Plan Correction	n/a	Assistant Examiner of Surveys	
YR2652084	2017/03/17	Transfer Easement	n/a	Sunrise Acquisitions (Hwy 7) Inc.	Alectra Utilities Corporation
YR2664317	2017/05/05	Notice of Site Plan Control Agreement	n/a	The Corporation of the City of Markham	Sunrise Acquisitions (Hwy 7) Inc.

YR2666512	2017/05/10	By-Law	n/a	The Corporation of the City of Markham	
65R37967	2018/07/31	Plan Reference	n/a		
YR2872601	2018/09/12	Transfer	\$2.00	Sunrise Acquisitions (Hwy 7) Inc.	Sunrise Acquisitions (Hwy 7) Inc.
YR3006971	2019/09/11	ByLaw	n/a	The Corporation of the City of Markham	
YRCP1420	2019/09/17	CE Condo PLN	n/a		
YR3009447	2019/09/17	Condo Declaration	n/a	Sunrise Acquisitions (Hwy 7) Inc.	
YR3011927	2019/09/24	Condo ByLaw / 98	n/a	York Region Common Elements Condominium Corporation No. 1420	

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- and -

SUNRISE ACQUISITIONS (HWY 7) INC.

Applicant

Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER
(Remaining Units)

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Counsel to KSV Restructuring Inc., solely in its capacity as
Court-appointed Receiver and not in its personal capacity