

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

KINGSETT MORTGAGE CORPORATON

Applicant

- and -

SUNRISE ACQUISITIONS (HWY 7) INC.

Respondent

**AFFIDAVIT OF MUZAMMIL KODWAVI
(affirmed June 9, 2021)**

I, **MUZAMMIL KODWAVI**, of the City of Richmond Hill, Province of Ontario, businessman, **AFFIRM AND SAY AS FOLLOWS:**

1. I am the Chief Operating Officer of the respondent Sunrise Acquisitions (HWY 7) Inc. ("**Sunrise**") and as such have knowledge of the matters to which I hereinafter depose. Where I do not have such knowledge, I have identified the source of my information and verily believe that information to be true.
2. This affidavit is sworn in response to the application by Kingsett Mortgage Corporation ("**Kingsett**") for an order appointing a receiver over certain lands in Markham, Ontario, (the "**Property**"), legally described in the real property parcel registers attached

as Exhibit "A" to the affidavit of Daniel Pollack sworn May 28, 2021 (the "**Pollack Affidavit**"). (The development at the Property is hereinafter "**Unionvillas**".)

3. In paragraph 9 of his affidavit, Mr. Pollack states that as at May 10, 2021, the amount owing by Sunrise to Kingsett is \$1,950,807.35 plus accrued and accruing interest, fees and costs (the "**Kingsett Debt**"). I accept his calculation as accurate.

4. I am currently trying to arrange financing that will allow Sunrise to pay the Kingsett Debt in full. The payment of the Kingsett Debt would eliminate the need for this proceeding. I estimate that Sunrise will need three to five weeks in order to obtain the financing and retire the Kingsett Debt. Any lender will require an appraisal of the real property, which appraisal could not complete, in my experience, in under two weeks. The negotiation of terms, the execution of agreements and the payment of the Kingsett Debt would take at least another two weeks. For these reasons, I ask this Honourable Court to adjourn the within application for five weeks in order to allow Sunrise the time to retire the Kingsett Debt and obtain a dismissal of this proceeding.

5. In the event that this Honourable Court declines to provide an adjournment for the purpose of allowing Sunrise the opportunity to retire the Kingsett Debt, I request an adjournment of two weeks to allow Sunrise to prepare its material in response to the application record and supplementary application record filed by Kingsett, in the form of responding affidavit from me, drafted with the aid of Sunrise's counsel, Fred Tayar &

Associates Professional Corporation, which firm was retained yesterday. Sunrise also wishes to cross-examine Pollack on his affidavit.

Kingsett's Concerns

6. In paragraphs 4 of his Affidavit, Pollack states that "*the five remaining townhome units (the "Remaining Units") are subject to sale agreements that do not meet the net minimum purchase price thresholds under Kingsett's loan terms...*" In his paragraph 42, Pollack states that "*the minimum threshold for a compliant sale under the Commitment Letter...is \$930,000 per sale*". In his paragraph 5, Pollack states that because of the minimum price issue, the large deposits provided in respect of the Remaining Units, and the fact that four of the sales are to parties related to Sunrise's principals, Kingsett has refused to consent to the sales of the Remaining Units, (and has brought the within application.) A full response to Pollack's allegations will be made in a responsive affidavit from me, if one becomes necessary. However, I can make the following comments now.

7. Firstly, Kingsett has repeatedly consented to Unionvillas sales at prices below the "*minimum threshold*" relied upon in Pollack's affidavit. The original sale price for each of the Remaining Units was \$900,000. Unionvillas units have been sold at that \$900,000 price on seven previous occasions, the most recent being February 25, 2020, each time with Kingsett's knowledge and acquiescence. Attached hereto as **Exhibit "A"** is a true copy of a list of the previous Unionvillas sales recently prepared by Sunrise. The \$900,000 sales occurred in June and August 2018 and February 2020.

8. Secondly, in order to avoid the appointment of a receiver and to enable four of the five Remaining Units to close, (i.e. the related-party transactions), I as guarantor of the Kingsett Debt would be willing to inject \$200,000 into each of the four sales, to a total of \$800,000, but only if those sales close in accordance with their terms. This would bring the net proceeds from each of these sales above \$650,000, well above the contractual minimum. The total net proceeds of the anticipated sales of those four units would be approximately \$2,600,000, which would be more than sufficient to pay the Kingsett Debt.

9. Kingsett should have confidence that Sunrise will be able to pay the Kingsett Debt, either through sales or refinancing. This project is the third development project that Sunrise has financed in part through Kingsett. In the previous two cases, Sunrise paid Kingsett on time and in full.

1. Kennedy Rd & 16th Ave., Markham – 30 townhouse units. In the event that I make a longer affidavit, I will attach true copies of the relevant Site Plan, the commitment letter from Kingsett, the commitment letter from the secondary lender Fortress / BDMC / FAAN commitment letter, and evidence that Sunrise repaid both loans prior to maturity and in full.
2. Helen Avenue & Greenberg Gate, Markham –9 single detached houses. In the event that I make a longer affidavit, I will attach true copies of the commitment letter from Kingsett and evidence that Sunrise repaid Kingsett's loan in full and on time.

10. This is the second development that Sunrise has completed with Faan Mortgage Administrators Inc. ("Faan"), which was the second mortgagee on the Kennedy Rd & 16th Ave described above. Faan was also paid off in full and prior to maturity.

11. Sunrise is a responsible commercial actor that takes its obligations seriously.

12. I do not believe that there would be any prejudice to either Kingsett or FAAN if the adjournment I have requested is granted. If either has concerns respecting Sunrise's books and records respecting the Property, I will make those records available for review by Kingsett's or FAAN's accountants during the term of the adjournment.

Affirmed before me at the City of Toronto)
in the Province of Ontario, on June 9th)
2021 in accordance with O. Reg. 431/20)
Administering Oath or Declaration)
Remotely)



A Commissioner, etc.)
"Colby Linthwaite")



MUZAMMIL KODWAVI

THIS IS EXHIBIT "A"
TO THE AFFIDAVIT OF MUZAMMIL KODWAVI
AFFIRMED JUNE 9, 2021



Colby Linthwaite
A Commissioner, etc.

Sunrise Acquisitions (HWY 7) Inc. - Unionvillas

June 8, 2021

Lot#	Civic Address	Purchase Price	Final Closing Date
1	128 Lichfield Road	\$950,000.00	June 5, 2018
2	126 Lichfield Road	\$900,000.00	June 7, 2018
3	124 Lichfield Road	\$1,100,000.00	June 7, 2018
4	122 Lichfield Road	\$1,275,000.00	June 28, 2018
5	120 Lichfield Road	\$1,275,000.00	June 29, 2018
6	118 Lichfield Road	\$1,300,000.00	June 28, 2018
7	116 Lichfield Road	\$1,300,000.00	July 5, 2018
8	114 Lichfield Road	\$1,150,000.00	November 14, 2018
9	112 Lichfield Road	\$930,000.00	June 22, 2018
10	110 Lichfield Road	\$930,000.00	August 7, 2018
11	108 Lichfield Road	\$900,000.00	August 7, 2018
12	106 Lichfield Road	\$900,000.00	August 14, 2018
13	104 Lichfield Road	\$900,000.00	August 8, 2018
14	102 Lichfield Road	\$900,000.00	August 7, 2018
15	100 Lichfield Road	\$1,300,000.00	August 3, 2018
16	98 Lichfield Road	\$1,480,000.00	August 7, 2018
17	96 Lichfield Road	\$930,000.00	August 7, 2018
18	131 Lichfield Road	\$997,500.00	October 30, 2019
19	129 Lichfield Road	\$1,210,000.00	October 17, 2019
20	127 Lichfield Road	\$1,175,000.00	October 17, 2019
21	125 Lichfield Road	\$1,275,000.00	October 25, 2019
22	123 Lichfield Road	\$1,050,000.00	October 8, 2019
23	121 Lichfield Road	\$1,450,000.00	October 17, 2019
24	119 Lichfield Road	\$1,010,000.00	October 8, 2019
25	117 Lichfield Road	\$1,145,000.00	October 8, 2019
26	113 Lichfield Road	\$1,085,000.00	January 23, 2020
27	111 Lichfield Road	\$1,230,000.00	January 17, 2020
28	109 Lichfield Road	\$970,000.00	December 19, 2019
29	107 Lichfield Road	\$970,000.00	December 19, 2019
30	105 Lichfield Road	\$900,000.00	February 21, 2020
31	103 Lichfield Road	\$9,555,000.00	February 7, 2020
32	101 Lichfield Road	\$1,250,000.00	February 20, 2020
33	99 Lichfield Road	\$900,000.00	February 25, 2020
34	4116 Hwy 7	\$1,325,000.00	June 16, 2020
35	4118 Hwy 7	\$1,050,000.00	June 25, 2020
36	4120 Hwy 7	\$980,000.00	September 8, 2020
37	4122 Hwy 7	\$1,050,000.00	August 6, 2020
38	4124 Hwy 7	\$1,065,000.00	August 7, 2020
39	4126 Hwy 7	\$1,001,000.00	April 27, 2021
40	4128 Hwy 7	\$1,001,000.00	April 27, 2021
41	4130 Hwy 7	\$980,000.00	October 15, 2020
42	4132 Hwy 7	\$980,000.00	October 16, 2020
43	4134 Hwy 7		
44	4138 Hwy 7	\$1,050,000.00	December 4, 2019
45	4140 Hwy 7	\$1,160,000.00	October 24, 2019
46	4142 Hwy 7	\$955,000.00	October 8, 2019
47	4144 Hwy 7		
48	4146 Hwy 7		
49	4148 Hwy 7		
50	4150 Hwy 7		
51	4152 Hwy 7	\$1,360,000.00	October 10, 2019
52	4154 Hwy 7	\$1,230,000.00	October 8, 2019

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

SUNRISE ACQUISITIONS (HWY 7) INC.

Respondent

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

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

Proceeding Commenced at Toronto

**AFFIDAVIT OF MUZZAMMIL KODWAVI
(affirmed June 9, 2021)**

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