

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

BETWEEN:

**KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION**

Applicants

- and -

**VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE LIMITED, 2402871  
ONTARIO INC., VANDYK – THE RAVINE LIMITED AND VANDYK – LAKEVIEW-  
DXE-WEST LIMITED**

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**

**AFFIDAVIT OF DANIEL POLLACK  
(Sworn January 8, 2024)**

I, Daniel Pollack, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND  
SAY:**

1. I am an Executive Director, Special Loans and Portfolio Management, of KingSett Mortgage Corporation ("**KingSett**"). I have responsibility for matters pertaining to the borrowings of Vandyk – Uptowns Limited ("**Uptowns**"), Vandyk – Heart Lake Limited (f/k/a 2366885 Ontario Inc.) ("**Heart Lake**"), 2402871 Ontario Inc. ("**240**"), and Vandyk – The Ravine Limited ("**Ravine**") from KingSett. I also have responsibility for matters pertaining to the borrowings of Vandyk – Lakeview-DXE-West Limited ("**Lakeview**", and collectively with Uptowns, Heart Lake, 240 and Ravine, the "**Debtors**") from Dorr Capital Corporation (together with KingSett, the "**Applicants**"), in respect of which KingSett holds all of the beneficial interest. As such, I have

personal knowledge of the matters to which I depose in this affidavit, unless otherwise indicated. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. I swear this affidavit further to my affidavit sworn on November 7, 2023 (the "**First Pollack Affidavit**") and in accordance with paragraph 5 of the order of the Honourable Madam Justice Conway granted on November 14, 2023 in these receivership proceedings (the "**Receivership Order**"). All capitalized terms not otherwise defined herein have the meaning ascribed to them in the Receivership Order. A copy of the Receivership Order is attached hereto as **Exhibit "A"**.

#### **I. THE RECEIVERSHIP ORDER**

3. The Applicants sought and, on November 14, 2023, obtained the Receivership Order pursuant to subsection 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C-43. Subject to paragraphs 4 and 5 thereof, the Receivership Order appointed KSV as the Receiver of the Property and granted the Receiver's Charge and the Receiver's Borrowings Charge over the Property.

4. Paragraphs 4 and 5 of the Receivership Order provide, in relevant part, that:

- (a) notwithstanding its issuance, the Receivership Order shall only become effective (without any further Order of the Court) as against Lakeview, Heart Lake, 240 and Ravine (each, a "**Remaining Debtor**") and their respective Property on the earlier of: (A) January 8, 2024 (the "**Remaining Appointment Date**"), unless, in the case of any applicable Remaining Debtor (i) such Remaining Debtor's Indebtedness to the applicable Applicant has been indefeasibly repaid in full on or before the

Remaining Appointment Date or (ii) such Remaining Debtor (and/or another entity in the "Vandyk Properties" group) has entered into (and provided the applicable Applicant with a copy of) a binding agreement that is not conditional on financing or any uncompleted diligence, is accompanied by a cash deposit equal to at least five percent (5%) of the purchase price thereunder, and has a closing date of no later than January 31, 2024 (the "**Outside Date**") that, if completed, will result in the repayment in full of such Remaining Debtor's Indebtedness to the Applicants; and (B) February 1, 2024, if the applicable Remaining Debtor's Indebtedness to the applicable Applicant is not indefeasibly repaid in full by the Outside Date; and

- (b) upon the delivery of an affidavit by the Applicants to the service list in these receivership proceedings attesting to any of the applicable Remaining Debtor's non-satisfaction of the conditions set out immediately above by the Remaining Appointment Date or the Outside Date, as applicable, the Receivership Order shall become effective immediately as against each such Remaining Debtor and its Property in all respects and the Receiver shall be authorized and empowered to act in respect of such Remaining Debtor and its Property in accordance with the terms of the Receivership Order, in each case without any further Order of the Court.


## **II. THE REMAINING DEBTOR'S NON-SATISFACTION OF THE TERMS OF THE RECEIVERSHIP ORDER**

5. As of the date of this affidavit, being the Remaining Appointment Date, each of the Remaining Debtors has failed to indefeasibly repay its Indebtedness to the applicable Applicant in full (or at all). Moreover, none of the Remaining Debtors have, to the Applicants' knowledge, entered into a binding agreement that is not conditional on financing or any uncompleted diligence,

is accompanied by a cash deposit equal to at least five percent (5%) of the purchase price thereunder, and has a closing date of no later than the Outside Date that, if completed, will result in the repayment in full of such Remaining Debtor's Indebtedness to the Applicants. Accordingly, each of the Remaining Debtors has failed to satisfy the conditions enumerated in paragraph 4 of the Receivership Order.

6. I swear this affidavit in accordance with paragraph 5 of the Receivership Order, and for no other or improper purpose.

**SWORN REMOTELY** by Daniel Pollack stated as being located in the City of Toronto, in the Province of Ontario, before me at the City of Oakville, in the Province of Ontario, on January 8, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

  
\_\_\_\_\_  
**JOSHUA FOSTER**  
Commissioner for Taking Affidavits  
(or as may be)

  
\_\_\_\_\_  
**DANIEL POLLACK**

THIS IS **EXHIBIT "A"** REFERRED TO IN THE AFFIDAVIT  
OF DANIEL POLLACK, SWORN BEFORE ME THIS  
8<sup>TH</sup> DAY OF JANUARY, 2024.

*Joshua Foster*

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Joshua Foster  
A Commissioner for taking Affidavits  
(or as may be)

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

THE HONOURABLE ) TUESDAY, THE 14<sup>TH</sup>  
 )  
JUSTICE CONWAY ) DAY OF NOVEMBER, 2023  
 )

BETWEEN:

**KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION**

Applicants

- and -

**VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE LIMITED, 2402871  
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Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE  
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SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED**

**ORDER  
(Appointing Receiver)**

THIS APPLICATION made by KingSett Mortgage Corporation and Dorr Capital Corporation (together, the "**Applicants**") for an Order pursuant to subsection 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**") appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") without security, of the real property legally described in Schedule "A" to this Order (the "**Real Property**") and all present and future assets, undertakings and personal property of Vandyk – Lakeview-DXE-West Limited ("**Lakeview**"), Vandyk – Heart Lake Limited ("**Heart Lake**"), 2402871 Ontario Inc. ("**240**"), Vandyk – The Ravine Limited ("**Ravine**") and Vandyk – Uptowns Limited ("**Uptowns**" and collectively with Lakeview, Heart Lake, 240 and Ravine, the "**Debtors**" and each a "**Debtor**"),

located at, related to, used in connection with or arising from or out of the Real Property or which is necessary to the use and operation of the Real Property, including all proceeds therefrom (collectively with the Real Property, the "**Property**") was heard this day via Zoom videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Daniel Pollack sworn November 7, 2023 and the Exhibits thereto (the "**Pollack Affidavit**") and the affidavit of Richard Ma affirmed November 12, 2023 and the Exhibits thereto, on hearing the submissions of counsel for the Applicants, the Respondents, the proposed Receiver and such other parties listed on the Participant Information Form, no one appearing for any other party although duly served as appears from the affidavit of service sworn and filed, on being advised that the Respondents consent to the issuance of this Order, and on reading the consent of KSV to act as the Receiver,

#### SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Application and the Application Record is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that all terms not otherwise defined herein shall have the meaning ascribed to them in the Pollack Affidavit.

#### APPOINTMENT

3. THIS COURT ORDERS that pursuant to subsection 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property, subject in all respects to paragraphs 4 and 5 of this Order.
4. THIS COURT ORDERS that, notwithstanding the issuance of this Order as of the date hereof, this Order shall only become effective (without any further Order of this Court) as against Lakeview, Heart Lake, 240 and Ravine (each, a "**Remaining Debtor**") and their respective Property on the earlier of: (A) January 8, 2024 (the "**Remaining Appointment Date**"), unless, in the case of any applicable Remaining Debtor (i) such Remaining Debtor's Indebtedness to the applicable Applicant has been indefeasibly repaid in full on or before the Remaining Appointment

Date or (ii) such Remaining Debtor (and/or another entity in the "Vandyk Properties" group) has entered into (and provided the applicable Applicant with a copy of) a binding agreement that is not conditional on financing or any uncompleted diligence, is accompanied by a cash deposit equal to at least five percent (5%) of the purchase price thereunder, and has a closing date of no later than January 31, 2024 (the "**Outside Date**") that, if completed, will result in the repayment in full of such Remaining Debtor's Indebtedness to the Applicants; and (B) February 1, 2024, if the applicable Remaining Debtor's Indebtedness to the applicable Applicant is not indefeasibly repaid in full by the Outside Date.

5. THIS COURT ORDERS that, upon the delivery of an affidavit by the Applicants to the service list in these proceedings attesting to any of the applicable Remaining Debtor's non-satisfaction of the conditions set out in paragraph 4 of this Order by the Remaining Appointment Date or the Outside Date, as applicable, this Order shall become effective immediately as against each such Remaining Debtor and its Property in all respects and the Receiver shall be authorized and empowered to act in respect of such Remaining Debtor and its Property in accordance with the terms of this Order, in each case without any further Order of this Court.

### **RECEIVER'S POWERS**

6. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of the Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;



- (c) to manage, operate, and carry on the business of the Debtors, or any of them, in connection with the Property, including the powers to enter into any agreements or incur any obligations in the ordinary course of business in connection with the Property, cease to carry on all or any part of the business of the Debtors in connection with the Property, or any of them, or cease to perform or disclaim any contracts of any of the Debtors in respect of the Property, provided that the Receiver shall not disclaim any agreement of purchase and sale related to the Real Property without further Order of this Court on notice to the service list in these proceedings;
- (d) to engage construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other Persons (as defined below) from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to undertake any construction at the Property necessary to bring the property into compliance with applicable laws and building codes;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtors, or any of them, in connection with the Property or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to any of the Debtors in connection with the Property (including, without limitation, any rent payments in respect of the Real Property) and to exercise all remedies of any of the Debtors in collecting such monies and accounts, including, without limitation, to enforce any security held by any of the Debtors;

- (h) to settle, extend or compromise any indebtedness owing to any of the Debtors in connection with the Property;
- (i) to deal with any lien claims, trust claims, and trust funds that have been or may be registered (as the case may be) or which arise in respect of the Property, including any part or parts thereof, and, with approval of this Court, to make any required distribution(s) to any contractor or subcontractor of the Debtors or to or on behalf of any beneficiaries of such trust funds pursuant to section 85 of the *Construction Act*, R.S.O. 1990, c. C.30;
- (j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of any of the Debtors, for any purpose pursuant to this Order;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to any of the Debtors (as such proceedings relate to the Property or any portion thereof), the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to investigate, and report to this Court on, intercompany payments, transactions and other arrangements between any of the Debtors and other Persons, including, without limitation, other companies and entities that are affiliates of any of the Debtors, that appear to the Receiver to be out of the ordinary course of business. All Persons shall be required to provide any and all information and documents related to the Debtors requested by the Receiver in connection with such investigations;

- (m) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtors thereon;
- (n) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion, and with the Applicants' consent, may deem appropriate;
- (o) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business:
  - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and
  - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act* or section 31 of the Ontario *Mortgages Act* as the case may be, shall not be required;
- (p) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (q) to report to, meet with and discuss with such affected Persons as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (r) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (s) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of any of the Debtors and to meet with and discuss with such governmental authority and execute any agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);
- (t) to enter into agreements with any trustee in bankruptcy appointed in respect of any of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by any of the Debtors;
- (u) to undertake any investigations deemed appropriate by the Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been, Property;
- (v) to exercise any shareholder, partnership, joint venture or other rights which any of the Debtors may have; and
- (w) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations, including opening any mail or other correspondence addressed to any of the Debtors,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons, including each of the Debtors, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

7. THIS COURT ORDERS that (i) each of the Debtors, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, (iii) all construction mangers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants and service

providers, and all other persons acting on their instructions or behalf, and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records, information and cloud-based data of any kind related to the business or affairs of any of the Debtors or the Property, and any computer programs, computer tapes, computer disks, cloud or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software, cloud and physical facilities relating thereto, provided however that nothing in this paragraph 8 or in paragraph 9 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

9. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer, in a cloud or other electronic system of information storage, whether by independent service provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph 9, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer, cloud or other system and

providing the Receiver with any and all access codes, account names, account numbers and account creating credentials that may be required to gain access to the information.

10. THIS COURT ORDERS that, without limiting the generality of paragraphs 7-9 of this Order, all Persons, including, without limitation, any affiliates of any of the Debtors (collectively, the "**Vandyk Group**"), and each of them, shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtors, or any of them, and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, the Vandyk Group, or any of them, shall be required to do the following: (a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents relevant to any of the Debtors and/or the Property: (1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and (3) provide thirty (30) days' notice of any renewal date, termination date, election date or similar date in respect thereof; and (b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required or requested with respect to the exercise of the Receiver's authority hereunder.

#### NO PROCEEDINGS AGAINST THE RECEIVER

11. THIS COURT ORDERS that no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**"), shall be commenced or continued against the Receiver except with the written consent of the Receiver or with leave of this Court.

#### NO PROCEEDINGS AGAINST THE DEBTORS OR THE PROPERTY

12. THIS COURT ORDERS that no Proceeding, including for greater certainty the Proceedings in the Ontario Superior Court of Justice bearing Court File No. CV-22-00689146-0000 and Court File No. CV-22-00686376-0000, against or in respect of any of the Debtors or the Property shall be commenced or continued except with the written consent of the Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of any of

the Debtors or the Property are hereby stayed and suspended pending further Order of this Court. Notwithstanding the foregoing, the Plaintiffs in the Ontario Superior Court of Justice actions bearing Court File No. CV-22-00689146-0000 and Court File No. CV-22-00686376-0000 may continue with their motion for contempt against Exquisite Bay Development Inc., Bay Homes Inc., Bay International Inc., 2474229 Ontario Inc., 2468924 Ontario Inc., Ahmed Raza Yousuf, and Muhammad Yousuf returnable on December 19, 2023, before Justice Centa, and may take such further or other steps required to conclude the contempt motion and enforce compliance with any penalties imposed or remedies granted in the contempt motion.

### **NO EXERCISE OF RIGHTS OR REMEDIES**

13. THIS COURT ORDERS that all rights and remedies against the Debtors, the Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph 13 shall (i) empower the Receiver or any of the Debtors to carry on any business which the Debtors are not lawfully entitled to carry on, (ii) exempt the Receiver or any of the Debtors from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

### **NO INTERFERENCE WITH THE RECEIVER**

14. THIS COURT ORDERS that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any of the Debtors, without written consent of the Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

15. THIS COURT ORDERS that all Persons having oral or written agreements with any of the Debtors or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, accounting services, centralized banking services, payroll services, insurance, transportation services, utility

or other services to any of the Debtors are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of any of the Debtors' current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of each of the Debtors or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

16. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from any of the Debtors to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

#### **RECEIVER TO HOLD FUNDS**

17. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

#### **EMPLOYEES**

18. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the applicable Debtor until such time as the Receiver, on the applicable Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in subsection 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing



to pay, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

## **PIPEDA**

19. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by each of the Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

20. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act, 1999*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act* or the *Ontario Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver's duties and powers

under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER'S LIABILITY**

21. THIS COURT ORDERS that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under subsections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER'S ACCOUNTS**

22. THIS COURT ORDERS that the Receiver and counsel to the Receiver 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, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

23. THIS COURT ORDERS that the Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

24. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

## **FUNDING OF THE RECEIVERSHIP**

25. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from KingSett Mortgage Corporation by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$1,000,000 (or such greater amount that is acceptable to the Applicants and as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Receiver's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person but subordinate in priority to the Receiver's Charge and the charges as set out in subsections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

26. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

27. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.

28. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

## **SERVICE AND NOTICE**

29. THIS COURT ORDERS that the E-Service Guide of the Commercial List (the "**Guide**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website

at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the *Rules of Civil Procedure*. Subject to Rule 3.01(d) of the *Rules of Civil Procedure* and paragraph 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: <https://www.ksvadvisory.com/experience/case/vandyk>.

30. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Guide is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to any of the Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

31. THIS COURT ORDERS that the Applicants, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtors' creditors or other interested parties and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of subsection 3(c) of the *Electronic Commerce Protection Regulations* (SOR/2013-221).

## **DEPOSITS**

32. THIS COURT ORDERS that notwithstanding anything else contained herein, the "Property" as defined in the preamble of this Order shall not include any current or future funds related to deposits held in trust by any law firm or credit union acting on behalf of a Debtor with respect to the purchase of a residential unit located on any of the Real Property, including, without limitation, the deposits held by Schneider Ruggiero Spencer Milburn LLP in trust pursuant to deposit trust agreements related to Uptowns' and Lakeview's respective Projects.

GENERAL

33. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

34. THIS COURT ORDERS that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of any of the Debtors.

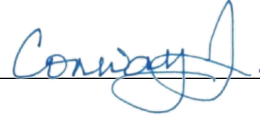
35. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals,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

36. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

37. THIS COURT ORDERS that the Applicants shall have their costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicants' security or, if not so provided by the Applicants' security, then on a substantial indemnity basis to be paid by the Receiver from the net realizations from the Property with such priority and at such time as this Court may determine.

38. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

39. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.



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**Schedule "A"**

**REAL PROPERTY**

**Vandyk – Heart Lake Limited (f/k/a 2366885 Ontario Inc.) and Vandyk – Uptowns Limited**

**PIN 14227-1291 (LT)**

PT LOT 12, CONCESSION 2, EHS DES PT 1, PL 43R33117; SUBJECT TO AN EASEMENT IN GROSS OVER PT 1, 43R35581 AS IN PR2508870; SUBJECT TO AN EASEMENT IN GROSS AS IN PR3253482; SUBJECT TO AN EASEMENT IN GROSS AS IN PR3770466; SUBJECT TO AN EASEMENT AS IN PR3853334; CITY OF BRAMPTON

**PIN 14227-1266 (LT)**

PT LT 11 CON 2 EHS CHING DES PT 1 PL 43R-19750, SAVE AND EXCEPT PT 7 PL 43R-31217; BRAMPTON

**PIN 14227-1264 (LT)**

PT LT 11 CON 2 EHS CHING AS IN CH21799, SAVE AND EXCEPT BL 696, PTS 1, 2, 3, 4, 5 PL 43R-31098, LYING NORTH EAST OF PT 1 PL 43R-31217 AND PTS1, 2 PL43R-31192; BRAMPTON; T/W ROW OVER PT LT 11 CON 2 EHS CHING DESPTS 1, 2, 3, 4, 5 PL 43R-31098, AS IN PR1167589

**PIN 14227-1262 (LT)**

PT LT 11 CON 2 EHS CHING DES PTS 1, 2 PL 43R-31192; BRAMPTON; T/W ROW OVER PT LT 11 CON 2 EHS CHING DES PTS 1, 2, 3, 4, 5 PL 43R-31098, AS IN PR1167589

**2402871 Ontario Inc.**

**PIN 07617-0889 (LT)**

LOTS 159, 160 & 161 PLAN 164 EXCEPT PART LOTS 160 & 161 PLAN 164, PART 2 66R28185; ETOBICOKE; TOGETHER WITH AN EASEMENT OVER PART LOTS 160 & 160 PLAN 164, PART 2 66R28185 AS IN AT4215394; SUBJECT TO AN EASEMENT IN GROSS AS IN AT4264438; SUBJECT TO AN EASEMENT IN GROSS AS IN AT4274323; SUBJECT TO AN EASEMENT AS IN AT3989173; CITY OF TORONTO



**Vandyk – Lakeview – DXE – West Limited**

**PIN 13482 - 0071 (LT)**

LTS 1, 2, 3, 22, 23 & 24, PL H23 ; EXCEPT PT 1 43R16245 & PT 1 43R21276; MISSISSAUGA

**Vandyk – The Ravine Limited**

**PIN 13214-0871 (LT)**

LOT 1, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0872 (LT)**

LOT 2, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0873 (LT)**

LOT 3, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0874 (LT)**

LOT 4, PLAN 43M2113; SUBJECT TO AN EASEMENT IN GROSS OVER PART 4, 43R40043 AS IN PR3908805; CITY OF MISSISSAUGA

**PIN 13214-0875 (LT)**

LOT 5, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0876 (LT)**

LOT 6, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0877 (LT)**

LOT 7, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0878 (LT)**

LOT 8, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0879 (LT)**

LOT 9, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0880 (LT)**

LOT 10, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0881 (LT)**

LOT 11, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0882 (LT)**

LOT 12, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0883 (LT)**

LOT 13, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0884 (LT)**

LOT 14, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0885 (LT)**

LOT 15, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0886 (LT)**

LOT 16, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0887 (LT)**

LOT 17, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0888 (LT)**

LOT 18, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0889 (LT)**

LOT 19, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0890 (LT)**

LOT 20, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0891 (LT)**

LOT 21, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0892 (LT)**

LOT 22, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0893 (LT)**

LOT 23, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0894 (LT)**

LOT 24, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0895 (LT)**

LOT 25, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0896 (LT)**

LOT 26, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0897 (LT)**

LOT 27, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0898 (LT)**

LOT 28, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0899 (LT)**

LOT 29, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0900 (LT)**

LOT 30, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0901 (LT)**

LOT 31, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0902 (LT)**

LOT 32, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0903 (LT)**

LOT 33, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0904 (LT)**

LOT 34, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0905 (LT)**

LOT 35, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0906 (LT)**

LOT 36, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0907 (LT)**

LOT 37, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0908 (LT)**

LOT 38, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0909 (LT)**

LOT 39, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0910 (LT)**

LOT 40, PLAN 43M2113; CITY OF MISSISSAUGA

**PIN 13214-0911 (LT)**

LOT 41, PLAN 43M2113; CITY OF MISSISSAUGA

**SCHEDULE "B"**  
**RECEIVER CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") without security, of the real property legally described in Schedule "A" (the "**Real Property**") to the Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November 14, 2023 (the "**Order**") and all present and future assets, undertakings and personal property of Vandyk – Uptowns Limited, Vandyk – Heart Lake Limited, 2402871 Ontario Inc., Vandyk – The Ravine Limited, and Vandyk – Lakeview-DXE-West Limited (collectively, the "**Debtors**"), located at, related to, used in connection with or arising from or out the Real Property or which is necessary to the use and operation of the Real Property, including all proceeds therefrom (collectively with the Real Property, the "**Property**"), appointed by the Order made in an application having Court File Number CV-23-00709180-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the \_\_\_\_\_ day of each month] after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ per cent above the prime commercial lending rate of Bank of \_\_\_\_\_ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 2023.

KSV Restructuring Inc., solely in its capacity  
as Receiver of the Property, and not in its  
personal capacity

Per: \_\_\_\_\_

Name:

Title:

**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**

**KINGSETT MORTGAGE CORPORATION  
AND DORR CAPITAL CORPORATION**

and

**VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE LIMITED,  
2402871 ONTARIO INC., VANDYK – THE RAVINE LIMITED AND  
VANDYK – LAKEVIEW-DXE-WEST LIMITED**

Applicants

Respondents

Court File No.: CV-23-00709180-00CL

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

Proceedings commenced in Toronto

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**APPOINTING ORDER**

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Lawyers for the Applicants



**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**

**KINGSETT MORTGAGE CORPORATION  
AND DORR CAPITAL CORPORATION**

and

**VANDYK – UPTOWNS LIMITED, VANDYK – HEART LAKE  
LIMITED, 2402871 ONTARIO INC., VANDYK – THE RAVINE  
LIMITED AND VANDYK – LAKEVIEW-DXE-WEST LIMITED**

Applicants

Respondents

Court File No.: CV-23-00709180-00CL

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

Proceedings commenced in Toronto

**AFFIDAVIT OF DANIEL POLLACK  
(Sworn January 8, 2024)**

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