



Court File No. CV-23-00710267-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

THE HONOURABLE

)

MONDAY THE 11<sup>TH</sup>

)

JUSTICE PENNY

)

DAY OF DECEMBER 2023

MCAP FINANCIAL CORPORATION

Applicant

- and -

VANDYK-BACKYARD KINGS MILL LIMITED

Respondent

APPLICATION UNDER SECTION 243(1) OF THE BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 1985, C. B-3, AS AMENDED; SECTION 101 OF THE COURTS OF JUSTICE ACT, R.S.O. 1990, C. C.43, AS AMENDED; AND SECTION 68 OF THE CONSTRUCTION ACT, R.S.O. 1990, c. C.30

ORDER

(appointing Construction Receiver)

THIS APPLICATION made by the Applicant for an Order appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager pursuant to section 243 of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3 (the "**BIA**") and section 101 of the Courts of Justice Act, R.S.O. 1990, c. C.43 (the "**CJA**") (in such capacity, the "**Receiver**") without security, and Construction Lien Trustee, pursuant to section 68 of the Construction Act, R.S.O. 1990, c. C.30 (the "**Construction Act**") (in such capacity, the "**Construction Lien Trustee**", collectively with the Receiver, the "**Construction Receiver**"), without security, over all property, assets and undertakings of Vandyk-Backyard Kings Mill Limited ("**Vandyk-Kings Mill**" or the "**Debtor**") acquired for or used in relation to the Debtor's business and the Project, including the proceeds thereof (collectively, the "**Property**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Michael Misener sworn November 24, 2023 and the Exhibits thereto and on hearing the submissions of counsel for the Applicant, counsel for the Respondent, counsel for KSV, and those other parties listed on the counsel slip, no one else appearing although duly served as appears from the affidavit of service of

Heather Fisher sworn November 24, 2023 and on reading the consent of KSV to act as the Construction Receiver,

## **SERVICE**

1. THIS COURT ORDERS that, if necessary, the time for service of the Notice of Application and the Application is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPOINTMENT OF RECEIVER AND CONSTRUCTION LIEN TRUSTEE**

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property.

3. THIS COURT ORDERS that pursuant to section 68 of the Construction Act, KSV is hereby appointed Construction Lien Trustee (collectively with the Receiver, the Construction Receiver), without security, of the Property of the Debtor.

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) on the earlier of:

- (a) January 8, 2024 (the “**Appointment Date**”), unless, in the case of the Debtor,
  - i. the Debtor’s indebtedness to the Applicant (the “**Indebtedness**”) has been repaid in full on or before the Appointment Date; or
  - ii. the Debtor (and/or another entity in the Vandyk Group, as defined below) has entered into (and provided the 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 15% of the purchase price, 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 the Indebtedness; or
- (b) February 1, 2024, if the Indebtedness is not indefeasibly repaid in full by the Outside Date.

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

## **CONSTRUCTION RECEIVER'S POWERS**

6. THIS COURT ORDERS that the Construction 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 Construction Receiver is hereby expressly empowered and authorized to do any of the following where the Construction 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 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 Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtor 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 consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Construction Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to deal with any lien claims, trust claims, and trust funds that have been or may be registered or which arise in respect of the Property, including any part or parts thereof, and to make any required distribution(s) to any contractor or subcontractor of the Debtor or to or on behalf of any beneficiaries of any such trust funds pursuant to section 85 of the Construction Act;

- (i) 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 Construction Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
  - (j) 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 the Debtor, the Property or the Construction 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;
  - (k) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtor thereon;
  - (l) 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 Construction Receiver in its discretion may deem appropriate;
  - (m) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
    - iii. without the approval of this Court in respect of any transaction not exceeding \$50,000, provided that the aggregate consideration for all such transactions does not exceed \$100,000; and
    - iv. 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;
- (n) 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;
  - (o) to report to, meet with and discuss with such affected Persons (as defined below) as the Construction 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 Construction Receiver deems advisable;
  - (p) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;

- (q) 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 Construction Receiver, in the name the Debtor 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 (and for the avoidance of doubt, acting solely in its capacity as Receiver and not in its personal or corporate capacity);
- (r) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (s) to undertake any investigations deemed appropriate by the Construction Receiver with respect to the location and/or disposition of assets reasonably believed to be, or to have been Property;
- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have;
- (u) to exercise the powers provided by section 68(2) of the Construction Act; and
- (v) 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 the Debtor.

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

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

7. THIS COURT ORDERS that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, (iii) all construction managers, 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 Construction 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 Construction Receiver, and shall deliver all such Property to the Construction Receiver upon the Construction Receiver's request.

8. THIS COURT ORDERS that all Persons shall forthwith advise the Construction Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, 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 Construction Receiver or permit the Construction Receiver to make, retain and take away copies thereof and grant to the Construction Receiver unfettered access to and use of accounting, computer, software 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 Construction 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 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 Construction Receiver for the purpose of allowing the Construction 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 Construction Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Construction Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Construction Receiver with all such assistance in gaining immediate access to the information in the Records as the Construction Receiver may in its discretion require including providing the Construction Receiver with instructions on the use of any computer or other system and providing the Construction Receiver with any and all access codes, account names and account numbers 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 Debtor (collectively, the "**Vandyk Group**"), and each of them, shall be required to cooperate, and share information, with the Construction Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtor, 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 the Debtor and/or the Property: (1) maintain them in good standing and provide immediate notice and copies to the Construction Receiver of any communications received from regulators or providers in respect thereof; (2) provide immediate notice to the Construction 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 Construction Receiver in obtaining any further permits and licenses

that may be required or requested with respect to the exercise of the Construction Receiver's authority hereunder.

11. THIS COURT ORDERS that the Construction Receiver shall provide each of the relevant landlords with notice of the Construction Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Construction Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Construction Receiver, or by further Order of this Court upon application by the Construction Receiver on at least two (2) days notice to such landlord and any such secured creditors.

### **NO PROCEEDINGS AGAINST THE CONSTRUCTION RECEIVER**

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

### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

13. THIS COURT ORDERS that no Proceeding against or in respect of the Debtor or the Property shall be commenced or continued except with the written consent of the Construction Receiver or with leave of this Court and any and all Proceedings currently under way against or in respect of the Debtor or the Property are hereby stayed and suspended pending further Order of this Court.

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

14. THIS COURT ORDERS that all rights and remedies against the Debtor, the Construction Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Construction 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 shall (i) empower the Construction Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Construction Receiver or the Debtor 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 CONSTRUCTION RECEIVER**

15. 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 the Debtor, without written consent of the Construction Receiver or leave of this Court

## **CONTINUATION OF SERVICES**

16. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor 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 Construction Receiver, and that the Construction Receiver shall be entitled to the continued use of the Debtor's 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 Construction Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Construction Receiver, or as may be ordered by this Court.

17. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from the Debtor to the Construction Receiver, or is otherwise established in the Construction 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.

## **CONSTRUCTION RECEIVER TO HOLD FUNDS**

18. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Construction 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 Construction Receiver in its capacity as Receiver (the "Post Receivership Accounts") and as Construction Lien Trustee (the "Post Construction Lien Trustee Accounts") and the monies standing to the credit of such Post Receivership Accounts and Post Construction Lien Trustee Accounts from time to time, net of any disbursements provided for herein, shall be held by the Construction Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

## **EMPLOYEES**

19. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Construction Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Construction Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Construction Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the Wage Earner Protection Program Act.



## **PIPEDA**

20. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, the Construction 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 Construction 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 the Debtor, and shall return all other personal information to the Construction Receiver, or ensure that all other personal information is destroyed.

## **LIMITATION ON ENVIRONMENTAL LIABILITIES**

21. THIS COURT ORDERS that nothing herein contained shall require the Construction 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*, 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 Construction Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Construction Receiver shall not, as a result of this Order or anything done in pursuance of the Construction 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 CONSTRUCTION RECEIVER'S LIABILITY**

22. THIS COURT ORDERS that the Construction Receiver shall incur no liability or obligation as a result of its appointment or the carrying out 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 sections 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 Construction Receiver by section 14.06 of the BIA or by any other applicable legislation.

## **CONSTRUCTION RECEIVER'S ACCOUNTS**

23. THIS COURT ORDERS that the Construction Receiver and counsel to the Construction 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 Construction Receiver and counsel to the Construction Receiver shall be entitled to and are hereby granted a charge (the "Construction 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 Construction 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 sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.1

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

25. THIS COURT ORDERS that prior to the passing of its accounts, the Construction 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 Construction 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 & CONSTRUCTION LIEN TRUSTEESHIP**

26. THIS COURT ORDERS that the Construction Receiver be at liberty and it is hereby empowered to borrow 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 \$500,000 (or such greater amount 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 Construction 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 "Construction 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 Construction Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

28. THIS COURT ORDERS that the Construction Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the

“Construction Receiver’s Certificates”) for any amount borrowed by it pursuant to this Order.

29. THIS COURT ORDERS that the monies from time to time borrowed by the Construction Receiver pursuant to this Order or any further order of this Court and any and all Construction 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 Construction Receiver’s Certificates.

## **SERVICE AND NOTICE**

30. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “Protocol”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (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 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL ‘<@>’.

31. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Construction 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 the Debtor’s creditors or other interested parties at their respective addresses as last shown on the records of the Debtor 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.

32. THIS THIS COURT ORDERS that the Applicants, the Construction 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 Debtor’s 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)

33. 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.

## GENERAL

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

35. THIS COURT ORDERS that nothing in this Order shall prevent the Construction Receiver from acting as a trustee in bankruptcy of the Debtor.

36. 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 Construction 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 Construction Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Construction Receiver and its agents in carrying out the terms of this Order.

37. THIS COURT ORDERS that the Construction 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 Construction 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.

38. THIS COURT ORDERS that the Applicant shall have its costs of this Application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Construction Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

39. 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 Construction 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.



**SCHEDULE "A"**  
**CONSTRUCTION RECEIVER CERTIFICATE**

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

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

1. THIS IS TO CERTIFY that KSV Restructuring Inc. ("KSV"), the receiver, manager and construction lien trustee (the "Construction Receiver") of the assets, undertakings and properties of Vandyk-Backyard Kings Mill Limited ("Vandyk-Kings Mill") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the 11th day of December, 2023 (the "Order") made in an action having Court file number CV-23-00710267-00CL, has received as such Construction Receiver from the holder of this certificate (the "Lender") the principal sum of \$ ●, being part of the total principal sum of \$ ● which the Construction 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 Construction 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*, and the right of the Construction 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 Construction 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 Construction 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 Construction 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 ●, 20.

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

Per \_\_\_\_\_

Name: ●

Title: ●

MCAP Financial Corporation  
Applicant

-and- Vandyk-Backyard Kings Mill Limited  
Respondent

Court File No. CV-23-00710267-00CL

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

PROCEEDING COMMENCED AT  
TORONTO

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**ORDER  
(Appointing Construction Receiver)**

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**GOWLING WLG (CANADA) LLP**

Barristers & Solicitors  
1 First Canadian Place  
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