

Court File No. CV-24-00714543-00CL

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

B E T W E E N:

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
2226 ROYAL WINDSOR LP**

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**

**MOTION RECORD  
(Motion for Second Amended and Restated Receivership Order and Claims  
Process Order, returnable April 17, 2025)**

April 11, 2025

**OSLER, HOSKIN & HARCOURT LLP**  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)  
Tel: 416.862.4908  
Email: mwasserman@osler.com

**Dave Rosenblat** (LSO# 64586K)  
Tel: 416.862.5673  
Email: drosenblat@osler.com

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc. in its  
capacity as court-appointed Receiver

- 2 -

TO: **SERVICE LIST**

Court File No.: CV-24-00714543-00CL

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

**BETWEEN:**

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
2226 ROYAL WINDSOR LP**

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**

**SERVICE LIST**

As at April 10, 2025	
<b>BENNETT JONES LLP</b> 3400 One First Canadian Place P.O. Box 130 Toronto, ON M5X 1A4  <i>Lawyers for the Applicant</i>	<b>Sean Zweig</b> Tel: (416) 777-6254 Email: <a href="mailto:zweigs@bennettjones.com">zweigs@bennettjones.com</a>  <b>Aiden Nelms</b> Tel: (416) 777-4642 Email: <a href="mailto:nelmsa@bennettjones.com">nelmsa@bennettjones.com</a>
<b>KSV RESTRUCTURING INC.</b> 220 Bay Street, 13th Floor Toronto, ON M5J 2W4  <i>The Receiver</i>	<b>Noah Goldstein</b> Tel: (416) 932-6207 Email: <a href="mailto:ngoldstein@ksvadvisory.com">ngoldstein@ksvadvisory.com</a>  <b>Murtaza Tallat</b> Tel: (416) 932-6031 Email: <a href="mailto:mtallat@ksvadvisory.com">mtallat@ksvadvisory.com</a>

- 2 -

<p><b>OSLER, HOSKIN &amp; HARCOURT LLP</b>  1 First Canadian Place  100 King Street West, Suite 6200  Toronto, ON M5X 1B8</p> <p><i>Lawyers for the Receiver</i></p>	<p><b>Marc Wasserman</b>  Tel: (416) 862-4908  Email: <a href="mailto:mwasserman@osler.com">mwasserman@osler.com</a></p> <p><b>Dave Rosenblat</b>  Tel: (416) 862-5673  Email: <a href="mailto:drosenblat@osler.com">drosenblat@osler.com</a></p>
<p><b>MCCARTHY TETRAULT</b>  66 Wellington Street West, Suite 5300  Toronto, ON M5K 1E6</p> <p><i>Lawyers for the Respondents</i></p>	<p><b>Heather L. Meredith</b>  Tel: (416) 601-8342  Email: <a href="mailto:hmeredith@mccarthy.ca">hmeredith@mccarthy.ca</a></p> <p><b>Geoff Hall</b>  Tel: (416) 601-8342  Email: <a href="mailto:ghall@mccarthy.ca">ghall@mccarthy.ca</a></p> <p><b>Sanee Tanvir</b>  Tel: (416) 601-8181  Email: <a href="mailto:stanvir@mccarthy.ca">stanvir@mccarthy.ca</a></p>
<p><b>ONTARIO MINISTRY OF FINANCE (INSOLVENCY UNIT)</b>  Ministry of Finance – Legal Services Branch  11-777 Bay Street  Toronto, ON M5G 2C8</p>	<p>Email: <a href="mailto:insolvency.unit@ontario.ca">insolvency.unit@ontario.ca</a></p>
<p><b>ATTORNEY GENERAL OF CANADA</b>  Department of Justice Canada  Ontario Regional Office, Tax Law Section  120 Adelaide Street West, Suite 400  Toronto, ON</p>	<p>Email: <a href="mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca">AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca</a></p>
<p><b>7037619 CANADA INC.</b>  385 Southdown Road  Mississauga, ON L5J 2Y3</p>	
<p><b>WEIRFOULDS LLP</b>  66 Wellington Street West, Suite 4100  Toronto, ON M5K 1B7</p> <p><i>Lawyers for Nucor Steel ULC c.o.b. Nucor Rebar Fabrication, a Construction Lien Claimant (759 Winston Churchill) and Precon Precast Limited, a Kenaidan subcontractor (759 Winston Churchill)</i></p>	<p><b>Sandra Astolfo</b>  Tel: (416) 947-5045  Email: <a href="mailto:sastolfo@weirfoulds.com">sastolfo@weirfoulds.com</a></p> <p><b>Philip Cho</b>  Tel: (416) 619-6296  Email: <a href="mailto:pcho@weirfoulds.com">pcho@weirfoulds.com</a></p>

- 3 -

<p><b>DRUDI ALEXIOU KUCCHAR LLP</b> 4950 Yonge Street, Suite 508 Toronto, ON M2N 6K1</p> <p><i>Lawyers for the JC Infrastructure Ltd. and Montana Electrical Contractors Ltd., each a Construction Lien Claimant (759 Winston Churchill)</i></p>	<p><b>Marco Drudi</b> Tel: (905) 850-6116 Email: <a href="mailto:mdrudi@dakllp.com">mdrudi@dakllp.com</a></p>
<p><b>LOOPSTRA NIXON LLP</b> 135 Queens Plate Drive, Suite 600 Etobicoke, ON M9W 6V7</p> <p><i>Lawyers for Superior Sprinkler Co. Ltd., a Construction Lien Claimant (759 Winston Churchill)</i></p>	<p><b>Christophe Shammass</b> Tel: (416) 748-5121 Email: <a href="mailto:cshammass@LN.Law">cshammass@LN.Law</a></p> <p><b>Tamara Watson</b> Tel: (416) 748-7544 Email: <a href="mailto:twatson@LN.Law">twatson@LN.Law</a></p>
<p><b>NORTON ROSE FULLBRIGHT CANADA LLP</b> 99 Bank Street, Suite 500 Ottawa, ON K1P 6B9</p> <p><i>Lawyers for Kenaidan Contracting Ltd., a Construction Lien Claimant (759 Winston Churchill and 688 Southdown)</i></p>	<p><b>Evan Cobb</b> Tel: (416) 216-1929 Email: <a href="mailto:evan.cobb@nortonrosefulbright.com">evan.cobb@nortonrosefulbright.com</a></p> <p><b>Meghan C. Fougere</b> Tel: (613) 780-1555 Email: <a href="mailto:meghan.fougere@nortonrosefulbright.com">meghan.fougere@nortonrosefulbright.com</a></p>
<p><b>SPEIGEL NICHOLS FOX LLP</b> 1 Robert Speck Parkway, Suite 200 Mississauga, ON L4Z 3M3</p> <p><i>Lawyers for Black &amp; McDonald Limited, a Construction Lien Claimant (759 Winston Churchill)</i></p>	<p><b>Jennifer Lake</b> Tel: (905) 366-9700 ext. 245 Email: <a href="mailto:jennifer@ontlaw.com">jennifer@ontlaw.com</a></p>
<p><b>SUTHERLAND LAW</b> 330 Hwy 7, Suite 904 Concord, ON L4K 4M3</p> <p><i>Lawyers for Soilcan Inc., a Construction Lien Claimant (688 Southdown)</i></p>	<p><b>Rob Moubarak</b> Tel: (905) 695-5500 ext. 2800 Email: <a href="mailto:rmoubarak@sutherlaw.com">rmoubarak@sutherlaw.com</a></p> <p><b>Jonathan L. Frustaglio</b> Tel: (905) 695-5500 ext. 2760 Email: <a href="mailto:jfrustaglio@sutherlaw.com">jfrustaglio@sutherlaw.com</a></p> <p><b>Adam Zweig</b> Tel: (905) 695-5500 ext. 2950 Email: <a href="mailto:azweig@sutherlaw.com">azweig@sutherlaw.com</a></p>

- 4 -

<p><b>BORDEN LADNER GERVAIS LLP</b>          Bay Adelaide Centre, East Tower          22 Adelaide Street West, Suite 3400          Toronto, ON M5H 4E3</p> <p><i>Lawyers for Petro-Canada Lubricants Inc.</i></p>	<p><b>Nick Hollard</b>          Tel: (416) 367-6545          Email: <a href="mailto:NHollard@blg.com">NHollard@blg.com</a></p> <p><b>Andrew Guerrisi</b>          Tel: (416) 367-6556          Email: <a href="mailto:AGuerrisi@blg.com">AGuerrisi@blg.com</a></p>
<p><b>KAGAN SHASTRI DEMELO WINER PARK LLP</b>          188 Avenue Road          Toronto, ON M5R 2J1</p> <p><i>Lawyers for Noram Glass Corporation, a Construction Lien Claimant (759 Winston Churchill)</i></p>	<p><b>David Winer</b>          Tel: (416) 368-2100 ext. 225          Email: <a href="mailto:dwiner@ksllp.ca">dwiner@ksllp.ca</a></p> <p><b>Jeremy Ruffalo</b>          Tel: (416) 368-2100 ext. 260          Email: <a href="mailto:jruffalo@ksllp.ca">jruffalo@ksllp.ca</a></p>
<p><b>GOODMANS LLP</b>          Bay Adelaide Centre          333 Bay Street, Suite 3400          Toronto, ON M5H 2S7</p> <p><i>Lawyers for Coulson Contracting Ltd., a Kenaidan subcontractor (759 Winston Churchill)</i></p>	<p><b>Joe Cosentino</b>          Tel: (416) 597-4245          Email: <a href="mailto:jcosentino@goodmans.ca">jcosentino@goodmans.ca</a></p> <p><b>Joe Latham</b>          Tel: (416) 597-4211          Email: <a href="mailto:jlatham@goodmans.ca">jlatham@goodmans.ca</a></p>
<p><b>HARRISON PENZA LLP</b>          130 Dufferin Ave., Suite 1101          London, ON N6A 5R2</p> <p><i>Lawyers for the Toronto-Dominion Bank</i></p>	<p><b>Timothy Hogan</b>          Tel: (519) 661-6743          Email: <a href="mailto:thogan@harrisonpenza.com">thogan@harrisonpenza.com</a></p>
<p><b>DENTON CANADA LLP</b>          Suite 400, 77 King Street West          Toronto, Ontario M5K 0A1</p> <p><i>Lawyers for SCI Logistics Ltd.</i></p>	<p><b>Michael Beeforth</b>          Tel: (416) 367-6779          Email: <a href="mailto:michael.beeforth@dentons.com">michael.beeforth@dentons.com</a></p>
<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b>          Suite 3200, Bay Adelaide Centre          North Tower          40 Temperance St.          Toronto, ON M5H 0B4 Canada</p> <p><i>Lawyers for Timbercreek Mortgage Servicing Inc.</i></p>	<p><b>Jeremy Bornstein</b>          Tel: (416) 869-5386          Email: <a href="mailto:jborenstein@cassels.com">jborenstein@cassels.com</a></p>

## EMAIL ADDRESS LIST

[zweigs@bennettjones.com](mailto:zweigs@bennettjones.com);      [nelmsa@bennettjones.com](mailto:nelmsa@bennettjones.com);      [ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com);  
[mtallat@ksvadvisory.com](mailto:mtallat@ksvadvisory.com);      [mwasserman@osler.com](mailto:mwasserman@osler.com);      [drosenblat@osler.com](mailto:drosenblat@osler.com);  
[sstidwill@osler.com](mailto:sstidwill@osler.com);      [jkanji@osler.com](mailto:jkanji@osler.com);      [sfarr@osler.com](mailto:sfarr@osler.com);      [hmeredith@mccarthy.ca](mailto:hmeredith@mccarthy.ca);  
[ghall@mccarthy.ca](mailto:ghall@mccarthy.ca);      [stanvir@mccarthy.ca](mailto:stanvir@mccarthy.ca);      [AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca](mailto:AGC-PGC.Toronto-Tax-Fiscal@justice.gc.ca);  
[insolvency.unit@ontario.ca](mailto:insolvency.unit@ontario.ca);      [sastolfo@weirfoulds.com](mailto:sastolfo@weirfoulds.com);      [pcho@weirfoulds.com](mailto:pcho@weirfoulds.com);  
[mdrudi@dakllp.com](mailto:mdrudi@dakllp.com);      [cshammas@LN.Law](mailto:cshammas@LN.Law);      [twatson@ln.law](mailto:twatson@ln.law);  
[evan.cobb@nortonrosefulbright.com](mailto:evan.cobb@nortonrosefulbright.com);      [meghan.fougere@nortonrosefulbright.com](mailto:meghan.fougere@nortonrosefulbright.com);  
[jennifer@ontlaw.com](mailto:jennifer@ontlaw.com);      [rmoubarak@sutherlaw.com](mailto:rmoubarak@sutherlaw.com);      [jfrustaglio@sutherlaw.com](mailto:jfrustaglio@sutherlaw.com);  
[riachetta@soilcan.com](mailto:riachetta@soilcan.com);      [cfotopoulos@ln.law](mailto:cfotopoulos@ln.law);      [azweig@sutherlaw.com](mailto:azweig@sutherlaw.com);      [ktoma@sutherlaw.com](mailto:ktoma@sutherlaw.com);  
[NHollard@blg.com](mailto:NHollard@blg.com);      [AGuerrisi@blg.com](mailto:AGuerrisi@blg.com);      [dwiner@ksllp.ca](mailto:dwiner@ksllp.ca);      [jruffolo@ksllp.ca](mailto:jruffolo@ksllp.ca);  
[jlatham@goodmans.ca](mailto:jlatham@goodmans.ca);      [jcosentino@goodmans.ca](mailto:jcosentino@goodmans.ca);      [thogan@harrisonpensa.com](mailto:thogan@harrisonpensa.com);  
[michael.beeforth@dentons.com](mailto:michael.beeforth@dentons.com);      [jbornstein@cassels.com](mailto:jbornstein@cassels.com)

- 6 -

**COURIER LIST**

<b>7037619 CANADA INC.</b> 385 Southdown Road Mississauga, ON L5J 2Y3	
---	--



Court File No. CV-24-00714543-00CL

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

B E T W E E N:

KINGSETT MORTGAGE CORPORATION

Applicant

- and -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
2226 ROYAL WINDSOR LP**

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**

**TABLE OF CONTENTS**

<b><u>Tab</u></b>	<b><u>Description</u></b>	<b><u>Page No.</u></b>
1.	Notice of Motion dated April 11, 2025	11
2.	Draft Second Amended and Restated Receivership Order	28
3.	Blackline of Second Amended and Restated Receivership Order to Initial Amended and Restated Receivership Order	52
4.	Draft Priority Claims Procedure Order	78

# TAB 1

Court File No. CV-24-00714543-00CL

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

B E T W E E N:

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
2226 ROYAL WINDSOR LP**

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**

**NOTICE OF MOTION  
(Motion for Second A&R Receivership Order and Claims Process Order)**

KSV Restructuring Inc. (“KSV”), in its capacity as receiver and manager (in such capacity, the “**Receiver**”) of the real property described in Schedule “A” to the A&R Receivership Order (as defined below) (collectively, the “**Real Property**”) and all present and future assets, undertakings and personal property of 759 Winston Churchill GP Inc. (“**Churchill GP**”), 759 Winston Churchill L.P. (“**Churchill LP**” and, together with Churchill GP, “**Churchill**”), 688 Southdown GP Inc. (“**Southdown GP**”), 688 Southdown LP (“**Southdown LP**” and, together with Southdown GP, “**Southdown**”), 2226 Royal Windsor GP Inc. (“**Royal Windsor GP**”) and 2226 Royal Windsor LP (“**Royal Windsor LP**” and, together with Royal Windsor GP, “**Royal Windsor**”) (collectively, the “**Debtors**”), pursuant and subject to the terms of the A&R

- 2 -

Receivership Order, will make a Motion to a Judge presiding over the Commercial List on Thursday, April 17, 2025 at 11:00 a.m., or as soon after that time as the Motion can be heard.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard

- ☐ In writing under subrule 37.12.1(1) because it is;
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location:

<https://ca01web.zoom.us/j/64172244590?pwd=OHg5VkFZNIRHb3FPdFcxaVY4dnRRZz09#success> (Meeting ID: 641 7224 4590 Passcode: 708039)

**THE MOTION IS FOR**

1. An Order further amending and restating the Amended and Restated Receivership Order (the “**Second A&R Receivership Order**”), substantially in the form of the draft order included at Tab 2 of the Motion Record, among other things:

- (a) abridging the time for, and validating service of, this Notice of Motion and supporting materials such that the motion is properly returnable on April 17, 2025, and dispensing with further service thereof;

- 3 -

- (b) approving the Letter of Intent between Churchill LP and Leeswood Design Build (Alberta) Ltd. (“**Leeswood**”) dated April 7, 2025 and executed April 9, 2025 (the “**Churchill Construction LOI**”);
  - (c) approving the execution of a definitive CCDC 5A Construction Management Contract – for Services (2010) (the “**Second Churchill CM Contract**”) on terms consistent with the Churchill Construction LOI and granting certain related relief;
  - (d) sealing Confidential Appendix “1” to the second report of the Receiver dated April 11, 2025 (the “**Second Report**”);
  - (e) authorizing the Receiver to borrow up to an aggregate principal amount of \$90,250,000 (plus a \$2,000,000 letter of credit facility) pursuant to a commitment letter dated as of April 10, 2025 among the Receiver and KingSett Mortgage Corporation (“**KingSett**”) (the “**Churchill Commitment Letter**”) and granting certain related relief; and
  - (f) granting a charge (the “**Receiver’s WC Borrowings Charge**”) against the Property (defined below) of Churchill GP and Churchill LP as security for the payment of the monies borrowed under the Churchill Construction Facility (defined below), to rank subordinate to the Receiver’s Charge and *pari passu* with the Receiver’s General Borrowings Charge (each as defined in the proposed Second A&R Receivership Order);
2. A Claims Process Order (the “**CPO**”), substantially in the form of the draft order included at Tab 4 of the Motion Record, among other things:

- 4 -

- (a) approving a proposed claims process (the “**Claims Process**”) and authorizing the Receiver to carry out same in accordance with the terms therein; and

3. Such further and other Relief as to this Honourable Court may seem just.

## THE GROUNDS FOR THE MOTION

### *Background and the Receivership Proceedings*

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) issued on May 30, 2024 (the “**Receivership Order**”), KSV was appointed the Receiver of the Real Property and all present and future assets, undertakings and personal property of the Debtors, 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, excluding all security granted by Churchill GP to The Toronto-Dominion Bank in connection with certain letters of credit (collectively with the Real Property, the “**Property**”);

2. Each of the Debtors is a privately held real estate development entity and is part of the larger South Shore Group of companies. Churchill GP, Southdown GP and Royal Windsor GP are the registered owners of the Real Property and hold such property in trust for, and for the benefit of, Churchill LP, Southdown LP and Royal Windsor LP, respectively;

3. The Real Property is comprised of a property located at 759 Winston Churchill Boulevard, Mississauga, Ontario (the “**Churchill Lands**”); a property located at 688 Southdown Road, Mississauga, Ontario (the “**Southdown Lands**”); and a property located at 2226 Royal Windsor Drive, Mississauga, Ontario (the “**Royal Windsor Lands**”);

- 5 -

4. Prior to these receivership proceedings, the Debtors intended to develop three real-estate development projects on their respective Real Property (the “**Projects**”), which are all located in Mississauga, Ontario;

5. On the Churchill Lands, one building is complete and fully leased (the “**Completed WC Building**”), one building is partially constructed, and construction has not commenced on the third (together, the “**Remaining WC Buildings**”). There is no active construction on the Southdown Lands or the Royal Windsor Lands;

6. Since the commencement of the receivership proceedings, the Receiver has been assessing options for maximizing realizations from the Property. Given the status of the Projects and the lack of available financing to date, the Receiver’s efforts have primarily been focused on the pursuit of sale transactions;

7. The Receiver had previously executed confidential, non-binding letters of intent (“**Project Sale LOIs**”) for the acquisition of each of the Projects. However, since the Amended and Restated Order (the “**A&R Receivership Order**”) was granted on November 15, 2024, the Project Sale LOIs were terminated in accordance with their terms as the counterparties determined it was not feasible to proceed with the transactions contemplated therein;

8. It has become apparent to the Receiver during discussions with the counterparties to the Project Sale LOIs (as well as other potential buyers) that:

- (a) in respect of the Project on the Churchill Lands (the “**Churchill Project**”), completion of the Remaining WC Buildings would materially increase the

- 6 -

Churchill Project's value in any sales process and expand the pool of potentially interested acquirors; and

- (b) for all Projects, the identification and quantification of Construction Priority Claims (defined below) may facilitate a sale transaction, as this will allow the Receiver to canvass a broader pool of potential transaction structures, where the payment of Construction Priority Claims may be required in connection therewith;

***Development of the Churchill Project***

9. On November 15, 2024, the Court issued the A&R Receivership Order which approved, among other things, the retention of Leeswood as construction manager to oversee completion of an extension of Hazelhurst Road to Winston Churchill Blvd. (the “**Extension**”) pursuant to the “**First Churchill CM Contract**” (as defined in the Second A&R Receivership Order);

10. Completion of the Extension is on-budget, is substantially advanced, and is scheduled to be completed by late spring-2025;

11. Following the termination of the Project Sale LOI in respect of the Churchill Project and in consultation with KingSett, the Receiver evaluated the viability associated with completing the Remaining WC Buildings and determined that their completion would be accretive to any sales process;

12. Given their prior involvement in the Churchill Project, the Receiver engaged in discussions with Leeswood regarding a possible expansion of its scope of work to include completion of the Remaining WC Buildings;



- 7 -

13. Leeswood submitted the Churchill Construction LOI setting out its proposal for key terms to be included the Second Churchill CM Contract;
14. The Receiver, with KingSett's support, executed the Churchill Construction LOI;
15. The Churchill Construction LOI provides that Leeswood shall be paid : (i) a construction management fee of 2.8% (inclusive of all offsite overheads), (ii) a bonus of 15% of any cost savings relative to the overall construction budget, and (iii) bonuses if the following milestone schedules are met: (A) \$50,000 if Building 2 is completed within 6 months from the date of the Churchill Construction LOI; and (B) \$50,000 if Building 1 is completed within 11 months from the date of the Churchill Construction LOI;
16. The key terms included in Churchill Construction LOI, including proposed fees and timelines, are both favorable and reasonable:
  - (a) Leeswood is an experienced and reputable construction manager that is already familiar with, and engaged on, the Churchill Project;
  - (b) conducting a request for proposal in respect of the applicable scope of work would result in further delays and likely yield the same result;
  - (c) the Receiver views the key terms of the Churchill Construction LOI to be favourable and reasonable;
  - (d) completing the Remaining WC Buildings is intended to enhance value for the Debtors' stakeholders, and engagement of a construction manager will be required for same;

- 8 -

- (e) if the Churchill Construction LOI and subsequent execution of the Second Churchill CM Contract are not approved, the Receiver would be required to negotiate a separate construction management contract with another party, which the Receiver anticipates would be on less favourable terms and cause further delay, including that any alternative construction manager will have limited familiarity with the Churchill Project and the associated risks; and
- (f) KingSett, the primary economic stakeholder in these receivership proceedings and the party providing funding in these receivership proceedings (including the Churchill Construction Facility (defined below)), supports the retention of Leeswood and the terms of the Churchill Construction LOI;

### ***Sealing Order***

17. The Churchill Construction LOI attaches a budget of \$20,792,992 for Building 1 and a budget of \$16,977,445 for Building 2 (together, the “**Confidential WC Budgets**”);

18. The Confidential WC Budgets contain sensitive financial information regarding the Churchill Project’s economics and sealing of the Confidential WC Budgets until the earlier of (i) the completion of the Churchill Project; and (ii) further Order of the Court is appropriate in the circumstances:

- (a) disclosure of the Confidential WC Budgets could negatively impact ongoing negotiations with construction trade vendors and financial stakeholders. Public disclosure of this information may pose a significant risk to the successful completion of the Churchill Project, as it could undermine negotiations;

- 9 -

- (b) the salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances;
- (c) the sealing of the Confidential WC Budgets is in the best interest of Churchill's stakeholders generally;
- (d) the Receiver is not aware of any party that will be prejudiced if the information is sealed or any public interest that will be served if such details are disclosed in full;
- (e) the sealing relief is appropriately limited in time and scope; and
- (f) the sealing of the Confidential WC Budgets is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25.

### ***Churchill Construction Facility***

19. KingSett has agreed to fund the construction and related work performed under the Churchill Construction LOI and subsequent Second Churchill CM Contract pursuant to a construction financing facility (the “**Churchill Construction Facility**”) on the terms set out in the Churchill Commitment Letter;

20. The Churchill Commitment Letter provides that the Receiver may borrow a loan amount up to \$90.25 million at an interest rate of the Prime Rate + 6.50% per annum (subject to possible downward adjustment if the loan is syndicated), with a letter of credit facility of \$2 million subject to a fee of 2.25% per annum payable annually in advance;

21. The terms of the Churchill Construction Facility are reasonable and appropriate in the circumstances:

- (a) The Receiver compared the effective annualized interest rate of the loans (estimated to be currently 11.45%) to other debtor-in-possession facilities approved by the Canadian courts in similar insolvency proceedings commenced between 2022 and 2024. Based on this review and the Receiver's experience, the Receiver is of the view that the interest rate is consistent with or lower than market for a loan of this nature;
- (b) the Churchill Construction Facility is required for construction of the Remaining WC Buildings and other aspects of the Churchill Project, which is in the interest of maximizing recoveries for all stakeholders;
- (c) the Churchill Construction Facility is to be provided by KingSett, who is the existing primary financial stakeholder in these receivership proceedings, and is supportive of resuming construction of the Churchill Project in these receivership proceedings;
- (d) KingSett requires the Receiver's WC Borrowings Charge in order to fund the Churchill Construction Facility; and
- (e) if the Receiver does not obtain additional funding, it will be unable to complete the Churchill Project, which will impair value to the detriment of Churchill's stakeholders;

***Determination of Construction Priority Claims***

22. According to searches of title to the Real Property conducted and reviewed by counsel to the Receiver:

- (a) seven lien claimants (the “**Churchill Lien Claimants**”) have registered nine construction liens on title to some or all of the Churchill Lands;
- (b) two lien claimants (the “**Southdown Lien Claimants**” and together with the Churchill Lien Claimants, the “**Lien Claimants**”) have registered two construction liens on title to some or all of the Southdown Lands; and
- (c) there are no liens registered on the Royal Windsor Lands;

23. The Receiver understands, and has confirmed with management of the South Shore Group, that the Debtors are not holding any funds for the statutory holdback that the Debtors were required to retain pursuant to the *Construction Act* from payments to parties that supplied services or materials to the Projects being developed on the Real Property;

24. The *Construction Act* (Ontario) provides that (i) in certain circumstances, valid liens arising from an improvement may have certain priority over mortgages, and (ii) various trust claims may be advanced by potential claimants in relation to development projects (any such claim under (i) or (ii), a “**Construction Priority Claim**”). In light of the foregoing priority or rights afforded to Construction Priority Claims, the Receiver is seeking the CPO, among other things, for the purposes of identifying and quantifying same;

- 12 -

25. Subject to standard assumptions and qualifications, pursuant to the applicable security documentation, the mortgages registered on the Property create charges against the Property securing the Indebtedness;
26. The terms of the proposed Claims Process are summarized in the Second Report. The Claims Process is intended to only solicit Construction Priority Claims;
27. The Claims Process is reasonable and appropriate for the following reasons:
  - (a) the Receiver anticipates that crystalizing the quantum of the Construction Priority Claims will facilitate the sale of the Property;
  - (b) notwithstanding that the Receiver has not sought the approval of a transaction for the Property to date, crystalizing the dollar value of the Construction Priority Claims will be required in order to affect future distributions from any potential transactions;
  - (c) the proposed notices, dispute resolution provisions and timelines set out in the CPO are consistent with those commonly approved by Canadian courts and are sufficient to allow Lien Claimants to assert and establish Construction Priority Claims in these receivership proceedings; and
  - (d) in the Receiver's view, the claims bar date, being approximately 30 days from the date scheduled for this motion, is sufficient for Lien Claimants to file a proof of claim with the Receiver.

***Other Grounds***

28. The provisions of the BIA, section 101 of the CJA, and the inherent and equitable jurisdiction of this Court;

29. Rules 2.03, 3.02 and 37 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended; and

30. Such further and other grounds as counsel may advise and this Honourable Court may deem just.

**THE FOLLOWING DOCUMENTARY EVIDENCE** will be used at the hearing of the Motion:

1. The Second Report of the Receiver dated April 11, 2025; and

2. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

- 14 -

April 11, 2025

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)

Tel: 416.862.4908

Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)**Dave Rosenblat** (LSO# 64586K)

Tel: 416.862.5673

Email: [drosenblat@osler.com](mailto:drosenblat@osler.com)

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc. in its  
capacity as court-appointed Receiver

TO: **THE SERVICE LIST**



**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      759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688 SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and 2226 ROYAL WINDSOR LP**

Applicant

Respondents

Court File No.: CV-24-00714543-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceedings commenced in Toronto

**NOTICE OF MOTION  
(Motion for Second A&R Receivership Order and  
Claims Process Order)**

**OSLER, HOSKIN & HARCOURT LLP**  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)  
Tel: 416.862.4908  
Email: mwasserman@osler.com

**Dave Rosenblat** (LSO# 64586K)  
Tel: 416.862.5673  
Email: drosenblat@osler.com

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc. in its capacity as  
court-appointed Receiver



# TAB 2

Court File No.: CV-24-00714543-00CL

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

THE HONOURABLE	)	THURSDAY, THE 17 <sup>TH</sup>
	)	
JUSTICE KIMMEL	)	DAY OF APRIL, 2025

BETWEEN:

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
2226 ROYAL WINDSOR LP**

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**

**SECOND AMENDED AND RESTATED ORDER  
(Amending the Order Appointing Receiver dated May 30, 2024 as amended by an Order  
dated November 15, 2024)**

THIS APPLICATION made by KingSett Mortgage Corporation (the “**Applicant**”) 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 759 Winston Churchill GP Inc. (“**Churchill GP**”), 759 Winston Churchill L.P. (“**Churchill LP**”), 688 Southdown GP Inc. (“**Southdown GP**”), 688 Southdown LP (“**Southdown LP**”), 2226 Royal Windsor GP Inc. (“**Royal Windsor GP**”) and 2226 Royal Windsor LP (“**Royal Windsor LP**” and together with Churchill GP, Churchill LP, Southdown

GP, Southdown LP and Royal Windsor GP, the “**Debtors**” and each a “**Debtor**”), including all permits and deposits paid or obtained on behalf of 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, and excluding all security granted by Churchill GP to The Toronto-Dominion Bank in connection with the four (4) letters of credit issued by The Toronto-Dominion Bank with Churchill GP as Applicant (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 February 12, 2024 and the Exhibits thereto (the “**First Pollack Affidavit**”), the affidavit of Daniel Pollack sworn April 23, 2024 and the Exhibits thereto, the Responding Affidavit of Michael Moldenhauer sworn February 15, 2024 and the Exhibits thereto, the Affidavit of Kathryn Furfaro sworn February 26, 2024 and the Exhibits thereto, the First Report of the Receiver dated November 11, 2024 (the “**First Report**”), and the Second Report of the Receiver dated April 11, 2025 (the “**Second Report**”), and on hearing the submissions of counsel for the Applicant, the Debtors, the 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, and on reading the consent of KSV to act as the Receiver, and on being advised that the Debtors consent to this Order on terms agreed with the Applicant,

## **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 First 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.

## **RECEIVER'S POWERS**

4. 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 (unless such contract is a lease of real property or of an immovable if a Debtor is the lessor) any contracts of any of the Debtors in respect of the Property;
- (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 or other work at the Property in connection with the exercise of the Receiver's powers and duties conferred pursuant to this Order, including, without limitation, as contemplated by the Commitment Letter or the Construction Contracts (each as defined below), and/or as 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 on notice to the Debtors, 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 undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtors thereon;
- (m) 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 Applicant's consent, may deem appropriate;
- (n) 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;

- (o) 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;
- (p) 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;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) 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);
- (s) 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;
- (t) to exercise any shareholder, partnership, joint venture or other rights which any of the Debtors may have; and

- (u) 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**

5. 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 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 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.

6. 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 6 or in paragraph 7 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.

7. 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 7, 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.

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

8. 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**

9. THIS COURT ORDERS that no Proceeding 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.

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

10. 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 10 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**

11. 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**

12. THIS COURT ORDERS that all Persons having oral or written agreements with any of the Debtors or contractual, statutory or regulatory mandates for the supply of goods and/or services to the Debtors or in respect of the Debtors' Property, construction and development projects, including without limitation, all computer software, communication and other data services, sub-contracts, trade suppliers, accounting services, centralized banking services, payroll services, insurance, transportation services, utility or other services to any of the Debtors, or in respect of the Debtors' Property, construction and development projects, 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.

13. 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**

14. 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**

15. 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**

16. 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**

17. 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**

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation (including, without limitation, any personal liability or obligation under or in connection with (i) the Commitment Letter or the Construction Contracts, (ii) the performance, actions, errors, omissions or negligence by or of any construction manager, project manager, developer, contractor, subcontractor or other service provider, and all other persons acting on their behalf, or (iii) as a result of its appointment or the carrying out of the provisions of this Order), save and except for liability arising from any gross negligence or wilful misconduct on its part, as determined pursuant to a final order of this Court that is not subject to appeal or other review and all rights to seek any such appeal or other review shall have expired, 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

19. 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.

20. 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.

21. 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

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow, pursuant to the commitment letter dated as of April 10, 2025 among the Receiver and KingSett Mortgage Corporation (the “**Lender**”) (with such minor amendments that are not inconsistent with this Order, as the Lender and the Receiver may agree to, the “**Commitment Letter**”), such monies from time to time as it may consider necessary or desirable on the terms contained in the Commitment Letter, provided that draws made under the Commitment Letter do

not exceed the aggregate principal amount of \$90,250,000 (plus the \$2,000,000 letter of credit facility thereunder), plus interest, fees and charges.

23. THIS COURT ORDERS that the Receiver is hereby authorized and empowered to execute and deliver the Commitment Letter and such other definitive documents (collectively, the “**Definitive Documents**”), as are contemplated by the Commitment Letter or as may be reasonably required by the Lender pursuant to the terms thereof, and the Receiver is hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, subject to the terms of the Commitment Letter and paragraph 18 herein.

24. THIS COURT ORDERS that that the whole of the Property of Churchill GP and Churchill LP shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver’s WC Borrowings Charge**”) as security for the payment of the monies borrowed pursuant to the Commitment Letter, together with interest, fees and charges thereon, as set forth in the Commitment Letter and the Definitive Documents, and all other amounts that Churchill GP and Churchill LP are responsible for pursuant to the Commitment Letter or any of the Definitive Documents, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person, except: (i) the Receiver's General Borrowings Charge, with which it shall rank *pari passu*, and (ii) 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, to which it shall be subordinate in priority.

25. THIS COURT ORDERS that, that, notwithstanding any other provision of this Order:

- (a) the Receiver and the Lender may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Receiver's WC Borrowings Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Commitment Letter, any of the Definitive Documents or the Receiver's WC Borrowings Charge, the Lender, subject to paragraph 27 of this Order, may exercise any and all



of its rights and remedies against Churchill GP, Churchill LP, or the Property of Churchill GP and Churchill LP under or pursuant to the Commitment Letter, any of the Definitive Documents and the Receiver's WC Borrowings Charge, including, without limitation, to immediately cease making advances to the Receiver and set off and/or consolidate any amounts owing by the Lender to the Receiver against the obligations of the Receiver to the Lender under the Commitment Letter, any of the Definitive Documents or the Receiver's WC Borrowings Charge, make demand, accelerate payment and give other notices, or to apply to this Court for a bankruptcy order against Churchill GP or Churchill LP and for the appointment of a trustee in bankruptcy of Churchill GP or Churchill LP; and

- (c) the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy of Churchill GP, Churchill LP, or the Property of Churchill GP and Churchill LP.

26. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from the Lender 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 \$2,000,000 (which, for clarity, is separate and apart from any and all draws made under, and the letter of credit facility established pursuant to, the Commitment Letter) 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 General Borrowings Charge**” and, together with the Receiver’s WC Borrowings Charge, the “**Receiver’s Borrowings Charges**”) 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, except: (i) the Receiver’s WC Borrowings Charge, which shall rank *pari passu* with the Receiver’s General

Borrowings Charge, and (ii) 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, to which it shall be subordinate.

27. THIS COURT ORDERS that neither the Receiver's Borrowings Charges nor any other security granted by the Receiver in connection with its borrowings under this Order or the Commitment Letter shall be enforced without leave of this Court; provided, however, that nothing in this paragraph 27 shall prohibit the Lender from ceasing to make advances to the Receiver pursuant to the Commitment Letter upon an event of default thereunder.

28. 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 paragraph 26 this Order.

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

## **SERVICE AND NOTICE**

30. 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://ksvadvisory.com/experience/case/winston-churchill>.

31. 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.

32. THIS COURT ORDERS that the Applicant, 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).

#### **CONSTRUCTION MANAGEMENT CONTRACTS**

33. THIS COURT ORDERS that the CCDC 5A Construction Management Contract – for Services (2010) contract between Churchill LP and Leeswood Design Build (Alberta) Ltd (“**Leeswood**”) dated November 11, 2024, in the form attached as Appendix “B” to the First Report (the “**First Churchill CM Contract**”), be and is hereby approved.

34. THIS COURT ORDERS that the Letter of Intent between Churchill LP and Leeswood dated April 7, 2025, and executed on April 9, 2025, (the “**Churchill Construction LOI**”) and the subsequent execution of a definitive CCDC 5A Construction Management Contract – for Services (2010) (or other customized industry form of construction management contract), together with such supplementary conditions and other documents as may be necessary or desirable, on terms consistent with the Churchill Construction LOI, and on such other definitive terms as the Receiver considers appropriate (the “**Second Churchill CM Contract**”), be and are hereby approved.

35. THIS COURT ORDERS that the parties to the First Churchill CM Contract, the Churchill Construction LOI, and the Second Churchill CM Contract (collectively, the “**Construction Contracts**”) are authorized and directed to comply with the terms of the respective Construction Contracts, and the Receiver is authorized to take such steps and execute such additional documentation as may be necessary or desirable to give effect to the Construction Contracts.

**CRITICAL PAYMENTS**

36. THIS COURT ORDERS that the Receiver may, with the written consent of the Applicant, make payments owing by any of the Debtors to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order that are reasonably required for the preservation of the Property.

**SEALING PROVISION**

37. THIS COURT ORDERS that the Confidential WC Budgets (as defined in the Second Report and attached as Confidential Appendix 1 thereto) shall be and are hereby sealed, kept confidential and shall not form part of the public record, until the earlier of: (i) the completion of the Churchill Project (as defined in the Second Report); and (ii) further Order of this Court sought on not less than seven (7) days notice to the Receiver.

**GENERAL**

38. 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.

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

40. 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.

41. 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.

42. 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 Receiver from the net realizations from the Property with such priority and at such time as this Court may determine.

43. 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.

44. 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.

---

**Schedule "A"****REAL PROPERTY****Churchill****PIN: 13493-0213(LT)**

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 2 & 3 PLAN 43R39986; CITY OF MISSISSAUGA

**PIN: 13493-0226(LT)**

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 5 & 6 PLAN 43R39986; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN 43R38482 AS IN PR1662397; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR1021917; CITY OF MISSISSAUGA

**PIN: 13493-0225(LT)**

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PART 1 PLAN 43R39884; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN 43R38482 AS IN PR1662397; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR1021917; CITY OF MISSISSAUGA

**Southdown****PIN: 13493-0044(LT)**

PT LT 31 CON 3 SDS TORONTO; PT LT 32 CON 3 SDS TORONTO PTS 1 TO 6, 8, 43R13084;  
 S/T TT129899; S/T TT103210, TT103804, TT153650, VS163947, VS42085, VS58563  
 MISSISSAUGA

**Royal Windsor****PIN: 13493-0190 (LT)**

PT LT 31, 32 CON 3 SDS DES PTS 1, 2 PL 43R11375 SAVE & EXCEPT PTS 1,2,3 PL  
 43R21957, EXCEPT PT 1 43R22260, EXCEPT PT 1 43R25470, EXCEPT PTS 1, 2, 3 PL  
 43R25635, EXCEPT PT 1 PL 43R28305 MISSISSAUGA.S/T EASEMENT IN FAVOUR OF  
 INTERPROVINCIAL PIPE LINE COMPANY OVER PT LT 32 CON 3 SDS DES PT 2 PL  
 43R11375 EXCEPT PT 2 PL 43R21957 AS IN TT102320, TT104152.T/W EASEMENT OVER  
 PT LT 32 CON 3 SDS DES PT 3 PL 43R21957 AS IN LT1712946

**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 May 30, 2024 (as amended and restated on November 15, 2024 and on April 17, 2025, the “**Order**”) and all present and future assets, undertakings and personal property of 759 Winston Churchill GP Inc., 759 Winston Churchill L.P., 688 Southdown GP Inc., 688 Southdown LP, 2226 Royal Windsor GP Inc. and 2226 Royal Windsor LP (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-24-00714543-00CL, 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 \_\_\_\_\_, 20\_\_.

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      **759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688 SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and 2226 ROYAL WINDSOR LP**

Applicant

Respondents

Court File No.: CV-24-00714543-00CL

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

Proceedings commenced in Toronto

**SECOND AMENDED AND RESTATED ORDER  
(Amending the Order Appointing Receiver dated May  
30, 2024 as amended by an Order dated November 15,  
2024)**

**BENNETT JONES LLP**

One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

**Sean Zweig** (LSO# 57307I)

Tel: (416) 777-6254

Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

**Aiden Nelms** (LSO#: 74170S)

Tel: (416) 777-4642

Email: [nelmsa@bennettjones.com](mailto:nelmsa@bennettjones.com)

Lawyers for the Applicant

# TAB 3

Court File No.: CV-24-00714543-00CL

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

THE HONOURABLE    JUSTICE KIMMEL	) ) )	<del>FRIDAY</del> <u>THURSDAY</u> , THE <del>15<sup>th</sup></del> <u>17<sup>th</sup></u> DAY OF <del>NOVEMBER</del> <u>APRIL</u> , <del>2024</del> <u>2025</u>
--	-------------	--

BETWEEN:

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
2226 ROYAL WINDSOR LP**

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**

**SECOND AMENDED AND RESTATED ORDER**

**(Amending the Order Appointing Receiver dated May 30, 2024 as amended by an Order dated November 15, 2024)**

THIS APPLICATION made by KingSett Mortgage Corporation (the “**Applicant**”) 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 759 Winston Churchill GP Inc. (“**Churchill GP**”), 759 Winston Churchill L.P. (“**Churchill LP**”), 688 Southdown GP Inc. (“**Southdown GP**”), 688 Southdown LP (“**Southdown LP**”), 2226 Royal Windsor GP Inc. (“**Royal Windsor GP**”) and 2226 Royal

Windsor LP (“**Royal Windsor LP**” and together with Churchill GP, Churchill LP, Southdown GP, Southdown LP and Royal Windsor GP, the “**Debtors**” and each a “**Debtor**”), including all permits and deposits paid or obtained on behalf of 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, and excluding all security granted by Churchill GP to The Toronto-Dominion Bank in connection with the four (4) letters of credit issued by The Toronto-Dominion Bank with Churchill GP as Applicant (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 February 12, 2024 and the Exhibits thereto (the “**First Pollack Affidavit**”), the affidavit of Daniel Pollack sworn April 23, 2024 and the Exhibits thereto, the Responding Affidavit of Michael Moldenhauer sworn February 15, 2024 and the Exhibits thereto, the Affidavit of Kathryn Furfaro sworn February 26, 2024 and the Exhibits thereto ~~and~~, the First Report of the Receiver dated November 11, 2024 (the “**First Report**”), and the Second Report of the Receiver dated April 11, 2025 (the “**Second Report**”), and on hearing the submissions of counsel for the Applicant, the Debtors, the 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, and on reading the consent of KSV to act as the Receiver, and on being advised that the Debtors consent to this Order on terms agreed with the Applicant,

## **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 First 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.

## **RECEIVER'S POWERS**

4. 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 (unless such contract is a lease of real property or of an immovable if a Debtor is the lessor) any contracts of any of the Debtors in respect of the Property;
- (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 or other work at the Property in connection with the exercise of the Receiver's powers and duties conferred pursuant to this Order, including, without limitation, as contemplated by the ~~Churchill CM Contract~~ ([Commitment Letter or the Construction Contracts](#) (each as defined below), and/or as 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 on notice to the Debtors, 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 undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtors thereon;
- (m) 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 Applicant's consent, may deem appropriate;
- (n) 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;

- (o) 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;
- (p) 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;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) 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);
- (s) 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;

- (t) to exercise any shareholder, partnership, joint venture or other rights which any of the Debtors may have; and
- (u) 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**

5. 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 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 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.

6. 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 6

or in paragraph 7 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.

7. 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 7, 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.

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

8. 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**

9. THIS COURT ORDERS that no Proceeding 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.

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

10. 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 10 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**

11. 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**

12. THIS COURT ORDERS that all Persons having oral or written agreements with any of the Debtors or contractual, statutory or regulatory mandates for the supply of goods and/or services to the Debtors or in respect of the Debtors’ Property, construction and development projects, including without limitation, all computer software, communication and other data services, sub-contracts, trade suppliers, accounting services, centralized banking services, payroll services, insurance, transportation services, utility or other services to any of the Debtors, or in respect of the Debtors’ Property, construction and development projects, 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.

13. 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**

14. 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**

15. 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**

16. 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**

17. 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

18. THIS COURT ORDERS that the Receiver shall incur no liability or obligation (including, without limitation, any personal liability or obligation under or in connection with (i) the Commitment Letter or the Construction Contracts, (ii) the performance, actions, errors, omissions or negligence by or of any construction manager, project manager, developer, contractor, subcontractor or other service provider, and all other persons acting on their behalf, or (iii) as a result of its appointment or the carrying out of the provisions of this Order), save and except for liability arising from any gross negligence or wilful misconduct on its part, as determined pursuant to a final order of this Court that is not subject to appeal or other review and all rights to seek any such appeal or other review shall have expired, 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

19. 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.

20. 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.

21. 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

22. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow, pursuant to the commitment letter dated as of April 10, 2025 among the Receiver and KingSett Mortgage Corporation (the “Lender”) (with such minor amendments that are not inconsistent with this Order, as the Lender and the Receiver may agree to, the “Commitment Letter”), such monies from time to time as it may consider necessary or desirable on the terms contained in the Commitment Letter, provided that draws made under the Commitment Letter do not exceed the aggregate principal amount of \$90,250,000 (plus the \$2,000,000 letter of credit facility thereunder), plus interest, fees and charges.

23. THIS COURT ORDERS that the Receiver is hereby authorized and empowered to execute and deliver the Commitment Letter and such other definitive documents (collectively, the “Definitive Documents”), as are contemplated by the Commitment Letter or as may be reasonably required by the Lender pursuant to the terms thereof, and the Receiver is hereby authorized and directed to pay and perform all of the indebtedness, interest, fees, liabilities and obligations to the Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, subject to the terms of the Commitment Letter and paragraph 18 herein.

24. THIS COURT ORDERS that that the whole of the Property of Churchill GP and Churchill LP shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’s WC Borrowings Charge”) as security for the payment of the monies borrowed pursuant to the Commitment Letter, together with interest, fees and charges thereon, as set forth in the Commitment Letter and the Definitive Documents, and all other amounts that Churchill GP and Churchill LP are responsible for pursuant to the Commitment Letter or any of the Definitive Documents, in priority to all security interests, trusts (including, without limitation, deemed trusts), liens, charges and encumbrances, statutory or otherwise, in favour of any Person,



except: (i) the Receiver's General Borrowings Charge, with which it shall rank *pari passu*, and (ii) 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, to which it shall be subordinate in priority.

25. THIS COURT ORDERS that, that, notwithstanding any other provision of this Order:

- (a) the Receiver and the Lender may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the Receiver's WC Borrowings Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Commitment Letter, any of the Definitive Documents or the Receiver's WC Borrowings Charge, the Lender, subject to paragraph 27 of this Order, may exercise any and all of its rights and remedies against Churchill GP, Churchill LP, or the Property of Churchill GP and Churchill LP under or pursuant to the Commitment Letter, any of the Definitive Documents and the Receiver's WC Borrowings Charge, including, without limitation, to immediately cease making advances to the Receiver and set off and/or consolidate any amounts owing by the Lender to the Receiver against the obligations of the Receiver to the Lender under the Commitment Letter, any of the Definitive Documents or the Receiver's WC Borrowings Charge, make demand, accelerate payment and give other notices, or to apply to this Court for a bankruptcy order against Churchill GP or Churchill LP and for the appointment of a trustee in bankruptcy of Churchill GP or Churchill LP; and
- (c) the foregoing rights and remedies of the Lender shall be enforceable against any trustee in bankruptcy of Churchill GP, Churchill LP, or the Property of Churchill GP and Churchill LP.

26. ~~22.~~ THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from ~~KingSett Mortgage Corporation~~ the Lender 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 \$2,000,000 (~~or such greater amount that is acceptable to the Applicant and as this Court may by further Order authorize~~which, for clarity, is separate and apart from any and all draws made under, and the letter of credit facility established pursuant to, the Commitment Letter) 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 General Borrowings Charge**” and, together with the Receiver's WC Borrowings Charge, the “Receiver's Borrowings Charges”) 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,~~ except: (i) the Receiver's WC Borrowings Charge, which shall rank *pari passu* with the Receiver's General Borrowings Charge, and (ii) 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, to which it shall be subordinate.

27. ~~23.~~ THIS COURT ORDERS that neither the Receiver's Borrowings ~~Charge~~Charges nor any other security granted by the Receiver in connection with its borrowings under this Order or the Commitment Letter shall be enforced without leave of this Court; provided, however, that nothing in this paragraph 27 shall prohibit the Lender from ceasing to make advances to the Receiver pursuant to the Commitment Letter upon an event of default thereunder.

28. ~~24.~~ 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 pursuant to paragraph 26 this Order.

29. ~~25.~~ THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to the Commitment Letter or this Order or any further order of this Court and any and all of the 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~~Lender.

## SERVICE AND NOTICE

30. ~~26.~~ 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://ksvadvisory.com/experience/case/winston-churchill>.

31. ~~27.~~ 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.

32. ~~28.~~ THIS COURT ORDERS that the Applicant, 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).

## CONSTRUCTION MANAGEMENT ~~CONTRACT~~ CONTRACTS

33.     ~~29.~~ THIS COURT ORDERS that the CCDC 5A Construction Management Contract – for Services (2010) contract between Churchill LP and Leeswood Design Build (Alberta) Ltd (“**Leeswood**”) dated November 11, 2024, in the form attached as Appendix “B” to the First Report (the “First Churchill CM Contract”), be and is hereby approved.

34.     THIS COURT ORDERS that the Letter of Intent between Churchill LP and Leeswood dated April 7, 2025, and executed on April 9, 2025, (the “Churchill Construction LOI”) and the subsequent execution of a definitive CCDC 5A Construction Management Contract – for Services (2010) (or other customized industry form of construction management contract), together with such supplementary conditions and other documents as may be necessary or desirable, on terms consistent with the Churchill Construction LOI, and on such other definitive terms as the Receiver considers appropriate (the “Second Churchill CM Contract”), be and are hereby approved.

35.     ~~30.~~ THIS COURT ORDERS that the parties to the First Churchill CM Contract, the Churchill Construction LOI, and the Second Churchill CM Contract (collectively, the “Construction Contracts”) are authorized and directed to comply with the terms of the ~~Churchill CM Contract~~ respective Construction Contracts, and the Receiver is authorized to take such steps and execute such additional documentation as may be necessary or desirable to give effect to the ~~Churchill CM Contract~~ Construction Contracts.

## CRITICAL PAYMENTS

36.     ~~31.~~ THIS COURT ORDERS that the Receiver may, with the written consent of the Applicant, make payments owing by any of the Debtors to suppliers, contracts, subcontractors and other creditors in respect of amounts owing prior to the date of this Order that are reasonably required for the preservation of the Property.

## SEALING PROVISION

37.     THIS COURT ORDERS that the Confidential WC Budgets (as defined in the Second Report and attached as Confidential Appendix 1 thereto) shall be and are hereby sealed, kept confidential and shall not form part of the public record, until the earlier of: (i) the completion of

the Churchill Project (as defined in the Second Report); and (ii) further Order of this Court sought on not less than seven (7) days notice to the Receiver.

## **GENERAL**

38. ~~32.~~ 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.

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

40. ~~34.~~ 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.

41. ~~35.~~ 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.

42. ~~36.~~ 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 Receiver from the net realizations from the Property with such priority and at such time as this Court may determine.

43. ~~37.~~ 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.

44.     ~~38.~~ 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.

---

## Schedule "A"

## REAL PROPERTY

Churchill**PIN: 13493-0213(LT)**

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 2 & 3 PLAN 43R39986; CITY OF MISSISSAUGA

**PIN: 13493-0226(LT)**

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 5 & 6 PLAN 43R39986; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN 43R38482 AS IN PR1662397; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR1021917; CITY OF MISSISSAUGA

**PIN: 13493-0225(LT)**

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PART 1 PLAN 43R39884; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN 43R38482 AS IN PR1662397; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR1021917; CITY OF MISSISSAUGA

**Southdown****PIN: 13493-0044(LT)**

PT LT 31 CON 3 SDS TORONTO; PT LT 32 CON 3 SDS TORONTO PTS 1 TO 6, 8, 43R13084; S/T TT129899; S/T TT103210, TT103804, TT153650, VS163947, VS42085, VS58563 MISSISSAUGA

**Royal Windsor****PIN: 13493-0190 (LT)**

PT LT 31, 32 CON 3 SDS DES PTS 1, 2 PL 43R11375 SAVE & EXCEPT PTS 1,2,3 PL 43R21957, EXCEPT PT 1 43R22260, EXCEPT PT 1 43R25470, EXCEPT PTS 1, 2, 3 PL 43R25635, EXCEPT PT 1 PL 43R28305 MISSISSAUGA.S/T EASEMENT IN FAVOUR OF INTERPROVINCIAL PIPE LINE COMPANY OVER PT LT 32 CON 3 SDS DES PT 2 PL 43R11375 EXCEPT PT 2 PL 43R21957 AS IN TT102320, TT104152.T/W EASEMENT OVER PT LT 32 CON 3 SDS DES PT 3 PL 43R21957 AS IN LT1712946



**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 May 30, 2024 (as amended and restated on November 15, 2024 [and on April 17, 2025](#), the “**Order**”) and all present and future assets, undertakings and personal property of 759 Winston Churchill GP Inc., 759 Winston Churchill L.P., 688 Southdown GP Inc., 688 Southdown LP, 2226 Royal Windsor GP Inc. and 2226 Royal Windsor LP (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-24-00714543-00CL, 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 \_\_\_\_\_, ~~2024~~20\_\_.

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      **759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688 SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and 2226 ROYAL WINDSOR LP**

Applicant

Respondents

Court File No.: CV-24-00714543-00CL

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

Proceedings commenced in Toronto

**SECOND AMENDED AND RESTATED**  
**APPOINTING ORDER (Amending the Order**  
**Appointing Receiver dated May 30, 2024 as amended**  
**by an Order dated November 15, 2024)**

**BENNETT JONES LLP**

One First Canadian Place, Suite 3400  
P.O. Box 130  
Toronto, ON M5X 1A4

**Sean Zweig** (LSO# 57307I)

Tel: (416) 777-6254

Email: zweigs@bennettjones.com

**Aiden Nelms** (LSO#: 74170S)

Tel: (416) 777-4642

Email: nelmsa@bennettjones.com

Lawyers for the Applicant



# TAB 4

Court File No.: CV-24-00714543-00CL

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

THE HONOURABLE	)	THURSDAY, THE 17 <sup>TH</sup>
	)	
JUSTICE KIMMEL	)	DAY OF APRIL, 2025
	)	

BETWEEN:

**KINGSETT MORTGAGE CORPORATION**

Applicant

- and -

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688  
SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and  
2226 ROYAL WINDSOR LP**

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**

**PRIORITY CLAIMS PROCEDURE ORDER**

**THIS MOTION**, made by KSV Restructuring Inc., in its capacities 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 759 Winston Churchill GP Inc. (“**Churchill GP**”), 759 Winston Churchill L.P. (“**Churchill LP**”), 688 Southdown GP Inc. (“**Southdown GP**”), 688 Southdown LP (“**Southdown LP**”), 2226 Royal Windsor GP Inc. (“**Royal Windsor GP**”) and 2226 Royal Windsor LP (“**Royal Windsor LP**” and together with Churchill GP, Churchill LP, Southdown GP, Southdown LP and Royal Windsor GP, the “**Debtors**” and each a “**Debtor**”), including all permits and deposits paid or obtained on behalf of 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, and excluding all security granted by Churchill GP to The Toronto-Dominion Bank in connection with the four (4) letters of credit issued by The Toronto-Dominion Bank with Churchill GP as Applicant (collectively with the Real Property, the “**Property**”), for an order, among other things approving a procedure for the identification and resolution of applicable priority claims against the Debtors, was heard by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the Notice of Motion of the Receiver, the Second Report of the Receiver dated April 11, 2025 (the “**Second Report**”), and on hearing the submissions of counsel for the Receiver and the 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 of [●] affirmed April [●], 2025:

### **SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

### **DEFINITIONS**

2. **THIS COURT ORDERS** that all terms not otherwise defined herein shall have the meaning ascribed thereto in the Second Report.
3. **THIS COURT ORDERS** that, for the purposes of this Order, the following terms shall have the following meanings
  - (a) “**Claims Bar Date**” means 5:00 p.m. (Toronto time) on May 19, 2025.

- (b) **“Notice of Dispute”** means a notice delivered to the Receiver by a Priority Creditor disputing a Notice of Revision or Disallowance, which notice shall be substantially in the form attached hereto as Schedule “C” and shall set out the reasons for the dispute.
- (c) **“Priority Claim”** means a claim in priority to a registered mortgagee pursuant to Section 78 of, or a trust claim pursuant to, the *Construction Act* (Ontario), in each case relating to the Property or the Debtors.
- (d) **“Priority Creditor”** means a party asserting a Priority Claim.
- (e) **“Proof of Claim”** means a Proof of Claim to be completed and filed by a Priority Creditor, which shall be substantially in the form attached as Schedule “B” and include such items as are prescribed therein.
- (f) **“Proven Claim”** means the amount and classification of any Priority Creditor’s Priority Claim as finally determined in accordance with this Order.

#### **PROOF OF CLAIM**

- 4. **THIS COURT ORDERS** that any Priority Creditor wishing to assert a Priority Claim shall file with the Receiver a Proof of Claim by the Claims Bar Date in accordance with the terms of this Order.
- 5. **THIS COURT ORDERS** that all Proofs of Claim, together with supporting documentation, must be filed with the Receiver by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission, so that such Proof of Claim is received by the Receiver by no later than the Claims Bar Date.



6. **THIS COURT ORDERS** that any Priority Creditor who does not file a Proof of Claim, together with supporting documentation, by the Claims Bar Date:
- (a) shall be and is hereby forever barred from asserting or enforcing any such Priority Claim; and
  - (b) shall not be entitled to receive any distributions in respect of such Priority Claim.

#### **DETERMINATION OF CLAIMS**

7. **THIS COURT ORDERS** that the Receiver shall review all Proofs of Claim and supporting documentation filed on or before the Claims Bar Date and may accept, revise or disallow (in whole or in part) the amount and/or status of a Priority Claim set out in any Proof of Claim. At any time, the Receiver may request additional information or documentation with respect to any Priority Claim, and may request that the Priority Creditor file a revised Proof of Claim.
8. **THIS COURT ORDERS** that if the Receiver determines to revise or disallow a Proof of Claim, then the Receiver shall notify the applicable claimant of such revision or disallowance and the basis for same in writing (a “**Notice of Revision or Disallowance**”).
9. **THIS COURT ORDERS** that the Receiver may attempt to resolve the validity, amount and/or status of any Priority Claim with the Priority Creditor on a consensual basis prior to or after accepting, revising or disallowing such Claim.
10. **THIS COURT ORDERS** that where a Proof of Claim has been revised or disallowed (in whole or in part) by a Notice of Revision or Disallowance, the revised or disallowed portion of that Priority Claim shall not establish a Proven Claim unless the Priority Creditor has disputed the revision or disallowance in accordance with this Claims Process Order, and

proven the revised or disallowed Priority Claim (or portion thereof) in accordance with this Order.

### **NOTICES OF DISPUTE**

11. **THIS COURT ORDERS** that if a Priority Creditor disputes a Notice of Revision or Disallowance received by it and intends to contest the Notice of Revision or Disallowance, then such Priority Creditor shall deliver a Notice of Dispute by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission so that such Notice of Dispute is received by the Receiver by no later than 5:00 p.m. (Toronto time) on the business day which is seven (7) days after delivery of the Notice of Revision or Disallowance or such later date as the Receiver may agree in writing.
12. **THIS COURT ORDERS** that if a Person who receives a Notice of Revision or Disallowance fails to file a Notice of Dispute with the Receiver within the time limit required by paragraph 11 of this Order, then the validity, amount and status of such person's Priority Claim shall be deemed to be as set out in the Notice of Revision or Disallowance and such amount and status, if any, shall constitute such Priority Creditor's Proven Claim.

### **RESOLUTION OF CLAIMS**

13. **THIS COURT ORDERS** that as soon as practicable after the delivery of the Notice of Dispute to the Receiver, the Receiver may:
  - (a) attempt to resolve the validity, status and amount of the Priority Claim with the Priority Creditor on a consensual basis; and/or

- (b) schedule an appointment with the Court for the purpose of scheduling a motion to have the validity, status and/or amount of the Priority Claim determined by the Court.

- 14. **THIS COURT ORDERS** that, notwithstanding the other provisions of this Order, the Receiver may make a motion to the Court for a final determination of the validity, status and/or amount of a Priority Claim at any time, whether or not a Notice of Revision or Disallowance has been sent by the Receiver, on full notice to the applicable Priority Creditor.
- 15. **THIS COURT ORDERS** that the Receiver may, where it is satisfied that a Priority Claim has been adequately proven, waive strict compliance with the requirements of this Order as to completion and execution of Proofs of Claim.

#### **NOTICE OF TRANSFEREES**

- 16. **THIS COURT ORDERS** that the Receiver shall not be obligated to give notice to or otherwise deal with a transferee or assignee of a Priority Claim as the Priority Creditor in respect thereof unless:
  - (a) actual written notice of the transfer or assignment, together with satisfactory evidence of a valid transfer or assignment of the Priority Claim, has been received by the Receiver; and
  - (b) the Receiver has acknowledged in writing such transfer or assignment,and thereafter such transferee or assignee shall for the purposes hereof constitute the “Priority Creditor” in respect of such Priority Claim. Any such transferee or assignee of a Priority Claim, and such Priority Claim, shall be bound by any notices given or steps taken

in respect of such Priority Claim in accordance with this Order prior to the written acknowledgement by the Receiver of such transfer or assignment.

17. **THIS COURT ORDERS** that the Receiver is under no obligation to give notice of a valid transfer or assignment made pursuant to this Order to any Person other than the Priority Creditor holding the Priority Claim and shall, without limitation, have no obligation to give notice to any Person holding a security interest, lien, or charge in, or a pledge or assignment by way of security in, a Priority Claim.
18. **THIS COURT ORDERS** that the transferee or assignee of any Priority Claim:
  - (a) shall take the Priority Claim subject to the rights and obligations of the transferor/assignor of the Priority Claim, and subject to the rights of the Debtor(s) against any such transferor or assignor, including any rights of set-off which the Debtor(s) had against such transferor or assignor, and
  - (b) cannot use any transferred or assigned Priority Claim to reduce any amount owing by the transferee or assignee to a Debtor, whether by way of set-off, application, merger, consolidation or otherwise.

#### **PROTECTIONS FOR THE RECEIVER**

19. **THIS COURT ORDERS** that the Receiver, in addition to its prescribed rights, duties, responsibilities and obligations under: (i) the *Bankruptcy and Insolvency Act* (Canada) (“**BIA**”), (ii) the Second Amended and Restated Order (Amending the Order Appointing Receiver dated May 30, 2024 as amended by an Order dated November 15, 2024) dated April 17, 2025 made in these receivership proceedings (the “**Appointment Order**”), and/or (iii) any other Order of the Court, is hereby directed and empowered to take such

other actions and fulfill such other roles as are contemplated by this Order or incidental thereto.

20. **THIS COURT ORDERS** that in carrying out the terms of this Order:

- (a) the Receiver shall have all the protections given to it by the BIA, the Appointment Order, any other Order of this Court, and as an officer of this Court, as applicable;
- (b) the Receiver shall incur no liability or obligation as a result of the carrying out of the provisions of this Order save and except for any gross negligence or willful misconduct on its part;
- (c) the Receiver shall be entitled to rely on the books and records and any information provided by the Debtors as well as documentation and information provided by others, including information and documentation provided by Priority Creditors pursuant to this Order, which the Receiver believes to be accurate and true, without independent investigation; and
- (d) the Receiver shall not be liable for any claims or damages resulting from any errors or omissions in such books and records or information.

#### **DIRECTIONS**

21. **THIS COURT ORDERS** that the Receiver may, at any time, and with such notice as this Court may require, seek directions from this Court with respect to this Order.

#### **MISCELLANEOUS**

22. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any other foreign

jurisdiction 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.

23. **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.
-

**SCHEDULE "A"**  
**REAL PROPERTY**

**Churchill**

**PIN: 13493-0213(LT)**

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 2 & 3 PLAN 43R39986; CITY OF MISSISSAUGA

**PIN: 13493-0226(LT)**

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PARTS 5 & 6 PLAN 43R39986; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN 43R38482 AS IN PR1662397; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR1021917; CITY OF MISSISSAUGA

**PIN: 13493-0225(LT)**

PART LOT 35, CONCESSION 3, SOUTH OF DUNDAS STREET, PART 1 PLAN 43R39884; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 3 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 4 PLAN 4R43R38482 AS IN PR1663804; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 5 PLAN 43R38482 AS IN PR1662397; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 6 PLAN 43R38482 AS IN PR782354; TOGETHER WITH AN EASEMENT OVER PART LOT 35, CONCESSION 2 SOUTH OF DUNDAS STREET, PART 7 PLAN 43R38482 AS IN PR823503; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR896377; TOGETHER WITH AN EASEMENT OVER PART LOT 34, CONCESSION 3 SOUTH OF DUNDAS STREET, PART 8 PLAN 43R38482 AS IN PR1021917; CITY OF MISSISSAUGA

**Southdown****PIN: 13493-0044(LT)**

PT LT 31 CON 3 SDS TORONTO; PT LT 32 CON 3 SDS TORONTO PTS 1 TO 6, 8, 43R13084; S/T TT129899; S/T TT103210, TT103804, TT153650, VS163947, VS42085, VS58563 MISSISSAUGA

**Royal Windsor****PIN: 13493-0190 (LT)**

PT LT 31, 32 CON 3 SDS DES PTS 1, 2 PL 43R11375 SAVE & EXCEPT PTS 1,2,3 PL 43R21957, EXCEPT PT 1 43R22260, EXCEPT PT 1 43R25470, EXCEPT PTS 1, 2, 3 PL 43R25635, EXCEPT PT 1 PL 43R28305 MISSISSAUGA.S/T EASEMENT IN FAVOUR OF INTERPROVINCIAL PIPE LINE COMPANY OVER PT LT 32 CON 3 SDS DES PT 2 PL 43R11375 EXCEPT PT 2 PL 43R21957 AS IN TT102320, TT104152.T/W EASEMENT OVER PT LT 32 CON 3 SDS DES PT 3 PL 43R21957 AS IN LT1712946



**SCHEDULE "B"**  
**PROOF OF CLAIM**

**PARTICULARS OF CREDITOR:**

1. Full Legal Name of Priority Creditor: \_\_\_\_\_
2. Full Mailing Address of the Priority Creditor (the original Priority Creditor and not the Assignee):  
\_\_\_\_\_  
\_\_\_\_\_
3. Telephone number: \_\_\_\_\_
4. E-mail address: \_\_\_\_\_
5. Attention (Contact Person): \_\_\_\_\_
6. Has the Priority Claim been sold or assigned by the Priority Creditor to another party [check (✓) one]?  
Yes: \_\_\_\_\_ No: \_\_\_\_\_

**A. PARTICULARS OF ASSIGNEE(S) (IF ANSWER TO QUESTION 6 IS YES):**

7. Full Legal Name of Assignee(s): \_\_\_\_\_  
  
(If Priority Claim has been assigned, insert full legal name of assignee(s) of Priority Claim (if all or a portion of the Priority Claim has been sold). If there is more than one assignee, please attach a separate sheet with the required information)
8. Full Mailing Address of Assignee(s):  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_
9. Telephone number of Assignee(s): \_\_\_\_\_
10. E-mail address: \_\_\_\_\_
11. Attention (Contact Person): \_\_\_\_\_

**B. PROOF OF CLAIM:**

I, \_\_\_\_\_  
 [name of Priority Creditor or representative of the Priority Creditor],  
 of \_\_\_\_\_ do hereby certify that:  
 [City and Province]

(a) I [check (✓) one]

☐ am the Priority Creditor of \_\_\_\_\_; OR

☐ am \_\_\_\_ (state position or title) of the Priority Creditor of \_\_\_\_\_

(b) I have knowledge of all the circumstances connected with the Priority Claim referred to below;

(c) the Priority Creditor has a Priority Claim as follows:

TOTAL PRIORITY CLAIM: CDN\$ \_\_\_\_\_

**Note: This should only include Priority Claims.**

**C. EVIDENCE OF PRIORITY AND PARTICULARS OF CLAIM:**

In order to file your Proof of Claim, evidence of the security or basis for making a Priority Claim are required. Provide all particulars of the Priority Claim and supporting documentation, including any document(s) or information you wish to bring to the Receiver's attention with respect to the Priority Claim. At a minimum, you must provide the following for this to constitute a valid Proof of Claim:

- (1) An accounting of the state of accounts as between the Priority Creditor and the applicable Debtor or any party through whom the Priority Creditor is asserting a Priority Claim relating to the project(s) at 759 Winston Churchill Boulevard, 688 Southdown Road, and/or 2226 Royal Windsor Drive (the "**Projects**" and each a "**Project**"), including: (a) a list of all invoices rendered on the Project(s) and the date of each invoice; (ii) an indication of which invoices have been paid and any that remain unpaid; and (iii) copies of all invoices.
- (2) Any written agreements or contracts between your company and a Debtor or any party through whom you are asserting a Priority Claim in each case relating to the Project(s).
- (3) Any change orders.
- (4) Any payment certificates, completion certificates or certificates of substantial completion.

- (5) The Priority Creditor's ledger demonstrating the relevant amounts paid to date in relation to the Priority Creditor's work on the Project(s).

**This Proof of Claim must be received by the Receiver by no later than 5:00 p.m. (Toronto time) on May 19, 2025 ("Claims Bar Date")** by prepaid ordinary mail, courier, personal delivery or electronic or digital transmission at the following address:

KSV Restructuring Inc., in its capacity as Receiver  
220 Bay St., Suite 1300  
Toronto, ON M5J 2W4

Attention: Murtaza Tallat  
E-mail: [mtallat@ksvadvisory.com](mailto:mtallat@ksvadvisory.com)

With an e-mail copy to the Receiver's counsel at [emsmith@osler.com](mailto:emsmith@osler.com)

Dated at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

---

Signature of Priority Creditor

**SCHEDULE “C”****NOTICE OF DISPUTE**

We hereby give you notice of our intention to dispute the Notice of Revision or Disallowance dated \_\_\_\_\_ issued in respect of our Priority Claim.

**Reasons for Dispute** (attach extra sheets and copies of all supporting documentation if necessary):

---



---



---



---

Name of Priority Creditor: \_\_\_\_\_

\_\_\_\_\_  
(Signature of individual completing this Dispute)

\_\_\_\_\_  
(Please print name)

Telephone Number: \_\_\_\_\_

Email address: \_\_\_\_\_

Full Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**THIS FORM IS TO BE RETURNED BY PREPAID ORDINARY MAIL, COURIER, PERSONAL DELIVERY OR ELECTRONIC OR DIGITAL TRANSMISSION AND MUST BE RECEIVED NO LATER THAN 5:00 P.M. (TORONTO TIME) ON \_\_\_\_\_, BEING THE BUSINESS DAY WHICH IS SEVEN CALENDAR DAYS AFTER THE NOTICE OF REVISION OR DISALLOWANCE IS DELIVERED BY THE RECEIVER TO:**

KSV Restructuring Inc., in its capacity as Receiver  
220 Bay St., Suite 1300  
Toronto, ON M5J 2W4

Attention: Murtaza Tallat  
E-mail: [mtallat@ksvadvisory.com](mailto:mtallat@ksvadvisory.com)

With an e-mail copy to the Receiver's counsel at [emsmith@osler.com](mailto:emsmith@osler.com)

**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

**759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P.,  
688 SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL  
WINDSOR GP INC. AND 2226 ROYAL WINDSOR LP**

Court File No: CV-24-00714543-00CL

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**PRIORITY CLAIMS PROCEDURE ORDER**

**OSLER, HOSKIN & HARCOURT LLP**

100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)

Tel: 416.862.4908

Email: [mwasserman@osler.com](mailto:mwasserman@osler.com)

**Dave Rosenblat** (LSO# 64586K)

Tel: 416.862.5673

Email: [drosenblat@osler.com](mailto:drosenblat@osler.com)

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc., in its capacity as Receiver

**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      759 WINSTON CHURCHILL GP INC., 759 WINSTON CHURCHILL L.P., 688 SOUTHDOWN GP INC., 688 SOUTHDOWN LP, 2226 ROYAL WINDSOR GP INC. and 2226 ROYAL WINDSOR LP**

Applicant

Respondents

Court File No.: CV-24-00714543-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**  
Proceedings commenced in Toronto

**MOTION RECORD**  
**(Motion for Second A&R Receivership Order and  
Claims Process Order, returnable April 17, 2025)**

**OSLER, HOSKIN & HARCOURT LLP**  
100 King Street West  
1 First Canadian Place  
Suite 6200, P.O. Box 50  
Toronto ON M5X 1B8

**Marc Wasserman** (LSO# 44066M)  
Tel: 416.862.4908  
Email: mwasserman@osler.com

**Dave Rosenblat** (LSO# 64586K)  
Tel: 416.862.5673  
Email: drosenblat@osler.com

Fax: 416.862.6666

Lawyers for KSV Restructuring Inc. in its capacity as  
court-appointed Receiver