

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c.  
C-36, AS AMENDED

B E T W E E N:

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF  
HUDSON'S BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON  
SRI, HBC CANADA PARENT HOLDINGS INC., HBC CANADA PARENT  
HOLDINGS 2 INC., HBC BAY HOLDINGS I INC., HBC BAY HOLDINGS II  
ULC, THE BAY HOLDINGS ULC, HBC CENTREPOINT GP INC., HBC YSS  
1 LP INC., HBC YSS 2 LP INC., HBC HOLDINGS GP INC., SNOSPMIS  
LIMITED, 2472596 ONTARIO INC., AND 2472598 ONTARIO INC.

**RESPONDING FACTUM OF KINGSETT CAPITAL INC.  
(APA Approval)  
(Returnable August 28, 2025)**

August 25, 2025

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
Counsel  
Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

**Matthew P. Gottlieb** LSO#: 32268B  
mgottlieb@lolg.ca  
Tel: 416 644 5353

**Andrew Winton** LSO#: 54473I  
awinton@lolg.ca  
Tel: 416 644 5342

**Annecy Pang** LSO#: 87037S  
apang@lolg.ca  
Tel: 416 956 5098

Fax: 416 598 3730

Lawyers for KingSett Capital Inc.

TO: **STIKEMAN ELLIOTT LLP**  
Barristers and Solicitors  
5300 Commerce Court West  
199 Bay Street  
Toronto ON M5L 1B9

**Ashley Taylor** LSO#: 39932E  
ataylor@stikeman.com  
Tel: 416-869-5236  
Fax: 416-947-0866

**Maria Konyukhova** LSO#: 52880V  
mkonyukhova@stikeman.com  
Tel: 416-869-5230  
Fax: 416-947-0866

**Philip Yang** LSO#: 82084O  
PYang@stikeman.com  
Tel: 416-869-5593  
Fax: 416-947-0866

**Brittney Ketwaroo** LSO#: 89781K  
bketwaroo@stikeman.com  
Tel: 416-869-5524  
Fax: 416-947-0866

Lawyers for the Applicant

AND TO: **SERVICE LIST**

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## **PART I - OVERVIEW**

1. Ruby Liu Commercial Investment Corp. (“**PurchaserCo**”) was incorporated a few months ago for the sole purpose of attempting to acquire HBC leases. Neither PurchaserCo nor Ruby Liu has any experience in operating a single department store, let alone redeveloping, reimaging, resupplying and operating a new, 28-location chain of national department stores.
2. The leases at issue are between Canada’s most sophisticated commercial real estate owners and Canada’s oldest corporation. Most of the leases were entered into decades ago on terms that were based on HBC’s history, brand recognition, and success as a critical anchor tenant in the landlords’ malls. Most of the leases have decades remaining on their terms. Notwithstanding that, PurchaserCo asks this Court to allow it to take over the leases. The ask is patently outrageous, and it is remarkable that HBC, at the behest of its main lender, has brought this motion. The Monitor has rightly advised that it does not support the assignments.
3. This factum, delivered by KingSett Capital Inc. on behalf of all landlords opposing the motion, deals primarily with the fact that HBC has failed to prove that: (i) PurchaserCo will be able to perform its financial obligations under the leases (and therefore that it is able to perform the obligations under the leases for the purposes of CCAA section 11.3(3)(b)); or (ii) it is appropriate to assign HBC’s rights and obligations under the leases to an assignee with PurchaserCo’s opaque financial circumstances (for the purposes of CCAA section 11.3(3)(c)).
4. PurchaserCo’s alleged funding “commitment” is a fantasy. Further, Ms. Liu has misled this Court and the landlords regarding her financial circumstances by failing to disclose important facts that contradict her affidavit evidence. These issues alone illustrate plainly why

Ms. Liu and her company are not proper persons to acquire the leases and why she has not demonstrated she will comply with the terms of the leases if she acquires them.

5. Everything about PurchaserCo's financial ability to fulfill the terms of the 24 leases is illusory. Ms. Liu made sure that **the landlords have no right to enforce** any "commitment" she claims to have made to fund PurchaserCo's capital requirements for her venture. Nor does Ms. Liu's personal guarantee of rent obligations for one year have any value to landlords. Ms. Liu's funds can be moved offshore to Singapore and Hong Kong at her sole discretion. She confirmed she can move money in and out of companies and between countries as she chooses. She did not tell this to the Court or the landlords.

6. Also, Ms. Liu's reliance on the value of three malls she owns in British Columbia to support her venture fell apart on cross-examination. What she did not disclose is that (i) the malls are owned through a complex web of corporations where ultimate ownership is in Hong Kong or the British Virgin Islands; (ii) she does not solely own the malls, as ownership is shared with members of her family who are not part of PurchaserCo; (iii) there are significant mortgages on each of the malls, one of which must be repaid imminently; and (iv) contrary to her sworn affidavits, she did not receive an "offer" to buy one of the malls. Quite simply, Ms. Liu's "evidence" regarding her financial position cannot be trusted.

7. The motion should be dismissed with costs to the landlords at an elevated scale.

## PART II - SUMMARY OF FACTS

### A. The Bayshore Lease between HBC and KingSett

8. KingSett is one of Canada's leading private equity real estate investment firms. It has \$18.5 billion of assets under management and has interests in six shopping malls across Canada. KingSett has a 75% ownership interest in Bayshore Mall in Ottawa.<sup>1</sup>

9. HBC is a tenant at the mall pursuant to a lease agreement, as amended, dated April 29, 1972 (the "**Bayshore Lease**"), more than 50 years ago.<sup>2</sup>

10. Bayshore Mall opened in 1973. It has three levels and had two anchor tenants prior to HBC's insolvency: HBC and Walmart. The HBC store spans the three levels of the mall and contains approximately 180,000 square feet of retail space. HBC has been a Bayshore anchor tenant for 52 years.<sup>3</sup>

11. The Bayshore Lease expires on August 31, 2033, unless it is renewed. So long as it is not in default, HBC (or the tenant if the lease is assigned) can renew the lease for up to four ten-year terms, with a final expiry date of August 31, 2073.<sup>4</sup>

12. HBC's monthly rent in 2025 is \$98,806.95, which includes base rent, common area maintenance, and its contribution to a promotions fund. HBC was also responsible for its portion of the mall's property tax. On an annualized basis, HBC's rent and property tax obligations for its Bayshore Mall location are approximately \$1.7 million in 2025.<sup>5</sup>

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<sup>1</sup> Affidavit of Theresa Warnaar, sworn August 9, 2025 ("**T. Warnaar Affidavit**") at paras. 2, 8 and 29, KingSett's Responding Motion Record ("**KingSett RMR**") at Tab 1, pp. 39, 41 and 49.

<sup>2</sup> T. Warnaar Affidavit at para. 2, KingSett RMR at Tab 1, p. 39.

<sup>3</sup> T. Warnaar Affidavit at paras. 9-10, KingSett RMR at Tab 1, pp. 41-42.

<sup>4</sup> T. Warnaar Affidavit at para. 23, KingSett RMR at Tab 1, p. 47.

<sup>5</sup> T. Warnaar Affidavit at paras. 24-25, KingSett RMR at Tab 1, p. 47.

13. Article 9 of the Bayshore Lease requires that the tenant continuously carry on the business of a department store:

9 (1) The Tenant shall continuously, actively and diligently carry on its business of a department store in the whole of the Store during the entire Term and until such time as a permitted assignment under section 26(3) hereof under the principal name of "The Bay" and in a manner similar The Bay operations in southern Ontario. Subject to applicable regulatory requirements, the Store shall remain open to the public for the conduct of such business during such minimum hours as the Tenant and the Landlord shall agree upon from time to time and, in any event, in each week during such minimum number of hours in such week as permitted by law and generally observed by the Tenant in a majority of The Bay operations in Ontario. In the conduct of its business of a department store, the Tenant shall not use or permit any part of the Store to be used for, or with respect to, or in connection with, or for parking for the sale or distribution of any food or food product; provided that this section shall not restrict

(a) the sale in the Store of gourmet foods and bakery products and the sale of confectionery items from confectionery counters and the sale of alcoholic beverages only; provided that the portion of the Store used for the display and sale of such products shall not exceed 5% of the gross leasable area of the Store,

(b) the sale in the Store of any food, food product or beverages intended for immediate consumption in the Store or for take-out or delivery from the Store for immediate consumption.

Notwithstanding the provisions of this section 9(1), the Landlord agrees that the Tenant shall be permitted to sell or distribute food or food products to the same extent as it so permits [WalMart] from time to time.<sup>6</sup>

14. Article 14 of the Bayshore Lease concerns HBC's repair obligations: under article 14(1), HBC must keep the store in good repair and promptly make all necessary repairs.<sup>7</sup>

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<sup>6</sup> T. Warnaar Affidavit, Ex. B at s. 9(1), KingSett RMR at Tab 1B, p. 87.

<sup>7</sup> T. Warnaar Affidavit, Ex. B at s. 14(1), KingSett RMR at Tab 1B, p. 92.

15. HBC may only assign its leasehold interest in Bayshore Mall in limited circumstances, and only with KingSett's written consent. Under Article 26(3) of the Bayshore Lease, KingSett is entitled to withhold its consent if the proposed assignee is not a competent operator of a department store **at the time of the assignment**:

[...The] Tenant shall not assign this lease or sub-let the Leased Premises including the outdoor selling area unless the Landlord shall have given its prior written consent thereto, which consent shall not be unreasonably withheld nor unduly delayed; provided that

(a) the Store shall retain the appearance and character of an integrated, and not a multiple-lessee, business,

(b) the assignee or sub-lessee shall have covenanted with the Landlord to be bound by all the terms of this lease, and

(c) **at the time of such assignment or sub-lease, the assignee or sub-lessee shall be a competent operator of the business contemplated by section 9(1)** and shall be in a position to borrow money on a long term basis at an interest rate no less favourable to it than would then be available to the Tenant if the Tenant were then to borrow money on a long term basis.<sup>8</sup>

**B. The Critical Role of Anchor Tenants in a Mall**

16. KingSett adopts and agrees with the other landlords' submissions concerning the importance of anchor tenants to a shopping mall. The provision in the Bayshore Lease that limits an assignee to a "competent operator" of a department store "at the time of such assignment" is critical to KingSett. It ensures that its prime anchor space, which is responsible for drawing shoppers to the mall, is occupied by an **established** department store retailer. This is not space that can be assigned to someone with no history of successfully operating a department store.

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<sup>8</sup> T. Warnaar Affidavit, Ex. B at s. 26(3), KingSett RMR at Tab 1B, p. 106 [emphasis added].



17. The need for stability in a mall's anchor space also explains why it is important that the assignee be financially stable and creditworthy. Because anchor tenancies involve long-term leases at better terms, landlords need to be confident that their anchor tenants will be able to carry on their operations. Anchor tenants provide a stable presence in the mall which, in turn, signals confidence to other prospective tenants who are considering leasing space at the mall.<sup>9</sup>

18. Due to the importance of an anchor tenant, KingSett extensively evaluates a prospective anchor tenant. Choosing a new anchor tenant is a multi-faceted approach driven by its demographic fit, brand power, financial strength, lease terms, foot traffic, tenant compatibility and operational needs. KingSett conducts site visits of a prospective anchor tenant's existing locations to evaluate the store and its shoppers. It may also visit the prospective anchor tenant's head office and conduct a detailed review of its financial statements to ensure that they have the financial wherewithal to continue its operations in the new store. A guarantee from the tenant's affiliate or parent company is typical. For example, when Target entered Canada, KingSett ensured that Target Canada's lease obligations were guaranteed by Target USA.<sup>10</sup>

19. Anchor tenants cannot be "start up" operations. They must be established retailers with a lengthy history of success so that they can fulfill their role of being a primary driver of traffic to the mall.<sup>11</sup>

### **C. PurchaserCo's Flawed Business Plan**

20. PurchaserCo first circulated its business plan on June 6, 2025, *via* letter from its former counsel. It did not include the level of financial or operating detail expected of a prospective

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<sup>9</sup> T. Warnaar Affidavit at para. 16, KingSett RMR at Tab 1, p. 44.

<sup>10</sup> T. Warnaar Affidavit at paras. 19-20, 64, KingSett RMR at Tab 1, pp. 45-46, 59-60.

<sup>11</sup> T. Warnaar Affidavit at para. 20, KingSett RMR at Tab 1, pp. 45-46.

anchor tenant and confirmed KingSett's concerns about the financial viability and feasibility of PurchaserCo's plans for the Bayshore location. Following receipt of the June 6<sup>th</sup> "plan", KingSett refused to consent to the assignment of HBC's Bayshore Lease to PurchaserCo. In particular, KingSett was critical of PurchaserCo's proposed timelines to open its stores and its inadequate estimate of the costs to repair and renovate HBC's Bayshore location.<sup>12</sup>

21. The second business plan PurchaserCo delivered to KingSett for Bayshore Mall was attached to HBC's motion record, delivered July 29, 2025. PurchaserCo did not make any additional disclosure to KingSett during this 7.5 week period. The revised business plan is still deficient for several reasons. This factum focuses on PurchaserCo's failure to prove it would be able to fulfill its financial obligations under the leases. The landlords will have no ability to enforce any obligations against PurchaserCo in the event it obtained the leases and breached them – which will happen immediately.

**D. Financial Deficiencies in PurchaserCo's Second Business Plan**

*i. Ms. Liu's Alleged Financial Support Does Not Exist*

22. The main basis of PurchaserCo's position that it will succeed in its project is that Ms. Liu has committed to providing \$400 million to her venture (sometimes referred to as a \$375 million commitment). Ms. Liu's sworn evidence is that her "financial backing of this venture is the critical element to its success."<sup>13</sup> As set out below, this "critical element" is non-existent.

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<sup>12</sup> T. Warnaar Affidavit at paras. 46-50, KingSett RMR at Tab 1, pp. 54-55; T. Warnaar Affidavit, Ex. M, KingSett RMR at Tab 1M, pp. 255-257.

<sup>13</sup> Affidavit of Ruby Liu, sworn July 29, 2025 ("**R. Liu July 29 Affidavit**") at para. 30, Supporting Motion Record of Ruby Liu Commercial Investment Corp. ("**PurchaserCo MR**") at Tab 1, p. 44.

23. Ms. Liu also claims that she owns three valuable and successful malls in British Columbia (detailed below) that can be, in part, used to support her venture.<sup>14</sup> As a result of her lack of disclosure, it has only now come to light that those malls and her operation of them do not support her ability to succeed in her venture. The contrary is plainly true.

*ii. No Enforceable Commitment to Fund Capital Requirements*

24. The “financial obligations” of PurchaserCo are dependent on Ms. Liu’s willingness to comply with a one-page “equity commitment letter” that is unenforceable and worthless to landlords.<sup>15</sup> It is not worth the paper it is written on because the commitment is from Ms. Liu to Ms. Liu. The landlords cannot enforce it.

25. Ms. Liu signed the July 29, 2025 “commitment” on behalf of all three parties: the two offshore corporations that allegedly agreed to invest in PurchaserCo, and PurchaserCo itself. The commitment letter was signed on the day PurchaserCo delivered its supporting motion record and was clearly composed in haste — it is addressed to a corporation that does not exist (“Ruby Liu Commercial Corp.”). That error was only corrected after it was pointed out at Ms. Liu’s cross-examination.<sup>16</sup>

26. On its face, the “commitment” is nothing more than a non-binding promise **Ms. Liu has made to herself**. It is expressly unenforceable by third parties:

**4. No Third Party Rights.** This letter agreement shall not create any obligations of Ruby towards, or rights in favour of, any persons or entities which are not parties to this letter agreement. This letter

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<sup>14</sup> R. Liu July 29 Affidavit at paras. 33-34, PurchaserCo MR, at Tab 1, p. 45.

<sup>15</sup> R. Liu July 29 Affidavit at para. 31, PurchaserCo MR, at Tab 1, p. 44; R. Liu July 29 Affidavit, Ex. C, PurchaserCo MR at Tab 1C, pp. 185-186.

<sup>16</sup> R. Liu July 29 Affidavit, Ex. C, PurchaserCo MR at Tab 1C, pp. 185-186; cross-examination of Ruby Liu, dated August 15, 2025 (“**R. Liu Cross Examination**”), p. 78, l. 23 – p. 79, l. 11.

agreement may only be enforced by [Ruby Liu Commercial Investment Corp.] and Ruby [...].<sup>17</sup>

27. On cross-examination, Ms. Liu confirmed that she has no intention of guaranteeing that \$400 million will be available. Ms. Liu does not read English, but the document was translated into Mandarin for her before she signed it.<sup>18</sup>

28. At her cross-examination, the interpreter read the document to Ms. Liu again, after which Ms. Liu confirmed her refusal to commit to funding PurchaserCo's anticipated financial needs:

Q. Ms. Liu, you've had that letter commitment at tab C read it to you in Mandarin?

A. So I'm objecting to this and because I -- as far as I could recall, and my current lawyer asked me to sign this guarantee for this rent for one year. Not this \$400 million of a guarantee.

Q. Okay.

A. So I'm still not understanding this because just says on this piece of paper, that one-page piece of paper, it's not really just to add -- according to the date, July 29th, it's not adding to my personal guarantee thing. So in terms of this piece of paper, I want to ask a question. I want to ask my lawyer a question.

Q. You may not. Ms. Liu --

A. And in terms of the date on this piece of paper I -- in my affidavit, you would not be able to find this \$400 million, this number. So before July 29, I had never guaranteed any, like, the rent or promise to -- **I've never guaranteed this kind of \$400 million thing.**<sup>19</sup>

29. By her own unguarded words, Ms. Liu confirmed she is not guaranteeing she will fund \$400 million for this venture -- she was adamant that she did not give such a guarantee.

30. Also, the corporations (not) committing to funding PurchaserCo's financial needs are "Techion Global Investments Ltd.", a British Virgin Islands corporation, and "Central Walk

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<sup>17</sup> R. Liu July 29 Affidavit, Ex. C, PurchaserCo MR at Tab 1C, p. 185.

<sup>18</sup> R. Liu Cross Examination, p. 77, ll. 1-16.

<sup>19</sup> R. Liu Cross Examination, p. 79, l. 24 -- p. 80, l. 22 [emphasis added].

(Barbados) Company Ltd.”, a Barbados corporation that Ms. Liu co-owns with her brother. After her cross-examination, Ms. Liu produced an organizational chart for the three malls in British Columbia, including all parents, affiliates, and related companies. Central Walk (Barbados) is missing from the chart.<sup>20</sup>

31. The funds attributed to Central Walk (Barbados) are held in Hong Kong and Singapore, not Canada, and are not bound by any restrictions:

Q. In your material, you say that there is approximately 75 million US dollars in the bank of the Barbados Company, and I can show you the document if you want.

A. Yes.

Q. And that is a bank located in Hong Kong, I believe?

A. Yes. Singapore as well.

Q. [...] With respect to the Central Walk Barbados Company, you decide what happens with the money?

A. Yes.

Q. And same with Techion Global?

A. Yes.

**Q. And you can do whatever you want with that money, put it to any use you want?**

**A. Yes.**<sup>21</sup>

32. Ms. Liu swears that her commitment as “binding.”<sup>22</sup> It is not. The commitment is a fig leaf that HBC and PurchaserCo reference to suggest that the Court and the landlords can be assured that PurchaserCo will satisfy its financial obligations under the leases. There is nothing

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<sup>20</sup> R. Liu Cross Examination, p. 83, ll. 5-12, p. 85, l. 23 – p. 86, l. 10; corporate organization chart dated May 1, 2025, enclosed as **Schedule “A”**.

<sup>21</sup> R. Liu Cross Examination, p. 86, l. 21 – p. 87, l. 15 [emphasis added].

<sup>22</sup> Affidavit of Ruby Liu, sworn August 12, 2025 (“**R. Liu August 12 Affidavit**”) at para. 6, Reply Motion Record of Ruby Liu Commercial Investment Corp (“**PurchaserCo Reply MR**”) at Tab 1, pp. 40-41.

binding about it. If Ms. Liu does not provide any funds to PurchaserCo or decides to stop funding, there is nothing the Court or landlords can do to enforce the “commitment”.

*iii. Ms. Liu’s Personal Guarantee is Worthless*

33. Ms. Liu’s personal guarantee of one year of rent obligations, which was only offered two weeks after HBC delivered its motion record, in response to the landlords’ criticisms of the non-binding nature of the July 29 “commitment”, is as flawed and worthless as her July 29 “commitment”.<sup>23</sup> Ms. Liu’s cross-examination confirmed she has insulated herself from Canadian creditors.

34. The same organizational chart described above shows that Ms. Liu’s personal assets are offshore. She owns 70% of a British Virgin Islands corporation, which owns 100% of two Hong Kong corporations, which own 100% of two B.C. corporations, which own 100% of two other B.C. corporations, which own 100% of the legal nominal owner of the Woodgrove and Mayfair malls.<sup>24</sup>

35. The ownership of Tsawwassen Mills mall is more opaque. Ms. Liu owns 100% of a Hong Kong corporation, which owns 100% of a B.C. corporation, which owns 30% of a B.C. corporation, which owns 100% of the legal nominee owner of the leasehold interest in Tsawwassen Mills. The other 70% of the middle-tier B.C. corporation is owned by Ms. Liu’s younger sister, who apparently holds that interest in trust for Ms. Liu and her brother. The land is not owned by Ms. Liu; it is owned by Tsawwassen First Nation.<sup>25</sup>

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<sup>23</sup> R. Liu August 12 Affidavit at para. 8, PurchaserCo Reply MR at Tab 1, p. 41.

<sup>24</sup> Corporate organization chart dated May 1, 2025, enclosed as Schedule “A”.

<sup>25</sup> Corporate organization chart dated May 1, 2025, enclosed as Schedule “A”; R. Liu Cross Examination, p. 23, ll. 15-25, p. 62, l. 25 – p. 63, l. 23; R. Liu Cross Examination, Ex. 3.

36. Leaving aside the questionable value of the mall assets, which is addressed below, the organizational chart confirms that Ms. Liu has intentionally structured her affairs to ensure she can evade Canadian creditors. Any cash she holds personally in Canada, for which no evidence was given about the source of funds, can be transferred offshore long before any landlord will be able to enforce a personal guarantee, just as she easily transfers funds between Hong Kong, Singapore, and Canada in connection with the funding of her malls.<sup>26</sup>

*iv. Value of Ms. Liu's Three Malls are Overstated*

37. PurchaserCo claims it can succeed as a start-up operator of 28 integrated department stores across Canada because Ms. Liu is a successful operator of three malls in British Columbia. But a closer look at the malls' financial statements, which were produced at her cross-examination, reveals they are operating at a loss.

38. Ms. Liu has a 70% beneficial interest in two shopping malls ("**Woodgrove**" and "**Mayfair**") and a 30% interest in a third ("**Tsawwassen Mills**"). Ms. Liu's brother owns the other 30% beneficial interest in the first two malls. Her sister owns the 70% interest in Tsawwassen Mills, and holds that interest in trust for Ms. Liu and her brother. In her affidavits, when describing how she could use the (non-existent) equity in these malls to fund her plan, Ms. Liu did not disclose that she was not a 100% owner of those properties, even after the extent of her ownership interest was challenged by a landlord in their responding record.<sup>27</sup>

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<sup>26</sup> R. Liu Cross Examination, p. 38, l. 13 – p. 40, l. 6.

<sup>27</sup> R. Liu Cross Examination, p. 22, ll. 8-15, p. 62, l. 25 – p. 63, l. 23; affidavit of Nadia Corrado, sworn August 9, 2025 ("**N. Corrado Affidavit**") at paras. 14 and 15, Oxford Responding Motion Record ("**Oxford RMR**") at Tab 2, p. 68.

39. As explained below, the malls operate at a loss and are only able to remain solvent through significant loans from related corporations and the forgiveness of interest on those loans. In other words, the malls lose money, and Ms. Liu's continued loans are not making her any money — her malls are a money-losing investment that she is continuing to fund.

40. Moreover, and not disclosed by Ms Liu in her motion material, each of the malls is heavily mortgaged to third party lenders.

41. As of December 31, 2024, Woodgrove owed \$87,589,574 to Central Western Bank. The mortgage is secured by a first charge on the mall property and an assignment of rents. This mortgage, which Ms. Liu personally guaranteed, matures on November 1, 2026.<sup>28</sup>

42. As of December 31, 2024, Mayfair owed \$141,889,799 on a vendor take-back mortgage. The mortgage is secured by a first charge on the mall property and an assignment of rents. It is an interest-only loan during its term, but it matures on June 1, 2026.<sup>29</sup>

43. As of December 31, 2024, Tsawwassen Mills owed \$113,750,431 on a vendor take-back mortgage. The mortgage is secured by a first charge on the mall property and an assignment of rents. The mortgage matures on May 2, 2027.<sup>30</sup>

44. Each of the malls is losing money. Again, none of this was disclosed until cross examination. Woodgrove lost \$5,155,369 in 2023. In 2024, its financial statements showed income of \$1,922,260, but that was only after a related party amended the terms of a related

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<sup>28</sup> R. Liu Cross Examination, Ex. 12, p. 10; R. Liu Cross Examination, Ex. 13, pp. 5, 16; R. Liu Cross Examination, Ex. 14, p. 2.

<sup>29</sup> R. Liu Cross Examination, Ex. 6, pp. 5, 15; R. Liu Cross Examination, Ex. 8, p. 5; R. Liu Cross Examination, Ex. 10, p. 5.

<sup>30</sup> R. Liu Cross Examination, Ex. 3, p. 6; R. Liu Cross Examination, Ex. 4 at pp. 5, 14.



party loan in 2024 to waive interest on the loan in perpetuity. The same loan incurred a \$7,200,000 interest charge in 2023, meaning that but for the waiver of interest on related party debt, Woodgrove would have lost over \$5.2 million in 2024.<sup>31</sup>

45. Mayfair is in a similar situation. In 2023, it lost \$2,399,935. In 2024, its financial statements showed income of \$5,767,452, but that was only after a related party amended the terms of a related party loan in 2024 to waive the 6% interest that was payable on the debt and agreed to extend the repayment date for \$7,905,000 that was payable at December 31, 2023. But for the waiver of interest on related party debt, Mayfair would have lost over \$2.1 million in 2024.<sup>32</sup>

46. Tsawwassen Mills is also losing money. In 2023, it lost \$1,988,808. In 2024, its financial statements showed a loss of \$756,943. But this does not include \$1,286,521 of unpaid interest owing on related party debt. If this interest had been paid when due, Tsawwassen Mills would have lost over \$2 million in 2024.<sup>33</sup>

47. In total, the three malls lost approximately \$19 million in 2023 and 2024. But for extended terms on related party loans and waiver of interest payable on those loans, they would be insolvent.

48. The precarious financial state of the malls is also shown on their balance sheets. Each has negative equity value and are balance-sheet insolvent: Woodgrove has an accumulated deficit of

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<sup>31</sup> R. Liu Cross Examination, Ex. 13, pp. 6, 15.

<sup>32</sup> R. Liu Cross Examination, Ex. 6, pp. 6, 14.

<sup>33</sup> R. Liu Cross Examination, Ex. 4, pp. 6, 14.

\$15,304,678; Mayfair has an accumulated deficit of \$6,924,891; and Tsawwassen Mills has an accumulated deficit of \$5,223,680.<sup>34</sup>

49. Finally, it is unclear what net proceeds any of the malls will generate if sold. Ms. Liu testified that she listed Woodgrove mall for sale, but she did not disclose the listing and refuses to say what price she is seeking for the mall. Woodgrove's financial statements value the mall and land at \$154,360,350. The property assessment for Woodgrove values the land and building at \$216 million (not \$230 million as indicated in Ms. Liu's affidavit). If the mall sells at this higher value, the net proceeds after repayment of third party debt are \$128 million. This is not enough to repay the related party loans.<sup>35</sup>

50. Ms. Liu swore she listed Woodgrove for sale in April 2025. But the listing agreement she produced after her cross-examination reveals she entered into a listing agreement with Colliers on February 19, 2025, **before HBC applied for CCAA protection.**<sup>36</sup> The Court should infer from this that the sale of the mall is unrelated to Ms. Liu's attempt to start a department store chain from scratch — she is selling the mall for other reasons, most likely because she has massive third-party debt coming due soon and no apparent means to pay it.

51. Ms. Liu swore she received a "serious and unsolicited offer to purchase" the Mayfair mall. It turns out this statement is also untrue. An "offer" would mean that the other party is bound to purchase the mall if Ms. Liu accepted it. But Ms. Liu refuses to produce the "offer"

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<sup>34</sup> R. Liu Cross Examination, Ex. 4 at p. 5; R. Liu Cross Examination, Ex. 6 at p. 5; R. Liu Cross Examination, Ex. 13 at p. 5.

<sup>35</sup> R. Liu July 29 Affidavit at para. 33, PurchaserCo MR, Tab 1, p. 45; R. Liu Cross Examination, Ex. 13 at p. 5; R. Liu Cross Examination, Ex. 15 at p. 1; answers to undertakings from the cross-examination of R. Liu, dated August 23, 2025 ("**R. Liu Answers to Undertakings**") at UA #4.

<sup>36</sup> Exclusive sale listing agreement between Colliers and Central Walk Woodgrove Shopping Centre Inc., dated February 19, 2025 at p. 1, R. Liu Answers to Undertakings at UA #4.

referenced in her affidavit. The explanation for the refusal is “CW Mayfair has received a only [sic] letter of intent. The same is not provided for reasons of confidentiality.”<sup>37</sup>

52. The *Rules* do not allow a party to refer to a document in their affidavit and then refuse to produce the document in response to a demand for production. The Court should infer from Ms. Liu’s refusal to produce an unsolicited “letter of intent” that it is not a “serious offer” as alleged by Ms. Liu.

53. Even if Ms. Liu is able to sell Mayfair for \$232 million, she first has to repay the \$141.9 million vendor take-back mortgage on the property. The \$90 million net proceeds after repayment of third-party debt are insufficient to repay related party debts and to redeem preferred shares, which amount to \$122 million.<sup>38</sup>

54. In summary, the evidence does not support Ms. Liu’s and HBC’s assertion that the sale of Woodgrove and/or Mayfair malls will generate sufficient proceeds to fund PurchaserCo’s financial obligations. The malls are money-losing operations that are heavily in debt, with negative equity. They are not the source of wealth Ms. Liu made them out to be in her affidavits. She hid the truth regarding these properties.

v. *Concerning Omissions from Ms. Liu’s Affidavit Evidence*

55. The evidence summarized above, which reveals the opaque structure of Ms. Liu’s business affairs, the unreliability of her (non)commitment and personal guarantee, and the lack of equity in her malls, and the fact that she does not own the malls (or 100% of them), was only

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<sup>37</sup> R. Liu July 29 Affidavit at para. 33, PurchaserCo MR at Tab 1, p. 45; R. Liu Answers to Undertakings at UA #2.

<sup>38</sup> R. Liu Cross Examination, Ex. 6 at p. 5.

revealed through cross-examination. None of it was offered by Ms. Liu in her affidavits or the exhibits to those affidavits.

56. But for the evidence obtained on cross-examination, the Court would not know that her malls are money-losing operations with negative equity; that the malls are dependent on interest-free cash injections from offshore corporations; that the malls are heavily in debt to third parties with imminent maturity dates; and that Ms. Liu has insufficient assets in Canada to support her personal guarantee.

57. KingSett and the other landlords were not rash or unreasonable in deciding that PurchaserCo is too risky an entity with which to go into business. The evidence obtained through cross-examination shows that Ms. Liu built a complex, opaque business structure that cannot support the capital requirements to start a 28-location integrated departure store from scratch.

### **PART III - STATEMENT OF ISSUES AND LEGAL ARGUMENT**

58. KingSett adopts and relies on the summary of the law set out in the landlords' joint factum. The facts summarized above explain how HBC and PurchaserCo cannot satisfy the Court that PurchaserCo would be able to perform its obligations under the leases and that it would not be appropriate to assign HBC's rights and obligations to PurchaserCo.

59. Not only is PurchaserCo not a current operator of an integrated department store (as required under the Bayshore Lease and other leases), the evidence does not support a finding that PurchaserCo will fund its obligations under the leases going forward.

60. Assigning the leases to PurchaserCo will expose the landlords to significant counterparty risk in circumstances where they negotiated the ability to avoid that risk. Just on an analysis of

its financial circumstances, without considering its inability to execute on its flawed business plan, PurchaserCo is not an appropriate assignee.

61. Each landlord has put in evidence of the harm it and its shopping malls will face if PurchaserCo is takes over the HBC leases and fails to deliver a department store.<sup>39</sup> This evidence is uncontested.

**A. PurchaserCo Will Not Be Able to Perform Its Financial Obligations**

62. Under s. 11.3(3)(b) of the CCAA, the Court must consider whether PurchaserCo will be able to perform its obligations under the 24 leases at issue on this motion. The evidence summarized above demonstrates that HBC and PurchaserCo cannot satisfy this requirement. PurchaserCo has limited assets and future funding is solely controlled by Ms. Liu.

63. For example, PurchaserCo's sole assets are a bank account opened on June 20, 2025. Currently, that account has approximately \$56,000 in cash and \$15 million in short-term investments. The \$15 million was deposited on August 1, 2025, with no indication where the funds came from.<sup>40</sup> These funds are insufficient to satisfy the APA purchase price, let alone obligations under the leases if the APA is approved.

64. PurchaserCo is wholly owned by Techion Global Investments Ltd, a British Virgin Islands corporation, so there is no ability for landlords to look "upstream" to a Canadian entity to satisfy its debts. Ms. Liu owns Techion, but Techion's assets are offshore.<sup>41</sup>

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<sup>39</sup> See, for example, T. Warnaar Affidavit at para. 21, KingSett RMR at Tab 1, p. 46; N. Corrado Affidavit at paras. 115-120, Oxford RMR at Tab 2, pp. 113-115.

<sup>40</sup> Revised Bank Printout for PurchaserCo at pp. 1, 6, R. Liu Answers to Undertakings at UT #5.

<sup>41</sup> R. Liu July 29 Affidavit, Ex. D, PurchaserCo MR at Tab 1D, p. 191; R. Liu August 12 Affidavit, Ex. A, PurchaserCo RMR at Tab 1A, p. 55; R. Liu Answers to Undertakings at UT #4.

65. To demonstrate her financial wherewithal to support PurchaserCo's obligations, Ms. Liu appended a letter dated April 30, 2025 from BMO to her bid. The letter indicated she had \$100 million in a bank account, which was deposited for the purpose of supporting payment of the purchaser price under the APA, not PurchaserCo's future operations. The funds came from accounts in Hong Kong and Singapore. As at July 28, 2025, Ms. Liu had \$135 million in the same account, with the additional amounts coming from Hong Kong.<sup>42</sup>

66. Ms. Liu controls whether those funds stay in a Canadian account or get moved elsewhere. She can remove the funds at her sole discretion.<sup>43</sup>

67. There is nothing preventing Mr. Liu from emptying her BMO account and transferring the funds offshore. In any event, most of the funds in Ms. Liu's BMO account would be spent on closing of the APA: to satisfy the purchase price of the APA (including cure costs) and to pay land transfer tax on the leases. The remainder is insufficient to fund the short-term repair and renovation obligations at the malls, which PurchaserCo has (under)estimated to be \$120 million.

68. Moreover, to the extent Ms. Liu relies on the three shopping malls in British Columbia as evidence of her financial wherewithal, the malls are owned by several layers of companies, they are losing millions every year, they are saddled with third-party and related party debts, and she only owns 70% of two of the malls and 30% of the third.<sup>44</sup>

69. It has not been proven on the evidence that PurchaserCo has the ability to satisfy its financial obligations under the leases. It is wholly dependent on the mercurial whims of Ms. Liu,

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<sup>42</sup> R. Liu Cross Examination, p. 88, l. 5 – p. 89, l. 7; R. Liu Cross Examination, Ex. 16; R. Liu July 29 Affidavit, Ex. D, PurchaserCo MR at p. 190.

<sup>43</sup> R. Liu Cross Examination, p. 87, ll. 6-15.

<sup>44</sup> Corporate organization chart dated May 1, 2025, enclosed as Schedule "A".

who expressly refused to give a binding commitment, backstopped by funds in Canada, to fund PurchaserCo's obligations.

*i. No Reliable Commitment or Guarantee*

70. The landlords cannot rely on any "commitment or "guarantee" that PurchaserCo will be able to perform its financial obligations for many reasons. First, the \$400 million funding "commitment" is a figment of Ms. Liu's imagination: it is a promise from herself to herself and is expressly unenforceable by third parties. When Ms. Liu reviewed the document at her cross-examination, she was alarmed when she mistakenly thought she had provided a \$400 million guarantee to third parties and she objected to the document's contents. She clearly has no intention of guaranteeing any funding "commitment".<sup>45</sup>

71. Second, Ms. Liu will waive or forgive debts when it suits her overall financial needs. When it was necessary to avoid showing a loss for her B.C. malls, she waived or "forgot to collect" interest owing on related party loans. When confronted with these intercompany loans, Ms. Liu claimed they are not "true" liabilities because the money is all owed to her.<sup>46</sup> There is no reason to suggest that her "commitment" to fund PurchaserCo is any more real to her than her related party loans to her malls.

72. Third, the one-year personal guarantee of rent obligations, which the parties agree has an approximate value of \$60 million, is not supported by evidence of sufficient liquid assets in Canada.<sup>47</sup>

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<sup>45</sup> R. Liu July 29 Affidavit, PurchaserCo MR at Tab 1C, p. 185; R. Liu Cross Examination, p. 79, l. 24 – p. 80, l. 22.

<sup>46</sup> R. Liu Cross Examination, p. 36, l. 10 – p. 37, l. 11, p. 38, l. 4 – p. 41, l. 18, p. 46, l. 7 – p. 47, l. 2;

<sup>47</sup> R. Liu Cross Examination, p. 70, ll. 2-6.

73. A special-purpose corporation with no guaranteed outside funding does not have the ability to fulfill its financial obligations under these leases.

**B. It Would Be Inappropriate to Assign Leases to PurchaserCo**

74. HBC and PurchaserCo point to Ms. Liu's history as a successful mall operator in support of the fact that PurchaserCo has sufficient experience to be a successful department store. That is a ridiculous assertion. As affirmed by several landlords, and is obvious, operating a national, multi-chain department store differs greatly from owning and operating shopping centres.<sup>48</sup> And those malls' questionable financial performance show why it would be inappropriate to assign the leases to PurchaserCo in any event.

75. Ms. Liu's failure to disclose the actual and accurate financial circumstances regarding the malls she owns in Canada also makes it clear why she is an inappropriate assignee under section 11.3(3)(c) of the CCAA. The landlords should not be forced to have a tenant who has not been honest and direct about her financial affairs and has been misleading in her disclosure to them in this Court process. That is in addition to all the other issues with her conduct as noted by the Monitor and the other landlords (in their respective factums).

76. Moreover, the three malls are significantly leveraged. They each have a third-party mortgage, as well as significant related party loans that together exceed the value of the properties. It is concerning that these details were omitted from Ms. Liu's affidavits when she

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<sup>48</sup> T. Warnaar Affidavit at para. 38, KingSett RMR at Tab 1, p. 52; see, for example, cross examination of Patrick Sullivan (Primaris) dated August 15, 2025, p. 7, l. 19 – p. 8, l. 10, and cross examination of Ruby Paola (Ivanhoe Cambridge) dated August 18, 2025, p. 9, ll. 1-10.



and HBC rely on her alleged “successful” operation of these malls as evidence of her business savvy and her ability to achieve her plan to open a new 28-location department store.

77. Although Ms. Liu claims she is willing to sell two malls (Woodgrove and Mayfair) to fund PurchaserCo’s obligations, this evidence is not credible or reliable. She has not produced the listing for Woodgrove and refused to produce the “offer” for Mayfair. Leaving aside that there is no evidence of an imminent sale of either mall, at any price, it is unclear how selling money-losing malls that are heavily leveraged will help PurchaserCo.

78. Even if one or both malls are sold, any proceeds after payment of third-party debt and capital gains taxes would first flow to Hong Kong to satisfy debts to related parties, to be split between Ms. Liu and her brother. The complex and opaque web of related party loans and offshore entities suggests that very little, if anything, of the proceeds of sale would be available to be transferred back to Canada.

### **C. Conclusion on s. 11.3(3) Factors**

79. HBC and Ms. Liu have not adduced credible or reliable evidence that PurchaserCo will be able to meet its financial obligations to the landlords as they become due. PurchaserCo is a shell corporation that is entirely dependent on the whims of its owner. The landlords have no ability to enforce the commitment that lies at the heart of her plan or effectively claim damages from PurchaserCo. Ms. Liu’s limited personal guarantee is similarly illusory.

80. For similar reasons, HBC has not demonstrated that it would be appropriate to assign the rights and obligations under the 24 leases to PurchaserCo. It would be unfair to force the landlords to accept as tenants in their anchor stores a shell corporation with flimsy financial backing just to satisfy a secured debt to one or two of HBC’s creditors.

81. In the context of a liquidation CCAA, the weak financial circumstances of PurchaserCo and the unreliable backing of its principal do not justify the extraordinary relief HBC seeks on this motion.

**PART IV - ORDER REQUESTED**

82. For the reasons set out above, KingSett respectfully requests:

- (a) An order dismissing HBC's motion to assign the 24 leases, including the Bayshore Lease, to PurchaserCo; and
- (b) Costs of this motion.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED** this 25<sup>th</sup> day of August, 2025.



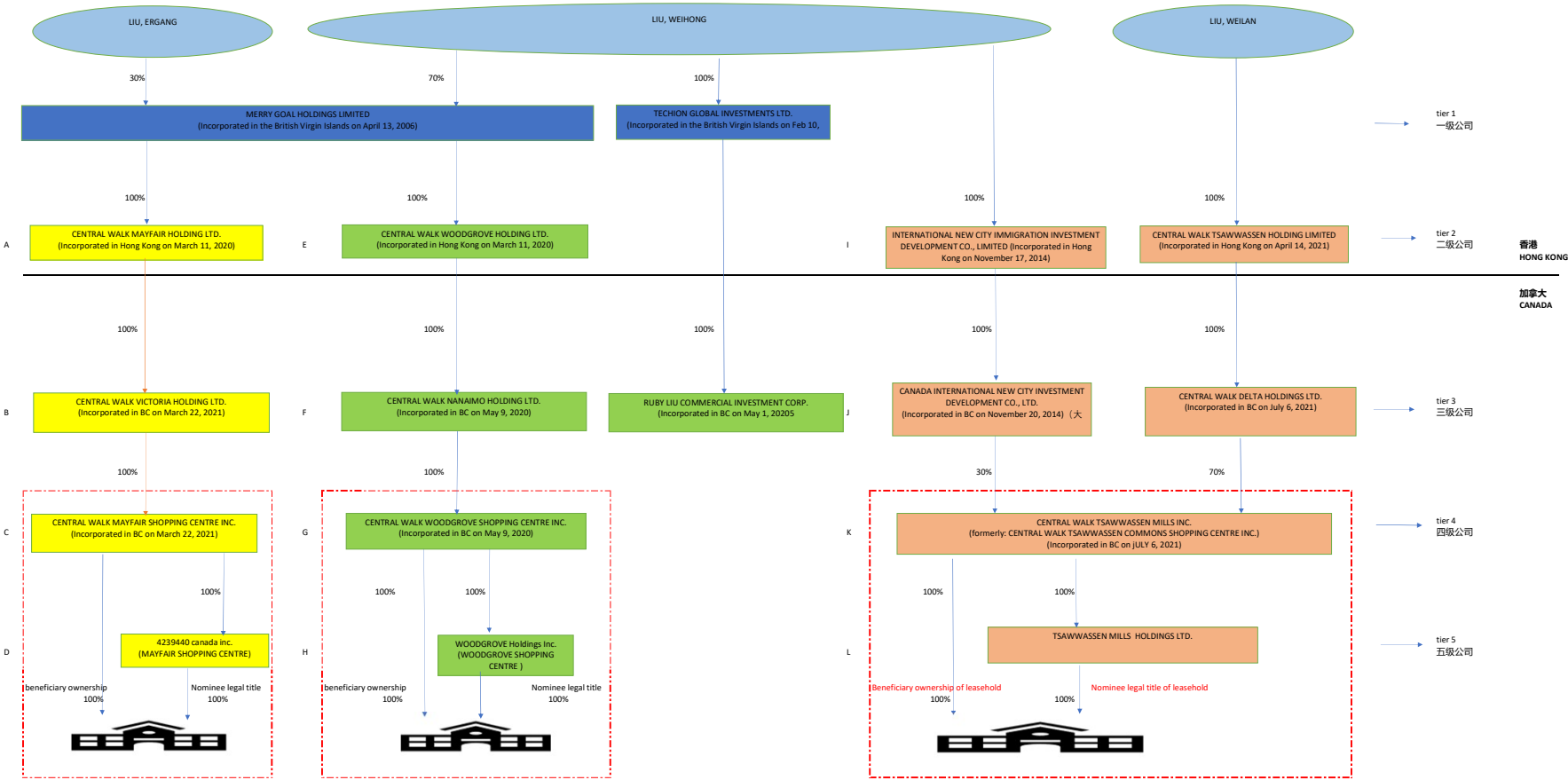
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**LAX O'SULLIVAN LISUS GOTTLIEB LLP**

**SCHEDULE “A”**

**LIU CORPORATE ORGANIZATIONAL CHART AS OF MAY 1, 2025**

Current corporate map as of May 1, 2025



IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, c. C-36, AS AMENDED, AND IN THE MATTER OF HUDSON'S  
BAY COMPANY ULC COMPAGNIE DE LA BAIE D'HUDSON SRI et al

Court File No. CV-25-00738613-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

*IN THE MATTER OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED*

PROCEEDING COMMENCED AT TORONTO

**RESPONDING FACTUM OF  
KINGSETT CAPITAL INC.  
(APA Approval)  
(Returnable August 28, 2025)**

**LAX O'SULLIVAN LISUS GOTTLIEB LLP**  
Suite 2750, 145 King Street West  
Toronto ON M5H 1J8

**Matthew P. Gottlieb** LSO#: 32268B  
mgottlieb@lolg.ca  
Tel: 416 644 5353

**Andrew Winton** LSO#: 54473I  
awinton@lolg.ca  
Tel: 416 644 5342

**Annecy Pang** LSO#: 87037S  
apang@lolg.ca  
Tel: 416 956 5098

Lawyers for Kingsett Capital Inc.