

2025 01G 0491

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF the *Companies
Creditors Arrangement Act* R.S.C., 1985 c.
C- 36 as Amended (the "CCAA")

AND IN THE MATTER OF an application
of Karwood Contracting Ltd., Karwood
Engineering Ltd., Karwood Design Group
Ltd., and Karwood Ontario Ltd. (collectively
the "Company")

AIDE MEMOIRE

DARREN D. O'KEEFE
O'KEEFE & SULLIVAN
Counsel for the Applicants
80 Elizabeth Avenue
St. John's, NL A1A 1W7
dokeefe@okeefesullivan.com

TO: Supreme Court of Newfoundland & Labrador
General Division (In Bankruptcy)
P.O. Box 937
309 Duckworth Street
St. John's, NL A1C 5M3

AND TO: The Service List attached as **Schedule "A"**

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1. The parties are scheduled to appear before the Court on 16 September 2025 for a case management hearing. The current stay of proceedings that was approved by the Court under s.11 CCAA remains in place until 01 October 2025.
2. At present, there are three main issues that need to be resolved:

(1) Breach of the DIP Loan Agreement:

- a. The Companies are in breach of the DIP Loan Agreement that was approved by the Court on 20 February 2025, with an order following (the "DIP Order"), attached as **Schedule "B"**. All parties have been aware of this breach of the DIP Loan Agreement since at least 01 August 2025, and it has been the subject of discussion between legal counsel since that time.
- b. The remaining properties/assets to be sold in the Companies include one piece of vacant land, and other miscellaneous assets (tools, etc.), goodwill, and intellectual property (designs, building plans, subdivision plans, etc.) (hereinafter, the "Remaining Assets").
- c. On 12 September 2025, BMO was informed that the Monitor had received an offer to purchase the Companies (the "KCL Offer"), as a going concern, which would

include all of the Remaining Assets. The purchase price offered is clearly within the range of acceptable value for the Remaining Assets, and the number will be submitted to the Court on a confidential basis.

- d. On 11 September 2025 the Bank of Montreal (“BMO”), as DIP Lender, issued a notice of default with an effective date of 15 September 2025.
- e. BMO followed up with a private appointment of MNP Ltd. as Receiver of the Companies on 15 September 2025. A copy of the appointment letter is attached as **Schedule “C”**.
- f. The Companies understand it is BMO’s position that they prefer to run a receivership to liquidate the Remaining Assets notwithstanding the KCL Offer is in place. There is no evidence that a receivership will be more cost effective or get a better result than the KCL Offer.
- g. The Companies have concerns with BMO appointing a receiver in this context, as doing so would eliminate the value of a going concern sale. It would also not be in the best interests of all stakeholders. The Companies are concerned that the appointment of a receiver is a tactic being employed to trigger a “material adverse change” that would end the CCAA proceedings and resolve the outstanding professional fees issue outlined below in favour of BMO.

(2) Outstanding Professional Fees:

- a. Since at least 01 August 2025 all parties have been aware that there are significant outstanding professional fees owed to the Monitor and its counsel, and the legal counsel for the Companies. This has been the subject of several discussions between counsel.
- b. There are also outstanding amounts owed to subcontractors who worked on the various properties outlined in the Distribution Order dated 30 June 2025 (the “Distribution Order”), attached as **Schedule “D”**.
- c. BMO takes the position that because the DIP Loan Agreement, attached as

Schedule "E", is in default, and it has not been repaid, that any funds in the possession of the Companies (approximately \$250,00.00) must be paid to it on its DIP Loan in priority to all others.

- d. The Monitor and the Companies take the position that the funds currently held by the Monitor should be paid to the Companies, and the Companies can then pay their professional fees and subcontractors. This position is based on the Distribution Order that was issued by the Court *after* the DIP Order, which says that after the payment of the fixed distribution to BMO as set out in that Distribution Order, the balance of the funds goes to the Companies.
- e. If the funds in the possession of the Monitor are released to the Companies, then the outstanding amounts owed to subcontractors and professionals will be paid with a balance of approximately \$50,000.00 remaining. This \$50,000.00 would fall within the limits of the current \$250,000.00 administrative charge.

(3) Next Steps and Issues for Discussion:

- a. The Companies are seeking to appease BMO by pursuing a limited sales strategy to confirm the price offered in the KCL Offer is an acceptable and/or reasonable offer. The Companies are seeking that the Court provide direction to the parties on the following:
 - 1. Should BMO be allowed to appoint a Receiver in the context of the above, notwithstanding it has the right to enforce against the assets in its DIP Loan Agreement?
 - 2. If not, can the Court agree that the Receiver should be subject to an injunction to allow the Monitor to carry out a limited sales process to test the market, failing which the KCL Offer could be accepted?
 - 3. If the answer to (1) and (2) is no, then the Companies seek direction from the Court on releasing the funds currently in the possession of the Monitor, in accordance with the Distribution Order, and further, an order that the

Administrative Charge will be registered as a charge against the assets and undertakings of the Companies so as to bind any sale of the Remaining Assets in the receivership.

Respectfully submitted.

Signed September  15, 2025



DARREN D. O'KEEFE
O'KEEFE & SULLIVAN
Counsel for the Company
80 Elizabeth Avenue, Suite 202
St. John's, NL, A1A 1W7
dokeefe@okeefesullivan.com

SCHEDULE A

**KARWOOD CONTRACTING LTD. AND KARWOOD ENGINEERING INC. AND KARWOOD
ONTARIO LTD. AND KARWOOD DESIGN GROUP LTD.**

SERVICE LIST

<p>O'KEEFE & SULLIVAN LAWYERS 80 Elizabeth Ave Suite 202 St. John's, N.L., A1A 1W7</p> <p>Darren O'Keefe dokeefe@okeefesullivan.com Tel: 709.700.0911</p> <p>Joshua L. Hancott jhancott@okeefesullivan.com</p> <p>80 Elizabeth Ave Suite 202 St. John's, N.L., A1A 1W7</p> <p>Counsel for the Applicants</p>	<p>BOYNE CLARKE LAWYERS 99 Wyse Road, Suite 600 P.O. Box 876, Dartmouth Main Dartmouth, NS B2Y 3Z5 JSantimaw@boyneclarke.ca Joshua J. Santimaw</p> <p>Counsel for the Monitor</p> <p>BDO Canada Limited 300 Kenmount Rd #200, St. John's, NL A1B 3R2</p> <p>Email: nejones@bdo.ca</p>
<p>ROYAL BANK OF CANADA 1871 Hollis Street, 7th Floor Halifax, NS B3J 1M7</p> <p>David Savoie 902-421-4905 David.Savoie@rbc.com</p>	<p>AXIOM LEASING INC. 4 Robert Speck Pkwy 15th Floor, Mississauga, ON L4Z 1S1</p>
<p>MOSKOWITZ CAPITAL MORTGAGE FUND II INC.</p> <p>Stewart McKelvey Suite 1100, Cabot Place 100 New Gower St. St. John's, N.L. A1C 6K3 Tel 709.570.8851 Fax 709.722.4565</p> <p>Stephen Winter swinter@stewartmckelvey.com</p> <p>Joe Thorne joethorne@stewartmckelvey.com</p>	<p>BANK OF MONTREAL 31 Water Street St. John's NL A1C 1A9 Canada Raffael Di Genova Raffael.digenova@bmo.com</p> <p>Cox & Palmer Scotia Centre, 235 Water St suite 1100, St. John's, NL A1C 1B6</p> <p>Josh McElman jmcelman@coxandpalmer.com</p>

	<p>Allison Philpott aphilpott@coxandpalmer.com</p> <p>Counsel for the Bank of Montreal</p>
<p>ROYAL BANK OF CANADA 7101 Pare Avenue, 5th Floor Montreal QC H3N 1X9 Canada</p>	<p>CANADA REVENUE AGENCY Shawinigan – Sud National Verification Collections Centre 4695 Shawinigan- Sud Boulevard Shawinigan QC G9P 5H9</p> <p>Atlantic Canada AGC-PGC.Atlantic-Tax-Fiscal@justice.gc.ca</p>
<p>DEPARTMENT OF FINANCE Dept of Digital Government and Service NL 2nd Floor, West Block, P.O. Box 8700 St. John's, NL A1B 4J6 Tel 709-729-2981 Fax 709-729-2091</p> <p>collections@gov.nl.ca</p>	<p>Boreal Atlantic Ltd. 239 Main Street Milltown NL Canada A0H 1W0</p> <p>Browne Fitzgerald Morgan & Avis Terrace on the Square, Level 2 P.O. Box 23135 St. John's, NL A1B 4J9</p> <p>Stephen Fitzgerald KC sfitzgerald@bfma-law.com</p>
<p>WORKPLACE NL PO Box 9000 St. John's, NL A1A 3B8</p> <p>Jennifer Langdon jennifer.langdon@workplacnl.ca</p>	<p>STEELCASE FINANCIAL SERVICES LTD. 200 King Street west Suite 2400 Toronto ON M5H 3T4</p>

FORD CREDIT CANADA LEASING, DIVISION OF CANADIAN ROAD LEASING COMPANY PO Box 2400 Edmonton AB T5J 5C7 Canada ON L4S 0C8	LIBRO CREDIT UNION LTD. 217 York Street London, Ontario N6A 5P9
BMW CANADA INC. 50 Ultimate Drive, Richmond Hill ,ON L4S 0C8	RANDY ORAM TAMMY ORAM 14 Old Topsail Hill CBS, NL, A1W 5W6 Canada
DEPARTMENT OF JUSTICE CANADA CRA Suite 1400, Duke Tower 5251 Duke Street Halifax NS B3J 1P3 Tel: 782-409-0068 Deanna Frappier, K.C. Deanna.Frappier@justice.gc.ca Caitlin Ward caitlin.ward@justice.gc.ca	Kent Building Supplies c/o Learmonth, Boulos & Fitzgerald 804-140 Water St. PO Box 700, Stn. C St. John's, Newfoundland and Labrador A1C 5L4 R. Barry Learmonth Email: barry@lbflegal.com
Quick Shot Contracting Inc. Peddigrew Wade Law 94 Elizabeth Avenue, Suite 4, 2nd Floor St. John's, NL A1B 1R8 Isabella@pw-law.ca cpeddigrew@pw-law.ca	

Email List

"Darren O'Keefe" <dokeefe@okeefesullivan.com>; "Josh Hancott" <jhancott@okeefesullivan.com>; "Jones, Neil" <nejones@bdo.ca>; "Joshua Santimaw" <jsantimaw@boyneclarke.ca>; "Jones, Neil" <nejones@bdo.ca>; "David.Savoie@rbc.com" <david.savoie@rbc.com>; "Stephen H. Winter" <swinter@stewartmckelvey.com>; "Joe Thorne"

<joethorne@stewartmckelvey.com>; "AGC-PGC Atlantic-Tax-Fiscal" <agc-pgc.atlantic-tax-fiscal@justice.gc.ca>; "DiGenova, Raffael" <raffael.digenova@bmo.com>; "Josh (NB)" <jmcelman@coxandpalmer.com>; "Collections (DGSNL)" <collections@gov.nl.ca>; "Jennifer" <jennifer.langdon@workplacenl.ca>; "Deanna (she her elle la)" <deanna.frappier@justice.gc.ca>; "Ward, Caitlin (she her elle la)" <caitlin.ward@justice.gc.ca>; "R. Barry Learmonth, K.C." <barry@lbflegal.com>; "Chris Peddigrew" <chris@pw-law.ca>; "Isabella Koltunski" <isabella@pw-law.ca>; sfitzgerald@bfma-law.com; [mrussell@coxandpalmer.com](mailto:mrusell@coxandpalmer.com); davidboyd@resolveadvisory.ca; sfitzgerald@bfma-law.com

SCHEDULE B

2025 01G 0491
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY

IN THE MATTER OF the *Companies
Creditors Arrangement Act* R.S.C., 1985 c. C-
36 as Amended (the "CCAA"); and

AND IN THE MATTER OF an application of
Karwood Contracting Ltd., Karwood
Engineering Inc., Karwood Design Group
Ltd. and Karwood Ontario Ltd. (the
"Applicants")

AMENDED AND RESTATED INITIAL ORDER

Before the Honourable Justice A. MacDonald:

WHEREUPON the Applicants have filed an affidavit for an extension to the current stay of proceedings under the CCAA up to and including 04 July 2025;

AND UPON reading the affidavit of Gregory Hussey sworn 18 February 2025 (the "Hussey Affidavit") and the Exhibits thereto, and on being satisfied that the secured creditors who are likely to be affected by the charges created herein including, without limitation, any creditor with an asserted, registered or claimed lien under the Mechanics' Lien Act, R.S.N.L. 1990 c. M-3, were given notice, and on hearing the submissions of counsel for the Applicant and such other counsel as appeared, with all parties being duly served and on reading the Pre-Filing Report and First Report of the Proposed Monitor and their consent act as the Monitor, the following is ordered and declared:

SERVICE

THIS COURT ORDERS that the time for service of the Notice of Application and the materials filed, as set out in the affidavit of service, is hereby deemed adequate notice so that this Application is properly returnable today and hereby dispenses with further service thereof.

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Filed	February 20, 2025	BB
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APPLICATION

1. **THIS COURT ORDERS AND DECLARES** that the Companies are each a company to which the CCAA applies.

PLAN OF ARRANGEMENT

2. **THIS COURT ORDERS** that the Companies shall have the authority to file and may, subject to further order of this Court, file with this Court a plan of compromise or arrangement (hereinafter referred to as the "Plan").

POSSESSION OF PROPERTY AND OPERATIONS

3. **THIS COURT ORDERS** that the Companies shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof save and except for the Exempt Property, as defined and dealt with below (the "Property"). Subject to further Order of this Honourable Court, the Companies shall continue to carry on business in a manner consistent with the preservation of their business (the "Business") and Property. The Companies are authorized and empowered to continue to retain and employ the employees, consultants, independent contractors, agents, experts, accountants, counsel and such other persons (collectively "Assistants") currently retained or employed by it, with liberty to retain such further Assistants as it deems reasonably necessary or desirable in the ordinary course of their Business or for the carrying out of the terms of this Order.

4. **THIS COURT ORDERS** that the Companies, shall be entitled to continue to utilize their cash management system currently in place, or replace it with another substantially similar cash management system (the "Cash Management System") and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Companies of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Companies, pursuant to the terms of the

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documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of compromise or arrangement with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

5. **THIS COURT ORDERS** that from and after the date of this Order, the Companies shall each maintain separate books and records and shall account separately in respect of receipts and disbursements. The Companies shall not commingle funds and revenues received or receivable by the Companies nor incur or pay any expenses or costs payable directly by the other Company or for the benefit of the other Company. The Applicants shall continue to maintain separate accounts for each corporate entity and shall not commingle funds except with the consent of the Monitor or leave of this Court.

6. **THIS COURT ORDERS** that the Companies shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements;
- (b) the fees and disbursements of any Assistants retained or employed by the Companies in respect of these proceedings, at their standard rates and charges;
- (c) with the consent of the DIP Lender (as defined herein), amounts owing for goods and services supplied to the Companies, if in the opinion of the Monitor, the supplier or vendor of such goods or services is necessary for the operation and preservation of the Business or Property. The Monitor shall report to the Court as to any payments made under this subparagraph.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein the Companies shall be entitled but not required to pay all reasonable expenses incurred by the Companies in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business; and
- (b) payment for goods or services supplied to the Companies following the date of this Order.

8. **THIS COURT ORDERS** that the Companies shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of (i) employment insurance, and (ii) Canada Pension Plan;
- (b) all goods and services or other applicable sales taxes (collectively, "Sales Taxes") required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Companies.

9. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Companies shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Companies and the landlord from time to time ("Rent"), for the period commencing from and including the date of this Order, in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such

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payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

10. **THIS COURT ORDERS** that, except as specifically permitted herein the Companies are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Companies to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of their Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

EXEMPT PROPERTY

11. **THIS COURT ORDERS** that the Property, as defined above, shall not include the following parcels of real property:

- i. The property municipally known as 236 West Street, Belmont, Ontario and legally described as Lot 31, Plan 33M778 Municipality of Central Elgin; subject to an easement in gross over Part 11, Plan 33R-20685 as in ER 1300729, being the whole of PIN 08195-0655; and
- ii. The property municipally known as 35 Honey Bend, St. Thomas, Ontario and legally described as Lot 8, Plan 11M232; City of St. Thomas, being the whole of PIN 35244-2202.

(collectively hereinafter referred to as the "Exempt Property").

12. **THIS COURT ORDERS AND DECLARES** that, notwithstanding the other terms of the within Order, the Exempt Property is not subject to the terms of the within Order.

RESTRUCTURING

13. **THIS COURT ORDERS** that the Companies shall, subject to such requirements as are imposed by the CCAA and such covenants as may be contained in the Definitive Documents (as hereinafter defined), have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of their business or operations, and to dispose of non-material assets not exceeding \$100,000 in one transaction in the aggregate;
- (b) terminate the employment of such of its employees, or temporarily lay off such of its employees, as it deems appropriate; and
- (c) pursue all avenues of refinancing, restructuring, sale and reorganization of the Business or Property, in whole or part, subject to obtaining prior approval of this Court before effecting any material refinancing, restructuring, sale or reorganization, as determined by the Monitor,

all of the foregoing to permit the Companies to proceed with an orderly restructuring of the Business (the "Restructuring").

14. **THIS COURT ORDERS** that the Companies shall provide each of the relevant landlords with notice of the Companies intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Companies entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Companies, or by further Order of this Court upon application by the Companies on at least two (2) days' notice to such landlord and any such secured creditors. If the Companies disclaims the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Companies claim to the fixtures in dispute.

15. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Companies and the Monitor 24 hours' prior written notice, and (b) at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may

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have against the Companies in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

NO PROCEEDINGS AGAINST THE COMPANIES OR THE PROPERTY

16. **THIS COURT ORDERS** that until and including 04 July 2025, or such later date as this Court may order (the "**Stay Period**"), no proceeding or enforcement process in any court or tribunal (each, a "**Proceeding**") shall be commenced or continued against or in respect of the Companies or the Monitor, or affecting the Business or the Property except with the written consent of the Monitor and the Companies, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Companies or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

17. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being "**Persons**" and each being a "**Person**") against or in respect of the Companies or the Monitor, or affecting the Business or the Property are hereby stayed and suspended except with the written consent of the Monitor and the Companies, or leave of this Court, provided that nothing in this Order shall (i) empower the Companies to carry on any business which the Companies is not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (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 RIGHTS

18. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right,

contract, agreement, license or permit in favour of or held by the Companies, except with the written consent of the Monitor and the Companies, or leave of this Court.

CONTINUATION OF SERVICES

19. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Companies or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Companies, 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 Companies, and the Companies shall be entitled to the continued use of their current premises, 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 Companies in accordance with normal payment practices of the Companies or such other practices as may be agreed upon by the supplier or service provider and the Companies or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

20. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Companies. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

21. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Companies with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Companies whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations,

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until a compromise or arrangement in respect of the Companies, if one is filed, is sanctioned by this Court or is refused by the creditors of the Companies or this Court.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

22. **THIS COURT ORDERS** that the Companies shall indemnify their directors and officers against obligations and liabilities that they may incur as directors or officers of the Companies after the commencement of the within proceedings, except to the extent that, with respect to any officer or director, the obligation or liability was incurred as a result of the director's or officer's gross negligence or wilful misconduct.

APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that GT is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Companies with the powers and obligations set out in the CCAA or set forth herein and that the Companies and their shareholders, officers, directors, and Assistants shall advise the Monitor of all material steps taken by the Companies pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Companies' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Companies, to the extent required by the Companies, in the dissemination, (i) to the DIP Lender and its counsel, and (ii) to registered secured creditors, Canada Revenue Agency ("CRA"), and their counsel if the Monitor determines it necessary or desirable, on a timely basis, of financial and other information as agreed to between the Companies and the DIP Lender, or information which the Monitor may determine is necessary or desirable to share

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with registered secured creditors or CRA, including reporting on a basis to be agreed with the DIP Lender, or between the Monitor and any registered secured creditor or CRA, as the case may be;

- (d) advise the Companies in the preparation of the Companies' cash flow statements and reporting required by the DIP Lender;
- (e) advise the Companies in their development of a plan or compromise or arrangement and any amendments thereto;
- (f) assist the Companies, to the extent required by the Companies, with the holding and administering of creditors' or shareholders' meetings for voting on a plan of compromise or arrangement;
- (g) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Companies, to the extent that is necessary to adequately assess the Companies business, cashflow, and financial affairs or to perform its duties arising under this Order;
- (h) be at liberty to engage with Companies' legal counsel or retain independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order;
- (i) assist the Companies to design and conduct any sales process as may be approved by the Court; and
- (j) perform such other duties as are required by this Order or by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

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26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor 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* and regulations thereunder (the "Environmental Legislation"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor'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.

27. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Companies with information provided by the Companies in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Companies is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Companies may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or willful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and counsel to the Companies shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, or subsequent to, the date of this Order, by the Companies as part of the costs of these proceedings. The Companies are hereby authorized and directed to pay the accounts of the Monitor, counsel for the Monitor, and counsel for the Companies on a weekly basis and, in addition, the Companies are hereby authorized to

pay to the Monitor, counsel to the Monitor, and counsel to the Companies reasonable retainers to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose, the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency.

31. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor, and the Companies' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on the Property, which charge shall not exceed an aggregate amount of \$250,000.00 as security for their professional fees and disbursements incurred at their respective standard rates and charges of the Monitor and such counsel, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 40-44 herein.

DIP FINANCING

32. **THIS COURT ORDERS** that the Companies are hereby authorized and empowered to obtain and borrow under a credit facility from the Bank of Montreal (the "**DIP Lender**") in order to finance the Companies' working capital requirements and other general corporate purposes and capital expenditures, provided that borrowings under such credit facility shall not exceed \$750,000.00 unless permitted by further Order of this Court.

33. **THIS COURT ORDERS** that such credit facility shall be on the terms and subject to the conditions set forth in the commitment letter between the Companies and the DIP Lender dated as of 19 February 2025 (the "**Commitment Letter**"), filed.

34. **THIS COURT ORDERS** that the Companies are hereby authorized and empowered to execute and deliver such credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively, the "**Definitive Documents**"), as are contemplated by the Commitment Letter or as may be reasonably required by the DIP Lender pursuant to the terms thereof, and the Companies are hereby authorized and directed to pay and perform all of their indebtedness, interest, fees, liabilities and obligations to

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the DIP Lender under and pursuant to the Commitment Letter and the Definitive Documents as and when the same become due and are to be performed, notwithstanding any other provision of this Order.

35. **THIS COURT ORDERS** that the DIP Lender shall be entitled to the benefit of and is hereby granted a charge on the principle, interest and other costs noted in the Commitment Letter (the "DIP Lender's Charge") on the Property, which DIP Lender's Charge shall not secure any obligation that exists before this Order is made. The DIP Lender's Charge shall have the priority set out in paragraphs 39-44 herein. The DIP Lender's Charge is effective on the issuance of this Order and no further Definitive Documents are required in order for the DIP Lender's Charge to be effective. Further, the DIP Lender may rely on the materials filed in this proceeding and this Order as sufficient evidence of the corporate authorization, due execution and delivery of the Commitment Letter and any other Definitive Documents without the necessity of any further opinion, certificates or resolutions.

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

- (a) the DIP Lender may, but shall not be required to, take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge or any of the Definitive Documents;
- (b) upon the occurrence of an event of default under the Definitive Documents or the DIP Lender's Charge, the DIP Lender, two (2) Business Days' notice to the Companies and the Monitor, may exercise any and all of its rights and remedies against the Companies or the Property under or pursuant to the Commitment Letter, Definitive Documents and the DIP Lender's Charge, or this Order. On the expiration of the notice set out above, unless the Companies have cured the default to the DIP Lender's satisfaction, the DIP Lender shall be entitled to, including without limitation, appoint a private receiver, cease making advances to the Companies and set off and/or consolidate any amounts owing by the DIP Lender to the Companies against the obligations of the Companies to the DIP Lender under the Commitment Letter, the Definitive Documents or the DIP Lender's Charge, to make demand, accelerate payment and give other notices, or to apply to this Court for the appointment of a receiver, receiver and manager



or interim receiver, or for a bankruptcy order against the Companies and for the appointment of a trustee in bankruptcy of the Companies, to collect on receivables forming part of the Property or take any other action permitted at law or in equity to recover the amounts due including without limitation to exercise all rights of a mortgagee of real property or a secured creditor under the applicable *Personal Property Security Act*; and

- (c) the foregoing rights and remedies of the DIP Lender shall be enforceable against any trustee in bankruptcy, interim receiver, receiver or receiver and manager of the Companies or the Property and the DIP Lender shall not be required to provide notice in accordance with section 244 of the *Bankruptcy and Insolvency Act* (Canada).

37. **THIS COURT ORDERS AND DECLARES** that the DIP Lender shall be treated as unaffected in any plan of arrangement or compromise filed by the Companies under the CCAA, or any proposal filed by the Companies under the *Bankruptcy and Insolvency Act* of Canada (the "BIA") and is not subject to any stay in these proceedings, with respect to any advances made under the Definitive Documents.

38. **THIS COURT ORDERS AND DECLARES** that this Order is subject to provisional execution and that if any of the provisions of this Order in connection with the DIP Agreement, the other Definitive Documents or the DIP Lender's Charge shall subsequently be stayed, modified, varied, amended, reversed, or vacated in whole or in part (collectively, a "Variation") whether by subsequent order of this Court on or pending an appeal from this Order, such Variation shall not in any way impair, limit or lessen the priority, protections, rights or remedies of the DIP Lender, whether under this Order (as made prior to the Variation), under the DIP Agreement or the other Definitive Documents with respect to any advances made or obligations incurred prior to the DIP Lender being given notice of the Variation, and the DIP Lender shall be entitled to rely on this Order as issued (including, without limitation, the DIP Lender's Charge) for all advances so made and other obligations set out in the DIP Agreement and the other Definitive Agreements.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

39. **THIS COURT ORDERS** that the priorities of the Administration Charge the DIP Lender's Charge, as among them, shall be as follows:

First – Administration Charge (\$250,000); and

Second –DIP Lender's Charge (\$750,000)

provided that as amongst the Property subject to the Charges, the Administrative Charge shall only have priority against the residential homes under construction at the following addresses 55 Silver Birch Crescent, 59 Silver Birch Crescent, 61 Silver Birch Crescent, 63 Silver Birch Crescent, 70 Silver Birch Crescent and 41 Yellow Wood Drive to the maximum of \$125,000.00 a (collectively, the "Residential Project") and the balance of the Administrative Charge shall have priority over all other encumbrances, liens and charges on the other assets of the Applicants, to the maximum amount of \$125,000.00.

40. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge or the DIP Lender's Charge (collectively, the "Charges") shall not be required, and that Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect. Notwithstanding the foregoing, the Companies shall file a copy of this Order under the applicable land registration systems and a notice under the Personal Property Security Acts in relation to the Property.

THIS COURT ORDERS that the Charges, on the issuance of this Order and without the need for any further act or document, shall constitute a charge on the Property and shall rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "Encumbrances") in favour of any Person which includes, without limitation, any creditor with an asserted, registered or claimed lien under the Mechanics' Lien Act, R.S.N.L. 1990 c. M-3, including without limitation any persons who may claim a lien but have not yet asserted or registered such claim. .

41. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Companies shall not grant any Encumbrances over any Property, or permit any statutory or other liens to arise, that rank in priority to, or *pari passu* with

any of the Charges, unless the Companies also obtain the prior written consent of the Monitor and of the applicable chargee(s) entitled to the benefit of the Charges (collectively, the "Charges"), or further Order of this Court.

42. **THIS COURT ORDERS** that the Charges, the Commitment Letter and the Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the Chargees shall not otherwise be limited or impaired in any way by: (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an "Agreement") which binds the Companies, and notwithstanding any provision to the contrary in any Agreement:

- (a) The creation of the Charges nor the execution, delivery, perfection, registration or performance of the Commitment Letter or the Definitive Documents shall not be deemed to constitute a breach by the Companies of any Agreement to which they are a party;
- (b) None of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Companies entering into the Commitment Letter, the creation of the Charges, or the execution, delivery or performance of the Definitive Documents; and
- (c) The payments made by the Companies pursuant to this Order, the Commitment Letter or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

43. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a charge in the Companies' interest in such real property leases.

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SERVICE AND NOTICE

44. **THIS COURT ORDERS** that the Monitor shall (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner by electronic means, a notice to every known creditor who has a claim against the Companies of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

45. **THIS COURT ORDERS** that the Companies and Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Companies creditors or other interested parties at their respective addresses as last shown on the records of the Applicants 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.

GENERAL

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

47. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from subsequently acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Company, the Business or the Property.

48. **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 Companies, the Monitor and their respective 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 Companies and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding,

or to assist the Companies and the Monitor and their respective agents in carrying out the terms of this Order.

49. **THIS COURT ORDERS** that each of the Company and the Monitor 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 Monitor 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.

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

51. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12.01 a.m., Newfoundland Time, on the date of this Order.

Dated at St. John's, in the Province of NL

this 20 day of Feb, 2025

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**COURT
OFFICER**

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SCHEDULE C

APPOINTMENT OF RECEIVER

**RE: Karwood Contracting Ltd.
Karwood Engineering Ltd.
Karwood Design Group Ltd.
Karwood Ontario Ltd.
(together as the "Companies")**

TO WHOM IT MAY CONCERN:

BMO Bank of Montreal (the "Lender")'s Debtor-In-Possession Financing Term Agreement (the "DIP Agreement") with the Companies is in default and enforceable in accordance with its terms. The Lender does hereby appoint, pursuant to the DIP Agreement and the Order of the Supreme Court of Newfoundland and Labrador in Bankruptcy and Insolvency on February 20, 2025 (the "Order"), MNP Ltd., of Suite 1400 – 1801 Hollis Street, Halifax, Nova Scotia, B3J 3N4 to be the receiver (the "Receiver") of all assets, property, and undertakings of the Companies (the "Assets") pursuant to the terms of the DIP Agreement.

The DIP Agreement's charge as contained in the Order is over all of the assets, undertakings, and properties of the Companies.

The Lender does hereby vest in the Receiver all powers and discretions at law, including without limitation the power, but not the obligation, to:

- a) Take possession, preserve, and protect the Assets;
- b) Collect receipts and deal with the accounts of the Companies;
- c) Market and realize on the Assets;
- d) Institute, continue, and prosecute suits, proceedings, and actions which the Receiver considers necessary or advisable for the proper protection and realization of the Assets and the Companies;
and
- e) Pay the Lender the net proceeds from the realization of the Assets.

Dated at Halifax, Nova Scotia, this 15th day of September, 2025

BMO Bank of Montreal



Raffael DiGenova
Account Manager

SCHEDULE E

**2025 01G 0491
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
IN BANKRUPTCY AND INSOLVENCY**

IN THE MATTER OF the *Companies Creditors Arrangement Act* R.S.C., 1985 c. C-36 as Amended (the "CCAA")

AND IN THE MATTER OF an application of Karwood Contracting Ltd., Karwood Engineering Ltd., Karwood Design Group Ltd., and Karwood Ontario Ltd. (the "Applicants")

ORDER

Before the Honourable Justice Alexander MacDonald on 30 June 2025:

UPON APPLICATION, made by Karwood Contracting Ltd., Karwood Engineering Ltd., Karwood Design Group Ltd., and Karwood Ontario Ltd., pursuant to the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36, as amended (the "CCAA") for an order extending the Stay Period (as defined in the Initial Order) granted on 03 February 2025 (the "Initial Order") and the Amended and Restated Initial Order (the "ARIO") granted on 20 February 2025

UPON APPLICATION for an order granting the distribution of certain sale proceeds (the "Proceeds") arising from the sale of certain of the Applicant's assets, as more particularly described in the Monitor's fifth report dated 05 June 2025 (the "Fifth Report").

ON READING the affidavit of Gregory Hussey, and the Fifth and the Fourth Report of BDO Limited in its capacity as monitor of the Applicants (the "Monitor");

AND UPON HEARING the submissions of counsel for the Applicants, the Monitor, the Bank of Montreal, Moskowitz Capital Fund I I LLC, Royal Bank of Canada and such other counsel that were present, no one else appearing for any party although duly served:

SERVICE



Filed June 30, 2025 [initials]

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the materials filed is hereby deemed adequate notice so that this Motion is properly returnable today and hereby dispenses with further service thereof.

STAY OF PROCEEDINGS

2. **THIS COURT ORDERS** that the stay of proceedings, as defined in the Initial Order of the Honourable Justice Alexander MacDonald dated 03 February 2025, as amended and restated in the ARIO dated 20 February 2025 is hereby further extended up to and including 01 October 2025.

DISTRIBUTION

3. **THIS COURT ORDERS** that, subject to section 4 of this Order, the Monitor is hereby authorized and directed to distribute certain proceeds, anticipated to be held by the Monitor following the closing of each residential property as follows:
 - a. 61 Silver Birch Crescent, Paradise, NL:
 - i. a distribution to the Bank of Montreal in the amount of \$151,754, consistent with the Companies' Second Cash Flow Forecast filed with the Court as Appendix S to the Fifth Report of the Monitor dated June 27, 2025; and
 - ii. a distribution to Karwood Contracting Ltd. of the remaining proceeds of sale.
 - b. 63 Silver Birch Crescent, Paradise, NL:
 - i. a distribution to the Bank of Montreal in the amount of \$151,754, consistent with the Companies' Second Cash Flow Forecast filed with the Court as Appendix S to the Fifth Report of the Monitor dated June 27, 2025; and
 - ii. a distribution to Karwood Contracting Ltd. of the remaining proceeds of sale.
 - c. 70 Silver Birch Crescent, Paradise, NL:
 - i. a distribution to the Bank of Montreal in the amount of \$132,569, consistent with the Companies' Second Cash Flow Forecast filed with the Court as Appendix S to the Fifth Report of the Monitor dated June 27, 2025; and
 - ii. a distribution to Karwood Contracting Ltd. of the remaining proceeds of sale.
 - d. 41 Yellow Wood Drive, Paradise, NL:



- i. a distribution to the Bank of Montreal in the amount of \$128,701, consistent with the Companies' Second Cash Flow Forecast filed with the Court as Appendix S to the Fifth Report of the Monitor dated June 27, 2025; and
- ii. a distribution to Karwood Contracting Ltd. of the remaining proceeds of sale.

4. **THIS COURT ORDERS** that the Monitor is hereby authorized and directed to hold back a sum equivalent to 10% of the proceeds of each sale outlined in section 3 of this Order, representing mechanics' lien holdback in accordance with the *Mechanics' Lien Act*, RSNL1990 Chapter M-3, as amended, not to be distributed until there is a further Order of the Court directing the same.

5. Notwithstanding:


- a. the pendency of these proceedings;
- b. any applications for a bankruptcy order issued pursuant to the *Bankruptcy and Insolvency Act (Canada)* (the "BIA"), in respect of the Applicants and any bankruptcy order issued pursuant to such applications; and
- c. any assignment in bankruptcy made in respect of the Applicants;


the payments and holdbacks authorized and directed by section 3 and 4 of this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Applicants and shall not be void or voidable by creditors of the Applicants nor shall it constitute nor be deemed to be a settlement, fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

GENERAL

6. **THIS COURT ORDERS** that this Order and all its provisions are effective as of 12:01 a.m. Newfoundland Time on the date of this Order.

ISSUED at St. John's, Newfoundland and Labrador this 30 day of June 2025.



COURT
OFFICER 

SCHEDULE D

DEBTOR-IN-POSSESSION FINANCING TERM SHEET

This term sheet ("**DIP Term Sheet**") sets out the terms and conditions upon which Bank of Montreal will provide debtor-in-possession financing to the DIP Loan Parties (as defined below) in consideration of the mutual covenants, terms and conditions set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged. It is recognized and agreed that the houses forming part of the Residential Project (as defined below) are under contract and the primary purpose of this DIP Term Sheet is to provide adequate financing so as to complete the Residential Project and to address the claims against the assets forming part thereof.

Borrower: Karwood Contracting Ltd. ("**Contracting**") as principal borrower together with Karwood Engineering Inc., Karwood Ontario Ltd., and Karwood Group Design Ltd. (together the "**DIP Loan Parties**").

DIP Lender: Bank of Montreal (the "**DIP Lender**")

Monitor: BDO Canada Limited in its capacity as monitor (in such capacity, the "**Monitor**") in connection with the DIP Loan Parties' proceedings (the "**CCAA Proceedings**") under the *Companies Creditors Arrangement Act* (Canada) (the "**CCAA**").

Type of DIP Loan: Loan of up to a maximum amount of CDN \$750,000.00 (the "**DIP Loan**"), secured by way of the DIP Charge (defined herein) to be available to Contracting with the agreement of the Monitor subject to and in accordance with the terms herein.

Availability: Subject to the fulfillment of the applicable conditions precedent to the availability of the DIP Loan set out herein and the DIP Loan Parties' adherence to the 26 week Cash-Flow Statement dated February 18, 2025, a copy of which is attached hereto as **Schedule "A"** (the "**Approved Cash Flows**") being satisfactory to the DIP Lender, and provided that no Event of Default (as defined below) has occurred and is then continuing, advances of the DIP Loan shall be made by the DIP Lender to Contracting.

Purpose, Use of Proceeds: The proceeds of the DIP Loan will be used by Contracting to fund the cash flow requirements as set out in the Approved Cash Flow on a going concern basis provided that the same is, unless approved in writing by the DIP Lender and the Monitor, (i) in accordance with the Approved Cash Flows, and (ii) not on account of a liability that existed prior to the date of filing, other than as may be provided in the Approved Cash Flow, for these CCAA Proceedings (the "**Filing Date**"), including for avoidance of doubt but without limitation any unremitted statutory remittances existing as of the Filing Date. It is understood and agreed that the principle

use of the proceeds from the DIP Loan are for the purpose of Contracting completing the construction of the residential homes located at:

1. 55 Silver Birch Crescent
2. 59 Silver Birch Crescent
3. 61 Silver Birch Crescent
4. 63 Silver Birch Crescent
5. 70 Silver Birch Crescent
6. 41 Yellow Wood Drive

(collectively, the "Residential Project")

Closing Date:

On or before 24th February 2025 unless otherwise agreed by the DIP Loan Parties and the DIP Lender (the "**Closing Date**").

Termination Date:

The maturity of the DIP Loan (the "**Termination Date**") shall be the earliest of:

- (a) 6 months following the Closing Date;
- (b) the effective date of any merger, amalgamation, consolidation, arrangement, reorganization, recapitalization, sale or any other transaction affecting the DIP Loan Parties' assets or operations or resulting in the change of ownership or control of the DIP Loan Parties as confirmed by the Supreme Court of Newfoundland (the "**Court**") and satisfactory to the DIP Lender (any of the foregoing being a "**Transaction**");
- (c) the date on which the DIP Loan Parties' stay of proceedings expires without being extended or the date on which the CCAA Proceedings are dismissed or terminated or the date on which either of the DIP Loan Parties becomes bankrupt or the stay of proceedings is lifted to allow the filing of a bankruptcy or receivership application or similar insolvency proceeding; and
- (d) the date of the acceleration of the DIP Loan and the termination of the commitment with respect to the DIP Loan as a result of an Event of Default (as defined herein).

All outstanding amounts under the DIP Loan, together with all interest accrued in respect thereof and all other amounts

owing under this DIP Term sheet shall be payable in full on the Termination Date.

Interest Rates:

All amounts outstanding under the DIP Loan will bear interest at a rate of 13% per annum, on the daily balance outstanding under the DIP Loan.

Interest shall be due, owing, payable and repaid as the Termination Date without further notice, protest, demand or other act on the part of the DIP Lender.

Commitment Fee

Contracting shall pay to the DIP Lender a commitment fee equal to 1.5% (the "**Commitment Fee**") which may be added to the principal balance of the DIP Loan. The Commitment Fee is non-refundable and is fully earned and payable no later than the Closing Date.

Repayment:

Unless otherwise repaid as contemplated herein, the DIP Loan shall be due, owing, payable and repaid as the Termination Date without further notice, protest, demand or other act on the part of the DIP Lender.

Cash Management and

Mandatory Payments:

The DIP Loan shall be repaid from the net proceeds of any Transaction involving the DIP Loan Parties as provided in the Approved Cash Flow. It is acknowledged and agreed that the proceeds from the sale of homes in the Residential Project shall not be treated as general revenue available to Construction or any other DIP Loan Party for general operations but the use of such funds shall be restricted to being used as provided for in the Approved Cash Flow. The net proceeds shall be delivered to, and held in trust by, the Monitor on each sale who shall distribute in accordance with the Approved Cash Flow, including to Construction if so provided in the Approved Cash Flow, such that the sale of the homes can be completed in a cost-effective manner. Any use of the proceeds from the sale of the homes identified in the Approved Cash Flows for expenses related to the CCAA proceedings shall only be permitted with the advance consent of the DIP Lender which shall be granted provided Construction is in compliance with this DIP Term Sheet and the use will not cause Construction to be in breach of this DIP Term Sheet.

Representations and Warranties: The DIP Loan Parties represent and warrant to the DIP Lender as of the date hereof, and as of the date of each advance under the DIP Loan, that:

- (a) the DIP Loan Parties are duly organized, validly existing and in good standing under the laws of the

jurisdiction of their organization, have all requisite power to carry on business as now and formerly conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to constitute a material adverse effect, are qualified to do business in, and are in good standing in, every jurisdiction where such qualification is required;

- (b) the execution, delivery and performance, as applicable, of the DIP Term Sheet has been duly authorized by all actions, if any, required on the part and by the DIP Loan Parties' directors, and constitutes a legal, valid and binding obligation of the DIP Loan Parties enforceable against them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, arrangement, winding-up, moratorium and other similar laws of general application that limit the enforcement of creditors' rights generally and to general equitable principles;
- (c) the Approved Cash Flows represent the DIP Loan Parties best estimate as at each applicable date of the likely results of the operations of the DIP Loan Parties during the period applicable thereto and, to the knowledge of the DIP Loan Parties, such results are achievable as provided therein; and
- (d) all employee wages and other amounts owing to employees are up-to-date and there are no amounts owing in respect of wages, termination pay, severance pay, vacation pay, pension benefit contributions or other benefits except those accruing in the normal course and in accordance with the established practices and arrangements of the DIP Loan Parties.

Covenants:

The DIP Loan Parties covenant and agree that:

- (a) the DIP Loan Parties shall pay all amounts and satisfy all obligations in respect of the DIP Loan, including the Commitment Fee;
- (b) the DIP Loan Parties shall not make or permit to be made any payment on account obligations owing as at the Filing Date, other than as may be provided in the Approved Cash Flow, without the prior consent of the Monitor and the DIP Lender;

- (c) the DIP Loan Parties shall not undertake any actions with respect to their respective assets, business operations and/or capital structure which would, in the sole determination of the DIP Lender, have a material adverse effect on the DIP Loan Parties or the Collateral (as defined below);
- (d) the DIP Loan Parties shall not incur any indebtedness, including the giving of guarantees, other than indebtedness specifically contemplated herein or permitted in writing by the DIP Lender;
- (e) the DIP Loan Parties shall not incur, create, assume or suffer to exist any lien, charge, security interest or other encumbrance on any of the Collateral now owned or hereafter acquired other than: (i) those encumbrances existing as of the Filing Date, (ii) permitted by the DIP Lender in its sole discretion, (iii) the DIP Charge, and (iv) the Administration Charge, to be granted by the Court;
- (f) the DIP Loan Parties shall not enter into any other credit facility or loan arrangements that would be secured in priority to or *pari passu* with the DIP Loan;
- (g) the DIP Loan Parties shall not enter into any Transaction without the prior written consent of the DIP Lender;
- (h) without the prior written consent of the DIP Lender, the DIP Loan Parties shall not: (i) declare or pay any dividends on, or make any other payments or distributions (whether by reduction of capital or otherwise) with respect to any of their respective issued and outstanding shares or other equity interests, or (ii) grant any loans, or (iii) pay or accept any amount from the DIP Loan as an inter-company payment between the DIP Loan Parties or to any related or affiliated company;
- (i) the DIP Loan Parties shall not sell any of their assets outside of the ordinary course of business without the prior written consent of the DIP Lender;
- (j) the DIP Loan Parties shall ensure that their senior management team and advisors are available to meet and respond to inquiries and information requests from the Monitor and the DIP Lender and their advisors as may be reasonably required, and in any event no less frequently than once every two

weeks, and to provide them with updates as may be required by the DIP Lender or the Monitor;

- (k) the DIP Loan Parties shall promptly pay all DIP Expenses (as defined below), including all legal and advisory fees and expenses, of the DIP Lender as such DIP Expenses are incurred and invoiced to the DIP Loan Parties;
- (l) the DIP Loan Parties shall pay the fees, if any, owing to the DIP Lender in connection with the DIP Loan (as set out herein or otherwise) promptly when such fees are due;
- (m) the DIP Loan Parties shall update the Approved Cash Flows and provide a copy thereof to the DIP Lender and the Monitor together with a comparison to the prior version for the DIP Lender's approval, it being understood that such updated Approved Cash Flows, if approved by the DIP Lender, become the Approved Cash Flows for purposes hereof; and
- (n) the DIP Loan Parties shall provide such other information that the DIP Lender may reasonably request in relation to the CCAA Proceedings, the Collateral, or the DIP Loan generally.

Security:

As continuing security (the "**DIP Security**") for the prompt payment of all amounts payable by the DIP Loan Parties to the DIP Lender under the DIP Term Sheet and as continuing security for the due and punctual performance by the DIP Loan Parties of their existing and future obligations pursuant to the DIP Term Sheet (the "**DIP Obligations**"), the DIP Loan Parties hereby grant, convey, assign, transfer, mortgage and charge as and by way of a fixed and specific security interest, mortgage and charge, to and in favour of the DIP Lender, all of their property, assets, rights and undertakings, real and personal, moveable or immovable, tangible and intangible, legal or equitable, of whatsoever nature and kind, wherever located, both present and future, and now or hereinafter owned or acquired (collectively, the "**Collateral**").

The DIP Security shall be elevated by way of a Court-ordered super-priority charge (the "**DIP Charge**") which DIP Charge shall rank in priority on the Collateral in priority to any security interests, claims, or deemed trusts (statutory or otherwise) but subordinate to the Administration Charge in relation to the Collateral as follows i) to a maximum of \$125,000.00 in and to the Collateral forming part of the Residential Project and ii) to a maximum

of \$125,000.00 in and to all other Collateral, without any other formality or requirement, such as without limitation registration or notice under the *Personal Property Security Act* (Newfoundland) or registrations in land registration office(s) or otherwise. For greater certainty, the DIP Charge shall rank in priority to any asserted, registered or claimed lien under the *Mechanics' Lien Act*, R.S.N.L. 1990 c. M-3, and the DIP Order (as defined below) shall specifically confirm such ranking.

Events of Default:

Each of the following shall constitute an “**Event of Default**”:

- (a) the DIP Loan Parties default in the payment of any amount due and payable to the DIP Lender (whether of principal, interest or otherwise) pursuant to this DIP Term Sheet;
- (b) any representations and warranties made by the DIP Loan Parties in the DIP Term Sheet proves to be incorrect as of the date given;
- (c) the DIP Loan Parties fail or neglect to observe or perform any term, covenant, condition or obligation contained or referred to in the DIP Term Sheet or any other document between the DIP Loan Parties and the DIP Lender;
- (d) the stay of proceedings expires without being extended or the CCAA Proceedings being dismissed or terminated or the DIP Loan Parties becoming subject to a proceeding in bankruptcy or receivership or similar insolvency proceeding;
- (e) the entry of an order staying, amending, reversing, vacation or otherwise modifying or having a material adverse effect with respect to the DIP Loan or the DIP Charge, in each case without the prior written consent of the DIP Lender;
- (f) the DIP Loan Parties undertake any actions with respect to their assets, business operations and/or capital structure which would, in the sole determination of the DIP Lender, has a material adverse effect on the DIP Loan Parties or the Collateral;
- (g) if the DIP Loan Parties make any payments of any kind not permitted by this DIP Term Sheet, or contemplated by the Approved Cash Flows;

- (h) the occurrence of any other event or circumstance that has, or could reasonably be expected to have, a material adverse effect on either of the DIP Loan Parties or on the Collateral, including a material adverse change from the Approved Cash Flow budget or negative variance of 10% in the weekly performance of the Companies against the Approved Cash Flow as determined by the DIP Lender in its sole discretion; and
- (i) if there is a change in the ownership, control, existing senior operating management arrangements or governance of the DIP Loan Parties that is not acceptable to the DIP Lender.

Upon the occurrence of an Event of Default, without any notice, protest, demand or other act on the part of the DIP Lender, all indebtedness of the DIP Loan Parties to the DIP Lender shall become immediately due and payable and the DIP Lender shall be able to take all steps necessary to enforce its security. The DIP Lender shall also have the right to exercise all other customary remedies, including, without limitation, the right to enforce and realize on any or all of the Collateral, in each case, upon providing two (2) days prior written notice to the DIP Loan Parties and the Monitor, without the necessity of obtaining further relief or an order from the Court.

Conditions Precedent, to first advance:

The conditions precedent to any advance being made under this DIP Term Sheet are:

- (a) the representations and warranties made by the DIP Loan Parties in this DIP Loan Term Sheet being true and correct as of the date given;
- (b) the issuance of a Court order in form and substance acceptable to the DIP Lender and its counsel which, inter alia, approves the DIP Loan and the DIP Term Sheet, creating the DIP Charge, and authorizing the payment by the DIP Loan of all of the fees and expenses in respect of the DIP Loan (the "DIP Order"), authorizes and approves the restriction on use of funds arising from the sale of the homes forming part of the Residential Project as set out herein and confirms that the DIP Loan Parties need not take any further step or corporate action for ratification of this DIP Term Sheet or the completion of the transactions contemplated herein such that no opinion on same shall be required;

- (c) there not being an outstanding appeal of the DIP Order; and
- (d) the DIP Lender having received independent report(s) on the status of the construction of the homes forming part of the Residential Project from Kirkland Appraisals & Consultants so that the DIP Lender may confirm that the cost to complete construction in relation to each home is as set out in Schedule "B" attached hereto; which for certainty shall be achieved if there is not a negative variance in excess of 10% in relation to any one home forming part of the Residential Project. If there is a negative variance related to the construction of a home, no construction shall proceed until the DIP Lender is satisfied in its sole discretion that completing the construction will not result in an adverse change to the Approved Cash Flow or otherwise jeopardize the completion of the construction of the balance of the Residential Project.

Illegality:

In the event that it becomes illegal for the DIP Lender to lend or continue to lend, the DIP Lender will be repaid and/or the DIP Lender's commitment will be cancelled.

Taxation:

All payments of principal, interest and fees will be made free and clear of all present and future taxes, levies, duties or other deductions of any nature whatsoever, levied either now or at any future time.

Fees and Expenses:

The DIP Loan Parties shall pay all of the DIP Lender's out-of-pocket expenses (including the fees and expenses of its counsel and advisors), whether or not any of the transactions contemplated hereby are consummated and whether incurred prior to or after the date of the DIP Order, as well as all expenses of the DIP Lender in connection with the ongoing monitoring, interpretation, administration, protection and enforcement of the DIP Loan, and the enforcement of any and all of its remedies at law (collectively, the "DIP Expenses").

Governing Law, Jurisdiction:

Laws of the Province of Newfoundland and the federal laws of Canada applicable in the Province of Newfoundland and Labrador. The DIP Loan Parties agree to submit to the non-exclusive jurisdiction of the courts of the Province of Newfoundland and Labrador.

IN WITNESS HEREOF, the parties hereby execute this DIP Term Sheet as of the date first written above.

KARWOOD CONTRACTING LTD.

Per: _____
Name:
Title:

KARWOOD ONTARIO LTD.

Per: _____
Name:
Title:

KARWOOD DESIGN GROUP INC.

Per: _____
Name:
Title:

KARWOOD ENGINEERING INC.

Per: _____
Name:
Title:

[remainder of this page intentionally left blank, signature page follows]

BANK OF MONTREAL

Per: _____
Name:
Title:

Per: _____
Name:
Title: