

**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 Inc., Karwood Design Group Ltd. and Karwood Ontario Ltd. (the “**Applicants**”)

**AFFIDAVIT OF GREGORY HUSSEY**

I, **GREGORY HUSSEY**, of **Paradise**, Newfoundland and Labrador, **MAKE OATH AND SAY THAT:**

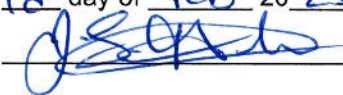
1. I am the President and a Director of Karwood Contracting Ltd. (“**Karwood Contracting**”), Karwood Engineering Inc. (“**Karwood Engineering**”), Karwood Ontario Ltd. (“**Karwood Ontario**”) and Karwood Design Group Ltd (“**Karwood Design**”) (collectively referred to as the “**Applicants**”), and as such I have direct knowledge of the Applicants’ business and financial affairs.
2. This Affidavit is sworn in support of the Applicants’ motion pursuant to s. 11 of the CCAA to extend the stay of proceedings under the Initial Order granted on 31 January 2025 (the “**Initial Order**”) up to and including 10 July 2025, pursuant to an amended and restated Initial Order (the “**ARIO**”). I have reviewed the application, and the facts contained therein are true to the best of my knowledge, information, and belief. Where the information provided herein is not based on my direct knowledge of the Applicants’ business and financial affairs, I have indicated the third-party source for that information. This Affidavit is sworn in respect of the Applicants’ application for the ARIO, and for no other purpose.
3. Since the date of the Initial Order, the Applicants have operated with good faith and due diligence, and have cooperated with the Monitor and their senior secured lenders including Libro Credit Union and the Bank of Montreal, to reduce the amount of disruption with the

business and the orderly liquidation of assets, to stabilize the business, and to obtain debtor in possession financing (the “**DIP Loan**”) in order to continue the CCAA proceedings in the best interest of all stakeholders.

4. A copy of the term sheet for the DIP Loan is attached hereto as **Exhibit “A”** (the “**DIP Term Sheet**”). The Applicants have reviewed this DIP Term Sheet in consultation with their legal counsel and the Monitor, and believe it is in the best interest of the Applicant and all stakeholders that the DIP Term Sheet be approved so as to permit the Applicants to continue the CCAA proceedings. The DIP Term Sheet represents the most recent version of the DIP Term Sheet as negotiated between the Applicants and the DIP Lender and may be subject to minor modifications prior to the hearing on 20 February 2025, though we believe that is unlikely. Any such modifications will be presented at or before the 20 February 2025 hearing.
  
5. The Applicants intend to complete the CCAA proceedings in accordance with the cashflow approved by the Monitor and the Bank of Montreal, as DIP lender, attached to the DIP Term Sheet.

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This is Exhibit "A" to the affidavit of  
Greg Hesse sworn before me on the  
1<sup>st</sup> day of feb 20 25.  


**EXHIBIT "A"**

Joshua L. Hancott  
Barrister, Solicitor, and Notary Public  
Newfoundland and Labrador

## 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 "**CCA Proceedings**") under the *Companies Creditors Arrangement Act* (Canada) (the "**CCA**").

**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 CCA 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 24<sup>th</sup> 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:

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**BANK OF MONTREAL**

Per: \_\_\_\_\_  
Name:  
Title:

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule "A"**

**Cash Flow**

**See attached**

**Schedule "B"**

**Cost to Complete Construction**

**See attached**