Court File No. CV-22-00689565-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

BARRETT KUDLOW CAPITAL MANAGEMENT INC.

Applicant

- and -

SMS PROPERTY TRUST INC.

Respondent

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

MOTION RECORD

(Discharge of Interim Receiver and Appointment of a Monitor – Returnable November 30, 2022)

Date: November 25, 2022

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON, M5C 3G5

David T. Ullmann (LSO # 42357I)
Tel: (416) 596-4289
Email: DUllmann@blaney.com

Lea Nebel (LSO #45484C)
Tel: (416) 593-3914
Email: LNebel@blaney.com

Counsel for the Applicant

To: The Service list

Court File No. CV-22-00689565-00CL

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SERVICE LIST
(as at November 25, 2022)

To:	**BLANEY MCMURTRY LLP** Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto, ON, M5C 3G5 **Mr. David T. Ullmann (LSO # 42357I)** Tel: (416) 596-4289 Email: DUllmann@blaney.com **Ms. Lea Nebel (LSO # 45484C)** Tel: (416) 593-3914 Email: LNebel@blaney.com Counsel for the Applicant and Interim Receiver
And To:	**ATSIN LAW** Barrister, Solicitor & Notary Public 250 Consumer Road Suite 517 Toronto, ON, M2J 4V6

	Ms. Sarojini Sinivasan (LSO # 71454U) Tel: (416) 613-8998 Email: atsinlaw@gmail.com Counsel for the Respondent, SMS Property Trust Inc.
And To:	**GRANT THORNTON LIMIED** 200 King Street West 11th Floor Toronto, ON, M5H 3T4 **Mr. Jonathan Krieger** Tel: (416) 360-5055 Email: Jonathan.Krieger@ca.gt.com **Mr. Bruce Bando** Email: Bruce.Bando@ca.gt.com Court-Appointed Interim Receiver
And To:	**SUB-PRIME MORTGAGE CORPORATION** c/o Terry Walman, LLB 1240 Bay Street Suite 202 Toronto, ON, M5R 2A7 **Mr. Terry Michael Walman (LSO # 23931E)** Tel: (416) 961-3809 Email: terry@terrywalman.com Creditor
And To:	**ATTORNEY GENERAL OF CANADA** Department of Justice Canada Ontario Regional Office, Tax Law Section 120 Adelaide Street West Suite 400 Toronto, ON, **Ms. Diane Winters (LSO #20824V)** Tel: (647) 256-7459 Email: Diane.Winters@justice.gc.ca

And To:	**Ministry of Finance (Ontario)** Ministry of the Attorney General (Ontario) Civil Law Division - Legal Services Branch 6-33 King Street West Oshawa, ON, L1H 8H5 **Steven Groeneveld** (**LSO # 45420I**) Email: steven.groeneveld@ontario.ca **Leslie Crawford (Law Clerk)** Email: leslie.crawford@ontario.ca
And To:	**Ministry of Revenue (Ontario)** 33 King Street West 6th Floor Oshawa, ON, L1H 8H5 **Insolvency Unit** insolvency.unit@ontario.ca

Email Address List

atsinlaw@gmail.com; Jonathan.Krieger@ca.gt.com; Bruce.Bando@ca.gt.com; terry@terrywalman.com; Diane.Winters@justice.gc.ca; steven.groeneveld@ontario.ca; leslie.crawford@ontario.ca; insolvency.unit@ontario.ca

Court File No. CV-22-00689565-00CL

EPIREON MORTGAGE CAPITAL CORPORATION and **SMS PROPERTY TRUST INC.**
Applicant Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

SERVICE LIST

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON, M5C 3G5

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Tel: (416) 596-4289
Email: DUllmann@blaney.com

Lea Nebel (LSO #45484C)
Tel: (416) 593-3914
Email: LNebel@blaney.com

Counsel for the Applicant

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Applicant

- and -

SMS PROPERTY TRUST INC.

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TAB 1

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

NOTICE OF MOTION
(Returnable November 30, 2022)

The Applicant, Barrett Kudlow Capital Management Inc. ("**BKCMI**" or the "**Applicant**") will make a motion to a judge presiding over the Commercial List, on Wednesday, November 30, 2022, at 12:30 p.m. or as soon after that time as the motion can be heard by Zoom video conference.

PROPOSED METHOD OF HEARING: The motion is to be heard orally by Zoom. Zoom coordinates to be emailed to parties closer to the hearing date and available in CaseLines.

THE MOTION IS FOR:

1. Two Orders, substantially in the form attached at **Tab 3** hereto (the "**Draft Order**"):

(a) seeking to discharge Grant Thornton Limited ("**GTL**") in its capacity as interim receiver (the "**Interim Receiver**"); and,

(b) to approve the activities, conduct, and fees of the Interim Receiver, as set out in its First Report to Court to be filed (the "**First Report**");

(c) appointing GTL as a monitor (the "**Monitor**") of the Respondent, SMS Property Trust Inc. ("hereinafter, the "**Respondent**", "**SMS**", or the "**Borrower**") and,

(d) such further and other relief as is required.

THE GROUNDS FOR THE MOTION ARE:

2. Undefined terms used herein shall have the meaning set out in the Affidavit of Charles Barrett sworn October 28, 2022 (the "**Initial Affidavit**").

3. The Applicant relies upon the statements set out in the Application Record to appoint the Interim Receiver dated November 1, 2022 and the Initial Affidavit.

4. Since November 1, 2022, Grant Thornton has acted in its capacity as Interim Receiver and has taken control of the banking and financing of the Respondent, and has established working controls with the Respondent.

5. In addition, the Respondent's principal has repaid $200,000 of the nearly $400,000 that was misappropriated from the Respondent's bank account, but the balance remains outstanding and unaccounted for.

6. The Applicant has negotiated a forbearance agreement (the "**Forbearance**") with the Respondent pursuant to which the Respondent agrees to the appointment of GTL as Monitor and otherwise consents to the appointment of a receiver in the event of default of the terms of the

Forbearance. The Forbearance is for a one-year term.

7. The Borrower will remain in control of its business but will have no ability to make material expenditures in respect of the business without the prior written consent of the Monitor. The Monitor will not be a receiver and will not be in control of the business, but will have control of the banking of the business.

8. The Applicant is prepared to consent to this arrangement on the basis of the terms of the Forbearance, which include the Borrower paying the fees incurred to date and receiving ongoing monitoring from the Applicant and the Monitor.

9. The Borrower has advised that the Collateral Mortgage in second position was registered in error and has agreed to attend to the discharge of that mortgage by no later than April 1, 2023.

10. It is necessary to maintain a stay of proceedings so that the operational arrears which were accumulated during the breakdown of the business between May, 2022 and the date of the appointment of the Interim Receiver can be managed and settled over time without unduly draining the cash flow of the business.

11. The Applicant has loaned $150,000 to the business pursuant to a receiver's certificate (the "**Receiver's Certificate**") as contemplated in the initial application. The Applicant intends to lend a further $150,000 if the order sought herein is granted on the same basis.

12. The amounts advanced under the Receiver's Certificate are at the same rate and terms as the original loan made to the Respondent. No premium is being charged for the distress value of the loan.

13. There will remain an administrative charge in the amount of $250,000 to support the costs of the process.

14. Although the Respondent has made some repayment, given past events the Applicant is

not comfortable that the Respondent can return to control of its financial affairs without a danger of further monies being withdrawn.

15. The presence of the Collateral Mortgage on the Property still represents a material drain on the equity and the Property.

16. The Applicant remains concerned as does the Interim Receiver that there be certainty for the senior citizen residents of McKellar Place and that there will be no further threat to their services or meal plan as a result of any further unanticipated or inappropriate actions by the Respondent.

17. The Interim Receiver recommends the continuation of some form of monitoring for a period of time to allow for the Respondent to repair its relationship and demonstrate a good faith approach to the continuation of the business.

18. The Forbearance Agreement is not yet finalized or executed. In the event it is not completed by the date of the hearing, the Applicant will ask the court to appoint GTL as receiver for a further 45 days to avoid an abrupt end to these proceedings and to allow for continued control of the banking pending the finalization of the Forbearance or further order of the Court.

19. GTL has consented to act as Monitor or, if necessary, as receiver.

20. Section 101 of the *Courts of Justice Act*, R.S.O., c. C. 43, as amended;

21. Section 243 of the *Bankruptcy and Insolvency Act*; and

22. Such further and other grounds as counsel may advise and this Court may permit.

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

23. The Initial Affidavit affirmed October 28, 2022, previously filed;

24. The Affidavit of Charles Barrett affirmed November 25, 2022;

25. The First Report of the Interim Receiver, to be filed;

26. The Fee Affidavit of Jonathan Krieger, to be filed; and

27. Such further and other evidence as counsel may advise and this Honourable Court may permit.

Date: November 25, 2022

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON, M5C 3G5

David T. Ullmann (LSO # 42357I)
Tel: (416) 596-4289
Email: DUllmann@blaney.com

Lea Nebel (LSO #45484C)
Tel: (416) 593-3914
Email: LNebel@blaney.com

Counsel for the Applicant

To: The Service List

Court File No. CV-22-00689565-00CL

BARRETT KUDLOW CAPITAL MANAGEMENT INC. and **SMS PROPERTY TRUST INC.**

Applicant / Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

NOTICE OF MOTION
(Returnable November 30, 2022)

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON, M5C 3G5

David T. Ullmann (LSO # 42357I)
Tel: (416) 596-4289
Email: DUllmann@blaney.com

Lea Nebel (LSO #45484C)
Tel: (416) 593-3914
Email: LNebel@blaney.com

Counsel for the Applicant

TAB 2

Court File No. CV-22-00689565-00CL

ONTARIO
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AFFIDAVIT OF CHARLES BARRETT

I, **CHARLES BARRETT**, of the City Toronto, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am President of the Applicant, Barrett Kudlow Capital Management Inc. ("**BKCM**" or the "**Applicant**" hereafter) in this matter and as such have personal knowledge of the matters set out herein, save and except where I rely on information and belief, in which case I identify the source of that information and verily believe it to be true.

2. On October 28, 2022, I swore an affidavit in connection with the requirement to appoint a Receiver or an Interim Receiver (the "**Initial Affidavit**").

3. I make this affidavit in support of providing further supplemental information in connection with the motion to appoint a monitor over the Respondent, SMS Property Trust Inc. (referred to as either "**SMS**" or the "**Respondent**").

4. Undefined terms used herein shall have the meaning set out in the Initial Affidavit.

5. As set out in my Initial Affidavit, it appeared that in excess of $400,000 had been extracted from the business by the principal of SMS, Ongrasothy Masillamany (also the "**Guarantor**") for purposes unrelated to the operation of McKellar Place.

6. Following the appointment of the interim receiver (the "**Interim Receiver**" and "**Interim Receivership**"), we corresponded with the Guarantor. A copy of our letter advising him of the Interim Receivership is attached hereto as **Exhibit "A"**.

7. The Guarantor and SMS have taken no steps to contest the Interim Receivership. They have been cooperative with the Interim Receiver.

8. The Guarantor has admitted to the withdrawal of funds. Attached hereto as **Exhibit "B"** is a copy of the letter from the Guarantor advising that he intends to return the funds.

9. The Guarantor advised me that he would return the funds and attend to the removal of the third-party Collateral Mortgage. As of the date of this affidavit, the Guarantor has repaid $200,000 into the operating account of the business. Attached hereto as **Exhibit "C"** is a copy of the deposit slip to that effect. He has, however, not repaid the balance of the funds.

10. The Guarantor also advised in his letter (see Exhibit “B”) that the registration of the Collateral Mortgage against the Property was in error. I personally find that very difficult to believe. In any event, he has promised to have it discharged.

11. As a result of the Interim Receiver’s appointment, the bank account for SMS was changed to deposit only, and the Guarantor no longer has any access to those funds. The staff of McKellar Place have met with the Interim Receiver, as I believe will be further outlined in the report to be provided by the Interim Receiver, and the funds have been used to pay operating costs for McKellar Place.

12. In particular, I understand that payments have been made to the food supplier to ensure the continuity of food services for the senior citizens who reside at McKellar Place.

13. I have had an opportunity to meet with the Interim Receiver, who advises me that the appointment of the Interim Receiver has not interfered with the quiet enjoyment of the premises by the other tenants, and that there has been no resistance to the Interim Receiver’s appointment to date.

14. Following the repayment of the $200,000, on or around November 15, 2022, we began negotiating a form of forbearance agreement with the Guarantor and SMS.

15. A copy of the draft forbearance agreement is attached hereto as **Exhibit “D”**. It was provided to SMS on November 24, 2022. It is my understanding that the Guarantor and SMS have agreed to the terms in principle, but have not yet finalized the agreement or executed same.

16. Among other terms, under the forbearance the Applicant will forbear from appointing a receiver or enforcing its rights in exchange for SMS allowing for the appointment of Grant Thornton Limited ("**GTL**") as Monitor, for a one-year term, absent a default.

17. A draft Monitor Order is attached as a schedule to the forbearance agreement for SMS and the Guarantor to review. It is identical to the order sought in this motion.

18. The BIA notice issued by the Applicant against SMS has now expired without SMS taking any steps to seek protection from its creditors or challenge the actions of the Applicant. As such, I am advised by my counsel that the Applicant is able to appoint a receiver in accordance with the provisions of the BIA. However, as set out below, we prefer to appoint a Monitor which I understand will be a less invasive option while still providing some oversight and control.

19. SMS will remain in control of its business, but will have no ability to make material expenditures in respect of the business without the prior written consent of the Monitor. The Monitor will not be a receiver and will not be in control of the business, but will have control of the banking of the business.

20. SMS also agrees in the forbearance to pay the fees incurred to date and will allow for ongoing monitoring from the Applicant and the Monitor in respect of which SMS also agrees to pay the fees. SMS also acknowledges the debt, agrees to the enforceability of the security, and waives any claims against the Interim Receiver or the Applicant.

21. In my view it is necessary to continue to have a stay of proceedings so that the arrears which were accumulated during the breakdown of the business between May, 2022 and the

date of the appointment of the Interim Receiver which were described in my Initial Affidavit, can be managed and settled over time without unduly draining the cash flow of the business.

22. I also believe that a court officer is necessary to provide certainty to the residents and other stakeholders that there will be no further misuse of the SMS's monies for purposes which do not benefit McKellar Place and the Property.

23. In particular, I remain concerned that there be certainty for the senior citizen residents of McKellar Place and that there will be no further threat to their services or meal plan as a result of any further unanticipated or inappropriate actions by SMS or the Guarantor.

24. The Applicant has loaned $150,000 to the business pursuant to a receiver's certificate (the "**Receiver's Certificate**") as contemplated in the initial application. The Applicant is prepared to lend a further $150,000 if the order sought herein is granted on the same basis, if so required.

25. The amounts advanced under the Receiver's Certificate are at the same rate and terms as the original loan made to SMS. No premium is being charged for the distress value of the loan. A copy of the receiver's certificate for the initial advance is attached hereto as **Exhibit "E"**.

26. Although the Guarantor has made some repayment, given past events I am not yet comfortable that SMS can return to control of its financial affairs without a danger of further monies being withdrawn.

27. The presence of the Collateral Mortgage on the Property still represents a material drain on the equity and the Property.

28. The Interim Receiver recommends the continuation of some form of monitoring for a period of time to allow for SMS to repair its relationship and demonstrate a good faith approach to the continuation of the business.

29. The Forbearance Agreement is not yet finalized or executed. In the event it is not completed by the date of the hearing, the Applicant will ask the court to appoint GTL as receiver for a further 45 days to avoid an abrupt end to these proceedings and to allow for continued control of the banking pending the finalization of the forbearance or further order of the Court.

30. GTL has consented to act as Monitor or Receiver if necessary.

31. I make this affidavit in support of an appointment of a further receiver or Monitor in respect of this matter and for no other improper purpose.

AFFIRMED REMOTELY BEFORE ME BY Charles Barrett at the City of Toronto, in Province of Ontario, on this 25th day of November 2022, in accordance with O.Reg. 431/20 Administering Oath or Declaration Remotely.	)	
[signature]	)	Chuck Barrett Chuck Barrett (Nov 25, 2022 14:27 EST)
A Commissioner for Taking Affidavits **Lea Nebel**	)	**Charles Barrett**

This is Exhibit "A" referred to in the Affidavit of Charles Barrett
sworn remotely on this 25th day of November 2022.

Commissioner for Taking Affidavits (or as may be)

Lea Nebel

From: Lea Nebel
To: Sothy Mashi
Bcc: Ariyana Botejue
Subject: Barrett Kudlow Capital Management Inc. Loan to SMS Property Trust Inc. - 325 Archibald Street South, Thunder Bay, Ontario
Date: November 1, 2022 8:24:46 PM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
image007.png
image009.png
image011.png
image013.png
image014.png
image015.png
image016.png
image017.png
image018.png
image019.png
image020.png

Dear SMS Property Trust Inc. and Mr. Massillamany:

Please find below the Order of the Honourable Justice Conway of today's date along with our client's application materials.

Pursuant to the Order, Grant Thornton Limited, has been appointed as interim receiver of all of the assets, undertakings and properties of SMS Property Trust Inc., effective immediately.

Please read the Order carefully as it contains important information.

Blaney McMurtry LLP 2 Queen Street East | Suite 1500
Toronto, Ontario M5C 3G5

Lea Nebel (She | Her)
Partner

lnebel@blaney.com
Ⓣ 416-593-3914 | Ⓕ 416-593-2969
Ⓦ Blaney.com

- -

You've been sent large files

Ariyana Botejue sent you large files. Download them before Tue, 08 Nov 2022 23:59 -0500.

Files

2022-11-01 - Application Record.pdf (10.9 MB)
2022-11-01 - Endorsement o... Conway.pdf (302.8 KB)
2022-11-01 - Interim Recei...issued).pdf (332.4 KB)
2022-10-31 - Memorandum of...plicant.pdf (452.1 KB)
2022-11-01 - Application Record.pdf (10.9 MB)

Download Files

This is Exhibit "B" referred to in the Affidavit of Charles Barrett
sworn remotely on this 25th day of November 2022.

Commissioner for Taking Affidavits (or as may be)

Lea Nebel

Lea Nebel

Blaney McMurtry LLP – Lawyers
2 Queen Street East, Suite 1500
Toronto, ON M5C 3G5

Thursday, November 3, 2022

Re: Barrett Kudlow Capital Management Inc. ("Lender") loan to SMS Property Trust Inc. (the"Borrower") as guaranteed by Ongrasothy Masillamany (the "Guarantor"), secured by a mortgage against 325 Archibald Street South, Thunder Bay, Ontario (the "Property")

Dear Lea,

In good faith I acknowledge the withdrawal of funds from the McKellar Place operating account of $640,144.56. Further, and in good faith I have been able to return $254,578.57. It should be noted that it has always been my goal and desire to the return the all of the funds. This is demonstrated by my return of the previously noted $254,578.57.

This leaves an outstanding balance of $385,565.56.

I am proposing we enter into discussions to resolve the above matter as quickly as possible, and to that end, and as further sign of good faith, I am prepared to deposit an initial payment of $200,000 dollars into the McKellar operating account within 10 days of the date of this letter. With the balance being returned on a mutually agreed to schedule.

This leaves the matter of the second mortgage. In error and without malice I entered into a second mortgage on McKellar Place. I propose that time be given to me to remove this debt from the property. I would require time do this as the funds needed to achieve this are significant. The timing for removing the second mortgage would again be negotiated and mutually agreed to.

I regret the course of events that have brough us to this point and I look forward to re-establishing a positive working relationship with the lender.

Sincerely,

Ongrasothy Masillamany
SMS Property Trust Inc.

This is Exhibit "C" referred to in the Affidavit of Charles Barrett
sworn remotely on this 25th day of November 2022.

Commissioner for Taking Affidavits (or as may be)

Lea Nebel

TD

Branch: 1289 MARKHAM & 14TH
7670 MARKHAM RD
MARKHAM, ON

Date: Nov 12, 2022, 02:32 PM
Ref #: 009299327 - ZNAV
Supervisor Override: ZAMI

From: Cheque Total
200,000.00

To: 1029-52***78
Deposit
Cash: 0.00 CAD
Number of Items: 2
MCKELLAR
200,000.00

Account Balance:
1029-52***78: 366,763.58

This is Exhibit "D" referred to in the Affidavit of Charles Barrett
sworn remotely on this 25th day of November 2022.

Commissioner for Taking Affidavits (or as may be)

Lea Nebel

FORBEARANCE AGREEMENT

THIS AGREEMENT made the ____ day of November, 2022

A M O N G:

SMS PROPERTY TRUST INC., a corporation incorporated pursuant to the laws of the Province of Ontario

(hereinafter referred to as the "**Borrower**")

- and -

ONGRASOTHY MASILLAMANY

(hereinafter referred to as the "**Guarantor**")

- and -

BARRETT KUDLOW CAPITAL MANAGEMENT INC.

(hereinafter referred to as the "**Lender**")

WHEREAS the Borrower is indebted to the Lender for the Indebtedness pursuant to the Commitment as set out in Article 2 below;

AND WHEREAS the Borrower has granted certain security ("**Security**") for the Indebtedness and the Guarantor has given a guarantee (the "**Guarantee**") of the Indebtedness, particulars of which Security and Guarantee are set out in Schedule "A" hereto;

AND WHEREAS the Borrower has acknowledged that it is in default of certain terms and provisions of the Commitment as defined herein;

AND WHEREAS the Lender has made demand for all amounts owing under the Commitment and the Security by demand letter to the Borrower dated October 28, 2022, and has the right to enforce any and all of the Security;

AND WHEREAS the Ontario Superior Court of Justice ruled on November 1, 2022 that is was appropriate that Grant Thornton Limited ("**GTL**") be appointed as the interim receiver of the property, assets and undertaking of the Borrower (the "**Interim Receiver**"), which Interim Receiver remains in place;

AND WHEREAS the Borrower has taken no steps to set aside or contest the appointment of the Interim Receiver;

AND WHEREAS the Borrower and the Guarantor have requested that the Lender forbear from exercising its remedies against the Security and the Guarantee and to forbear from appointing GTL as receiver of the Borrower, and the Lender has agreed to so forbear during the Forbearance Period (as that term is defined in Article 3.1 below), subject to the terms and conditions contained herein;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties agree with each other as follows:

ARTICLE 1
INTERPRETATION

1.1 Definitions. Unless otherwise specifically defined in this Agreement all capitalized terms used in this Agreement shall have the meanings ascribed to them in the Commitment. The following terms shall have the following meanings:

(a) **"Article"**, **"Section", "Subsection", "Paragraph"** or similar terms refer to the specified article, section, subsection, paragraph or other portion of this Agreement;

(b) **"Commitment"** means, collectively, the letter issued by Epireon Mortgage Capital Corporation on behalf of the Lender dated March 16, 2022, as amended by Amendments to Commitment Letter dated as of March 28, 2022 and April 13, 2022;

(c) **"Interest Rate**" has the meaning ascribed thereto in the Commitment;

(d) **"Event of Default"** has the meaning set out in Section 6.1;

(e) "**Forbearance Period"** has the meaning set forth in Section 3.1;

(f) **"Guaranteed Indebtedness"** means, the amount of the Indebtedness for which the Guarantor is liable pursuant to the Guarantee signed by him;

(g) **"Indebtedness"** has the meaning set out in Section 2.1;

(h) **"party"** or "**parties"** means any one or more of the parties referred to in this Agreement, as the context may require; and

(i) **"Property"** means the lands and premises municipally known as 325 Archibald Street South, Thunder Bay, Ontario, upon which the Borrower operates a seniors' residence called McKellar Place Seniors Living ("**McKellar Place**"); and

(j) "**Secured Assets"** means any and all assets charged by the Security.

1.2 Schedules. The following schedule is attached to and forms part of this Agreement:

Schedule "A" - Borrower's Security and Guarantee

ARTICLE 2
CREDIT FACILITIES

2.1 Indebtedness.

The Borrower and the Guarantor acknowledge that as at November 25, 2022, the Borrower is indebted to the Lender in the principal amount of $4,750,000.00 (the "**Loan**"), hereinafter referred to as the "**Indebtedness**". The Borrower acknowledges that, in addition to such principal amount, interest accrues and is owing as set out in the Commitment, and all other fees provided for under the Commitment shall be owing in accordance with the provisions of the Commitment, and that it is obligated to reimburse the Lender for its legal expenses incurred in connection with the defaults described in Section 3.3, this Agreement and the Commitment.

2.2 Interest and Costs.

The Borrower and Guarantor acknowledge that interest on the Indebtedness continues to accrue as set out in the Commitment and that said interest, as well as the Lender's costs, fees, and expenses incurred by the Lender in connection with the Indebtedness, the Security, the enforcement of the Security, the negotiation, preparation and enforcement of this Agreement, and the full amount of all legal and other professional fees incurred by the Lender in connection with the same shall be added to and are deemed to be part of the Indebtedness.

2.3 Continuation of Commitment and Security.

All of the terms and conditions of the Commitment and the Security are hereby confirmed and continued except to the extent modified by specific provisions of this Agreement. The Commitment remains in full force and effect without novation as between the parties thereto for that period of time ending on the day prior to the effective date of this Agreement and all the parties thereto retain all rights as between themselves thereunder with respect to that period of time prior to the effective date of this Agreement and the rights and obligations of the parties hereto under this Agreement commence as of the date of this Agreement. In the event of any conflict between the provisions of the Commitment, the Security, the Guarantee and this Agreement, the provisions of this Agreement will prevail.

ARTICLE 3
FORBEARANCE PERIOD

3.1 Forbearance.

The Borrower and the Guarantor hereby acknowledge and agree that this Agreement and the Forbearance Period contemplated herein shall not take effect or commence until the Court has approved the appointment of a Monitor as described in 3.2(a) below. This Agreement will not prevent the Lender from seeking the appointment of a receiver over the property, assets and undertakings of the Borrower in the event the Court determines the appointment of a Monitor is not appropriate.

Subject to the terms and conditions of this Agreement, and in reliance upon the representations, warranties and covenants of the Borrower and Guarantor contained in this Agreement, and provided that no Event of Default occurs, the Lender agrees that it will forbear from the exercise of its rights and remedies against the Borrower and the Guarantor in respect of the Indebtedness or under the Security for the period of time ("**Forbearance Period**") commencing from the date upon which this Agreement is executed and delivered by the Borrower and the Guarantor until the earlier of:

(a) November 1, 2023; or

(b) the occurrence of an Event of Default following the date hereof.

The Borrower and the Guarantor acknowledge that the Lender shall have no obligation to continue to forbear after the expiration of the Forbearance Period, and that the Indebtedness shall become due and payable on November 1, 2023.

3.2 Borrower's Obligations.

During the Forbearance Period and thereafter, the Borrower and the Guarantor agree with the Lender as follows:

(a) the Borrower consents to the Court appointing GTL as monitor, without security, of the Borrower with the powers substantially similar to those set out in the draft Order attached as Schedule "B" to this Agreement;

(b) during the Forbearance Period the Borrower will remain in possession of the Property and will be responsible for the ordinary course operation of McKellar Place, subject to the terms set out herein and in the Monitor Order, once granted by the Court;

(c) the Borrower acknowledges that the bank account for McKellar Place has been changed to "deposit only" and a new bank account (the "**Operations Account**") has been opened by GTL for the purpose of collecting receipts and paying expenses related to the Property and the operations of McKellar Place;

(d) all proceeds of the business of the Borrower including without limitation, all rent, are to be deposited into the Operations Account hereafter;

(e) GTL will monitor the Operations Account and approve all disbursements to be made from the Operations Account by the Borrower's property management staff at McKellar Place;

(f) the Guarantor will have view access only to the Operations Account;

(g) the Guarantor withdrew, or directed related parties to withdraw, net funds of approximately $400,000.00 from the McKellar Place bank account for use in matters unrelated to the business of the Borrower;

(h) the Guarantor repaid $200,000.00 to the McKellar Place bank account on November 12, 2022 and the Guarantor agrees that it will, or it will cause its related parties to pay $158,000.00 to the Operations Account to repay the remainder of the improper withdrawals by no later than February 1, 2023;

(i) the Borrower acknowledges and agrees that all legal and professional fees incurred by GTL will be paid monthly from the Operations Account;

(j) the Borrower agrees to and does hereby engage Epireon Capital Advisors Limited ("**ECAL**") to review the Operations Account, the McKellar Place operations and to liaise with GTL, and shall pay a monthly fee of $2,250.00 plus HST to ECAL, which will be deducted monthly from the Operations Account;

(k) the Borrower will ensure that there is no material deterioration to the Property;

(l) the Borrower acknowledges that GTL has borrowed $150,000.00 at the same interest rate as set out in the Commitment from the Lender during the interim receivership and has deposited that amount into the Operations Account. The Borrower authorizes GTL to borrow up to a further $150,000.00 from the Lender for the purpose of funding the operations of McKellar Place and expenses related to the Property as needed, at the same interest rate as set out in the Commitment, or at such higher rates as GTL determines is appropriate;

(m) the Borrower will not incur any obligations outside of the ordinary course with respect to the Property or the operations of McKellar Place hereafter without the express prior written consent of GTL;

(n) any proposed repair or capital improvement to the Property that exceeds $2,500.00 is to be reviewed and approved by GTL and the Lender in advance;

(o) the Borrower agrees to pay ECAL a fee of 5.0% plus HST of the value of any one specific repair/improvement totalling $15,000.00 or greater, or a number of repairs/improvements to be reviewed collectively that total $15,000.00 or greater, on account of the additional time required to review the request, quotes, and any follow up required after completion. The fee is payable to ECAL at the time of payment of the invoice for the specific repair/improvement and will be paid from the Operations Account;

(p) the Borrower agrees to obtain a discharge of the second mortgage granted in favour of Sub-Prime Mortgage Corporation which was registered against title to the Property as Instrument No. TY316337 on May 24, 2022 (the "**Second Mortgage**"), by no later than April 1, 2023;

(q) the Borrower agrees to pay a forbearance fee to the Lender of $25,000.00, which will be earned in full upon the execution of this Agreement and added to the Indebtedness;

(r) nothing herein reduces or derogates in any way from the obligation of the Borrower to pay interest on the outstanding principal amount of the Loan from time to time at the Interest Rate;

(s) the Borrower will pay the Lender's legal fees and disbursements in connection with the enforcement proceedings which have been brought to date, including without limitation those related to the appointment of the Interim Receiver to the date hereof, or in respect of any enforcement proceedings which may be brought in the future by the Lender in respect of the Commitment, the Security and this Agreement, and with respect to negotiations relating to this Agreement; and

(t) the Borrower will continue to, and will be obliged to, carry out and perform all of its other duties and obligations set out in the Commitment, including, without limitation, payment of the mortgage amount due monthly thereunder.

3.3 Existing Breaches.

The parties hereto acknowledge that the following Events of Default (as that term is defined in the Commitment) have occurred under the Commitment:

(a) the Borrower failed to pay realty taxes, harmonized sales tax, and utilities for the Property when due;

(b) the Borrower permitted the Second Mortgage to be registered against title to the Property without the prior written consent of the Lender; and

(c) the Guarantor withdrew net funds totalling approximately $400,000.00 from the McKellar Place bank account for purposes unrelated to the usual and ordinary business operations of the Borrower.

The parties hereto acknowledge that a continuation of the breaches listed in this subparagraph above will not constitute an immediate breach of this Agreement upon execution hereof or during the Forbearance Period provided that no other Events of Default occur. This acknowledgement is not otherwise to be construed to be an acquiescence or waiver on the part of the Lender of these breaches or any of them.

3.4 Section 244 Notice.

The Borrower:

(a) acknowledges receipt of a notice under section 244 of the *Bankruptcy and Insolvency Act* (Canada) from the Lender;

(b) subject to Section 3.1, consents to the immediate enforcement of the security described in the notice; and

(c) agrees that, upon the termination of the Forbearance Period, such notice shall be valid and need not be sent again by the Lender.

ARTICLE 4
ACKNOWLEDGEMENTS AND CONSENTS

4.1 Acknowledgments.

The Borrower and the Guarantor each hereby confirm and acknowledge that:

(a) the facts set out in the recitals are true;

(b) the Indebtedness is due and owing to the Lender and the Borrower has no right or claim of set-off, counterclaim, damages or any similar right or claim against the Lender in connection with the Indebtedeness;

(c) the Borrower is liable for the Indebtedness, together with all accrued interest, fees and costs that the Borrower is obligated to pay under the Commitment and the Security;

(d) the Security is in full force and effect, and constitutes legal, valid and binding obligations of the Borrower, is enforceable against the Borrower, and the Borrower hereby waives and agrees not to assert or cause to be asserted on its behalf, and is hereby estopped from asserting or causing to be asserted on its behalf, any defences or rights with respect to the legal effect of the Security or the legality, validity or binding effect of the obligations of the Borrower thereunder and the enforceability of same;

(e) except as provided for in this Agreement, the Lender (either by itself or through its employees or agents) has made no promises, nor has it taken any action or omitted to take any action which would constitute a waiver of its right to take any enforcement action in connection with the enforcement of the Security, or which would estop it from so doing and that no statement, representation, promise, act or omission by the Lender or its employees or agents shall create such a waiver or estoppel unless the Lender executes and delivers to the Borrower a written waiver of any such rights;

(f) the Borrower is in default under the Commitment;

(g) the Borrower has received a demand from the Lender dated October 28, 2022, for payment of the Indebtedness, which demand need not be made again on the Borrower;

(h) the Borrower and the Guarantor hereby waive any claim either of them may assert that the Borrower was not afforded a "reasonable notice period" as determined by case law, and hereby waive any further notice period;

(i) the Lender is fully entitled to exercise all of its rights and remedies against the Borrower and the Guarantor;

(j) the Guarantor is liable for the amount set out in the Guarantee;

(k) the Guarantee is binding upon the Guarantor and is valid and enforceable against the Guarantor in accordance with its terms; the Guarantee has not been released, waived or varied and there is no dispute respecting the liability of the Guarantor under the Guarantee on any grounds whatsoever;

(l) the Guarantor consents to the Borrower entering into this Agreement;

(m) the fifteen day period referred to in section 32 of the *Mortgages Act* (Ontario) has passed, and the forbearance agreement of the Lender set out herein shall not extend that period. Subject only to the forbearance agreement of the Lender set out herein, the Lender is entitled (among other things) to give the notice of power of sale contemplated by the *Mortgages Act* (Ontario); and

(n) the Borrower and the Guarantor have been provided with a reasonable opportunity to seek legal advice with respect to the execution and delivery of this Agreement and have either done so or have decided to execute and deliver the same to the Lender without obtaining such legal advice.

4.2 Waiver and Release.

The Borrower and the Guarantor acknowledge and agree that, to the date hereof, the conduct and actions of the Lender, GTL and ECAL in dealing with the Borrower and the Guarantor, has been fair and reasonable and they hereby waive and agree not to assert or cause to be asserted on behalf of any of them, and are hereby estopped from asserting or causing to be asserted on behalf of any of them, any defences, rights or claims on any grounds whatsoever with respect to such conduct, action and dealings, and hereby absolutely, unconditionally and irrevocably release and remise the Lender, GTL and ECAL (and their present and former affiliates, subsidiaries, divisions, predecessors, directors, officers, employees, shareholders, agents and other representatives and their successors, assigns, heirs, executors and trustees) of and from any and all demands, actions, causes of action, suits, covenants, contracts, controversies, agreements, promises, sums of money, accounts, bills, reckonings, damages and any other claims, counterclaims, defences, rights of set-off, demands and liabilities of any nature and kind whatsoever, known or unknown, both at law and in equity that the Borrower or the Guarantor (or any of their present and former officers, directors, employees, shareholders, agents, and other representatives and their successors, assigns, heirs, executors and trustees), may now or hereafter have against the Lender, GTL and ECAL.

The Borrower and the Guarantor hereby waive any and all rights they may have to assess any of the legal fees previously paid or payable by the Lender to its solicitors in connection with or in any way related to the parties hereto whether such rights of assessment arise pursuant to the Solicitors Act (Ontario) or under any other law or statute.

Further, in executing and delivering this Agreement, the Borrower and the Guarantor hereby acknowledge and agree that they are acting freely and without duress and that this release may be pleaded as a full and complete defence and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of that release and that no fact, event, circumstance, evidence or transaction which could now be asserted or which may later be discovered will affect in any manner the final, absolute and unconditional nature of this release.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES

5.1 Representations and Warranties.

The Borrower and the Guarantor represent and warrant to the Lender, and acknowledge that the Lender is relying on such representations and warranties in entering into this Agreement, as follows:

(a) the Borrower has the power and authority to enter into and perform its obligations under this Agreement and the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate actions by the Borrower; and

(b) this Agreement does not conflict with or result in the breach or violation of or constitute a default under the constating documents or by-laws of the Borrower or any judgment, commitment, agreement or any other instruments to which either of the Borrower and the Guarantor is bound, nor does it require the consent or approval of any other party.

The representations and warranties of the Borrower and the Guarantor set forth in this Agreement shall survive the execution and delivery of this Agreement and shall continue in full force and effect until repayment of the Indebtedness and any other amounts outstanding or which may become outstanding to the Lender pursuant to the Commitment or this Agreement.

ARTICLE 6
DEFAULT

6.1 Default.

Each of the following events shall constitute an event of default ("**Event of Default**") under this Agreement:

(a) if there is in the opinion of the Lender, in its reasonable discretion, any material deterioration of its security, or imminent risk of same, whether as a result of the acts or omissions of either the Borrower or the Guarantor, or of any third party or parties;

(b) if any default is made by the Borrower or the Guarantor in the performance of any of its or their obligations hereunder;

(c) if any Event of Default (as that term is defined in the Commitment) occurs (other than the existing defaults described in Section 3.3);

(d) if any person appoints a receiver or receiver and manager, or if an order is made by any court appointing a receiver or receiver and manager, of the Property or the Secured Assets or any part thereof; and

(e) if any representation, warranty or statement contained herein or any document delivered pursuant hereto is materially incorrect.

6.2 Consequence of Default.

An Event of Default hereunder shall constitute an Event of Default under the Commitment and all other security and lending arrangements between any of the Borrower, the Guarantor and the Lender.

Upon:

(a) the occurrence of an Event of Default, or

(b) the expiry of the Forbearance Period,

the Lender shall be entitled to enforce its rights and remedies under the Security without demand or notice to the Borrower or Guarantor, as the Lender deems appropriate in its sole discretion. The Borrower and the Guarantor each consent to the immediate enforcement of the Security or any part thereof by the Lender. Without limiting the generality of the preceding sentence, the Borrower and the Guarantor hereby consent to the appointment of a receiver, either privately or by court appointment, over any or all of the Property or the business of McKellar Place.

ARTICLE 7
GENERAL

7.1 Timely Performance.

It is intended by all parties hereto that the obligations in this Agreement shall be performed strictly in accordance with the provisions hereof and in a timely manner, with time being of the essence. Accordingly, should an Event of Default occur in the timely performance of obligations by the Borrower for any reason whether or not it is within its control, the Lender shall upon the occurrence of such Event of Default be entitled to rely strictly on its rights and remedies as set forth in this Agreement.

7.2 Entire Agreement.

This Agreement constitutes the entire Agreement between the Lender, the Guarantor and the Borrower with respect to the forbearance of the Lender, and supersedes all prior letters, agreements or discussions between the Lender and the Borrower or the Guarantor, whether written or oral, with respect to that subject.

7.3 Severability.

If any provision of this Agreement is found by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby and shall remain valid and enforceable.

7.4 No Waiver.

None of the covenants and agreements of the Lender in this Agreement, nor the performance thereof at any time, will constitute, or be deemed or implied to be, a waiver by the Lender of any default, either hereunder or under any other agreement with the Borrower or the Guarantor that has occurred to the date hereof or any other subsequent default by the Borrower or the Guarantor. The Lender may waive any Event of Default in its sole discretion but no such waiver shall constitute a waiver of any other or subsequent Event of Default and any such waiver shall be binding on the Lender only if given in writing.

7.5 Notice.

Any notice required or permitted to be given hereunder or under the Commitment or any of the Security shall be deemed to have been given and delivered if given by email at the following addresses:

(i) In the case of the Borrower or the Guarantor,
Ongrasothy Masillamany – sothynath@gmail.com

(ii) In the case of the Lender,
Charles Barrett - chuck@epireon.com

(iii) With a courtesy copy to counsel to the Lender,
Blaney McMurtry LLP, Lea Nebel – LNebel@blaney.com

7.6 Successors and Assigns.

This Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns. This Agreement shall not be assigned by the Borrower or the Guarantor without the Lender's prior written consent.

7.7 Governing Law.

The Agreement, the Commitment and the Security (including the Guarantee) shall be governed by the laws of the Province of Ontario and the laws of Canada applicable herein and the parties hereto hereby agree to submit to the jurisdiction of the Courts of the Province of Ontario in respect to any dispute that may arise in respect to this Agreement, the Commitment and the Security (including the Guarantee).

7.8 Counterparts and Electronic Execution.

This Agreement may be executed by electronically and in one or more counterparts, each of which will constitute an original and binding agreement as and when so executed. This Agreement or counterparts hereof may be executed by electronic transmission, and the parties adopt any signatures provided or received by electronic transmission as original signatures of the applicable party or parties.

IN WITNESS WHEREOF the parties hereto have duly executed this Agreement with effect as of the date first written above.

SMS PROPERTY TRUST INC.

Per: ____________________________
Name: Ongrasothy Masillamany
Title: President

I have authority to bind the Corporation.

________________________	________________________
Witness Name:	**ONGRASOTHY MASILLAMANY**

BARRETT KUDLOW CAPITAL MANAGEMENT INC.

Per: ____________________________
Name: Charles Barrett
Title: President

Per: ____________________________
Name: Gary Kudlow
Title: Vice-President

We have authority to bind the Corporation.

<u>SCHEDULE "A"</u>

Security and Guarantee

Security executed by the Borrower:

(i) a Charge/Mortgage granted by the Borrower in favour of the Lender registered against title to the Property on May 19, 2022 in the Land Titles Division of the Thunder Bay Land Registry Office (No. 55) as Instrument No. TY316236;

(ii) a General Assignment of Rents & Leases executed by the Borrower in favour of the Lender dated May 19, 2022 and A Notice of Assignment of Rents – General registered against title to the Property on May 19, 2022 in the Land Titles Division of the Thunder Bay Land Registry Office (No. 55) as Instrument No. TY316237; and

(iii) a General Security Agreement executed by the Borrower in favour of the Lender on April 25, 2022.

Guarantor:

(i) a Guarantee and Postponement of Claim effective April 25, 2022 executed by Ongrasothy Masillmany in favour of the Lender.

This is Exhibit "E" referred to in the Affidavit of Charles Barrett
sworn remotely on this 25th day of November 2022.

Commissioner for Taking Affidavits (or as may be)

Lea Nebel

INTERIM RECEIVER CERTIFICATE

CERTIFICATE NO. 1

AMOUNT $150,000

1. THIS IS TO CERTIFY that **Grant Thornton Limited**, the receiver (the "**Interim Receiver**") of the assets, undertakings and properties of **SMS Property Trust Inc.** (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 1st day of November, 2022 (the "**Order**") made in an action having Court file number CV-22-00689565-00-CL, has received as such Interim Receiver from the holder of this certificate (the "**Lender**") the principal sum of $150,000, being part of the total principal sum of $150,000 which the Interim Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the 1st day of each month after the date hereof at a notional rate per annum equal to the rate of 9.5 per cent.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Interim Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Interim Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

1. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

2. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Interim Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

3. The charge securing this certificate shall operate so as to permit the Interim Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

4. The Interim Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the 25th day of November, 2022.

Grant Thornton Limited, solely in its capacity as Interim Receiver of the Property, and not in its personal capacity

Per: ______________________________

Name: Bruce Bando
Title: Vice President

Court File No. CV-22-00689565-00CL

BARRETT KUDLOW CAPITAL MANAGEMENT INC. and **SMS PROPERTY TRUST INC.**

Applicant | Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF CHARLES BARRETT

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON, M5C 3G5

David T. Ullmann (LSO # 42357I)
Tel: (416) 596-4289
Email: DUllmann@blaney.com

Lea Nebel (LSO #45484C)
Tel: (416) 593-3914
Email: LNebel@blaney.com

Counsel for the Applicant

TAB 3

Court File No. CV-22-00689565-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

B E T W E E N:

BARRETT KUDLOW CAPITAL MANAGEMENT INC.

Applicant

- and -

SMS PROPERTY TRUST INC.

Respondent

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

AFFIDAVIT OF CHARLES BARRETT
(Appointment of Receiver)

I, **CHARLES BARRETT**, of the City Toronto, in the Province of Ontario, **MAKE OATH AND SAY**:

1. I am President of the Applicant, Barrett Kudlow Capital Management Inc. ("**BKCM**" or the "**Applicant**" hereafter) in this matter and as such have personal knowledge of the matters set out herein, save and except where I rely on information and belief, in which case I identify the source of that information and verily believe it to be true.

2. I swear this affidavit in support of an application by BKCM to appoint a receiver over the property, assets and undertaking of the Respondent and for no other improper purpose.

3. The Respondent, SMS Property Trust Inc. (hereafter, the “**Respondent**”, “**SMS**”, or the “**Borrower**”), owns and operates a seniors’ residence in Thunder Bay, Ontario, known as McKellar Place Seniors Living (“**McKellar Place**”) which provides accommodations to in excess of 100 senior citizens.

4. As further set out herein, the Respondent is in default of its security and lending arrangements with the Applicant and has also removed substantial funds from the operating account of the business, jeopardizing the operation of the facility, and the security of the residents.

5. The Respondent has been notified of the default and has not provided a reasonable explanation or returned the missing funds. Demand was made for the debt and a notice under section 244 of the *Bankruptcy and Insolvency Act* has been sent. The debt has not been repaid.

6. To the best of my knowledge, as will be further set out herein, the electrical bills for the premises are in arrears in excess of $100,000, the water bills are in arrears, realty taxes are in arrears, there are essentially no funds in the operating account to pay payroll and there is not sufficient funds in the operating account to fund the ongoing expenses including food costs associated with the provision of daily meals to the over 100 elderly residents of McKellar Place.

7. I am shocked that it has only been 5 months since the Respondent acquired this property and business, and it has deteriorated this quickly.

8. Rent, being the primary revenue source for McKellar Place, is due on November 1, 2022. It is necessary to appoint a receiver immediately to ensure that rent is properly collected,

services are maintained, confidence is provided to the residents, and to ensure that further funds are not removed and that the November rent is properly applied to operations.

9. Even with the collection of the November rent, it is likely the case that the Applicant will have to advance further funds to the Receiver to stabilize operations, which BKCM is only prepared to do once a receiver is appointed.

Background

10. SMS is a corporation incorporated in Ontario with its registered place of business at 351 Elson Street, Markham, Ontario (it is actually 315 Elson Street). SMS is one of several companies owned or controlled by Ongrasothy Masillamany. Mr. Masillamany (also referred to as the "**Guarantor**" hereafter) has guaranteed the debt as further set out herein and is the sole officer and director of SMS. The company was incorporated on April 12, 2022. A corporate profile report for SMS dated October 25, 2022 is attached hereto as **Exhibit "A".**

11. SMS owns and operates McKellar Place in Thunder Bay, Ontario. It is situated on the lands municipally described as 325 Archibald Street South, Thunder Bay (the "**Property**").

12. The operations of the business are maintained through a staff of 22 employees of SMS.

13. McKellar Place contains 110 residential units, along with certain common areas and dining areas in which a meal plan is administered to the residents by SMS. Attached hereto as **Exhibit "B"** are portions of the website describing the Property and its senior focused amenities.

14. This independent seniors' facility is not a licenced retirement, nursing home or care facility. No medical services are provided by SMS to the residents.

15. To my knowledge, there are at least three commercial tenants at the Property. One is a nurse practitioner clinic with 8 resident nurses known as "Lakehead Nurse Practitioner-Led Clinic", an unrelated entity, which provides services to some of the residents and to the greater Thunder Bay community. Another is Brain Injury Services of Northern Ontario (BISNO) which is a non-profit charitable organization providing rehabilitation and support services within the community to individuals living with the effects of an acquired brain injury. The third is Dilico Anishinabek Family Care which provides a range of services for the Anishinabek people including cultural, mental health, addictions, child welfare and health services.

16. BKCM is a privately held corporation in the business of making loans secured by real estate security. Acting for its own account, and in partnership with other lending entities, BKCM underwrites and funds loans in amounts of $500,000 to $10.0 million per transaction. BKCM's head office is located at 60 St. Clair Avenue East, Suite 1004, Toronto, Ontario.

17. I first became involved with the Property in around March, 2016 when another entity called Epireon Capital Limited, of which I am a director, along with Electrical Workers, Local Union 353 Non-Profit Centre (hereinafter collectively, "**Epireon**") lent $5,250,000 to the previous owner, McKellar Place Inc.

18. McKellar Place Inc. is an arms length entity not involved in these proceedings.

19. In or around September, 2017, McKellar Place Inc. defaulted under its security and lending arrangements with Epireon. However, unlike SMS, McKellar Place Inc. was cooperative and communicative and entered into a forbearance agreement with Epireon.

20. Under that forbearance agreement Epireon provided management services to McKellar Place Inc. and became very familiar with its operations. We charged a management default fee for those services.

21. Ultimately McKellar Place Inc. was unable to honour its security and lending arrangements with Epireon and Epireon sold the Property by power of sale to SMS for $8,000,000 in May, 2022.

22. It is my understanding that SMS also acquired the business of McKellar Place Inc. at or around that time.

23. To the best of our knowledge, SMS has no relationship to the previous owner.

24. A copy of the commitment letter between the parties dated March 16, 2022 is attached hereto as **Exhibit "C"** (the "**Commitment Letter**"). In accordance with the Commitment Letter, BKCM lent SMS $4,750,000 to assist with the acquisition of the Property. As set out therein, by subsequent amendments, the borrower was ultimately changed to SMS, (which was apparently incorporated at that time), before the loan was advanced.

25. As a component of the lending transaction, BKCM required the Borrower to provide a mortgage (the "**Charge**") against the Property in the full amount of the loan. The Commitment Letter also required the delivery of a general security agreement (the "**GSA**"), an assignment of rents, a guarantee from the Guarantor and other security. A copy of the Charge, the Assignment of Rents, the Guarantee and the GSA are attached hereto as **Exhibit "D"**. The other security set out in the Commitment Letter can be provided to the court at the hearing of this matter if required.

26. Attached hereto as **Exhibit "E"** is a parcel abstract for the Property confirming that the Charge and the Assignment of Rents are registered on title and registered in first priority.

27. Attached hereto as **Exhibit "F"** is a copy of a PPSA Search against the Borrower demonstrating that the GSA has been registered under the PPSA, that it is the only registration, and that it is registered against inventory, equipment, accounts and other.

28. The Commitment Letter requires the borrower to make equal monthly payments of $37,604.17 each, which is for interest only. This payment is also reflected in the Charge. The term of the loan is one year with a balance due date of May 1, 2024.

29. The Respondent has made all interest payments due under the Commitment Letter or the Charge since May, but payment for September was deposited on October 3, 2022 and was returned NSF on October 6, 2022. A replacement cheque was deposited on October 12, 2022. There has been no repayment of principal and the loan remains outstanding in full.

30. Among the terms of the Charge, in addition to the payment of interest, the Respondent was required to pay taxes, including realty and HST, and operating expenses including but not limited to repair and maintenance, utilities, insurance and cleaning services for the Property.

31. In my professional opinion as a real estate lender, in order for the Property to have a value that supports the loans made to the Property, it must house a successful operating seniors' residence. To satisfy ourselves that the business would operate properly in order to protect our collateral, we required SMS to enter into an Operations Oversight Agreement to permit the Applicant to receive various information relating to the ongoing operation of the

business. A copy of the Operations Oversight Agreement (the "**OOA**") dated April 25, 2022 is attached hereto as **Exhibit "G"**.

32. In accordance with the OOA, SMS was required, among other things:

    a. To provide any information requested regarding the financial position of the Borrower within 5 business days of a written request;

    b. To cooperate fully with the Applicant or its agents;

    c. To deposit all revenues into a single bank account for the benefit of the business (the "**Operations Account**"); and

    d. To only apply funds in the Operations Account for purposes directly related to the business, including payment of loan, costs and expenses.

33. The OOA also contained a cross default provision which confirmed that a default under the OOA constitutes a default under all the security held by the Applicant, including the GSA and the Charge, entitling the Applicant, at its option, to exercise all of its rights and remedies at law or equity, under the Security.

34. The GSA, the Commitment Letter, the Assignment of Rents and the Charge expressly provide that the remedies available to the Applicant in the event of default include the appointment of a receiver.

Events of Default and Need for Receiver

35. Although SMS has made payments to BKCM of the amounts due under the Charge when due since May, in early October, we became aware of several irregularities with respect to the operation of the Property which violated the terms of the security and lending arrangements between SMS and the Applicant.

36. I contacted Stacey Bradica on October 12, 2022, the bookkeeper of SMS (whom I had known when she worked with McKellar Place Inc. and assisted us during the period when Epireon was assisting with the management of the Property) to enquire about the late interest payment. At that point, I was advised by the bookkeeper:

    a. that HST was not being remitted when due and was outstanding in the amount of $15,000.00, and

    b. that the electricity bills for the Property from the utility known as "Synergy North" were not being paid. The accumulated arears totalled $138,742.48. Attached hereto as **Exhibit "H"** are the invoices from Synergy North evidencing the amount in arrears.

37. Defaults of this kind were very concerning to me given that the Respondent had only just taken over the Property in May of this year.

38. I also became aware on October 26th, 2022, again with the assistance of the bookkeeper that:

    a. Realty taxes were outstanding in the amount of $66,834.87 and

    b. Water charges were outstanding in the amount of $21,806.93.

    Copies of the Tax Arrears/Taxes Current Certificate and Water Certificate for the Property as of October 19, 2022, are attached hereto as **Exhibit "I"**.

39. Even more concerning, it was brought to our attention that funds for the Property which were, in accordance with the OOA, to be deposited in the Operations Account and used only for the benefit of the Property, were being and had been extracted from the Property and used for other purposes.

40. Upon further review, the bookeeper advised me that in excess of $400,000.00 had been withdrawn from the Operations Account leaving a balance of less than $10,000.00. Attached hereto as **Exhibit "J"** is a General Ledger Report identifying the withdrawals prepared by the bookkeeper.

41. As noted above, I knew the bookkeeper of SMS from the period during which Epireon was involved in the management of the Property during the defaults by McKellar Place Inc. and found her to be a competent employee. I believe she provided this information to me out of genuine concern about the health of the business, the suspicious nature of the withdrawals, and out of concern for her own employment should the business collapse for want of funds.

42. It seemed clear to me that SMS was failing to make regular payments when due and was removing from SMS the funds it would require in order to make those payments and using the funds for other non-Property related purposes.

43. Upon becoming aware of these serious issues, we engaged our counsel, Blaney McMurtry LLP, to send a default letter to SMS. A copy of the default letter (the "**Default Letter**"), dated October 18, 2022, is attached hereto as **Exhibit "K"**. The letter highlighted each of the above defaults (excluding the Realty Tax and Water Charges which were discovered later).

44. In accordance with the terms of the OOA, the Default Letter required the Respondent to provide proof that it had paid the HST arrears and unpaid electricity invoices by October 25th and to provide explanations for the financial irregularities by October 26th. However, as of the date of this affidavit, the Respondent has not provided an explanation for the withdrawals or returned the missing funds to the Operations Account. The Respondent has

not paid the outstanding electricity bills, although it claims to have submitted a couple of post-dated cheques to Synergy North.

45. The only communications we have received from SMS are the communications set out in two emails attached hereto as **Exhibit "L"**.

46. The first email is incomprehensible.

47. The second email, delivered on October 26th, 2022 attaches cheques payable to Synergy North in the collective amount of $77,863.27. The cheques are not certified and they do not come from SMS. The cheques are written from Maarso Group Inc. which was the entity which entered into the Commitment Letter before it was taken over by SMS. I believe it to be some kind of related entity owned or controlled by the Guarantor.

48. These cheques, to the extent they clear, will not pay the electricity bill in full. The Guarantor notes in a hand-written note at Exhibit "L" that there is some other deposit for the balance of the bill and he is "getting a letter from bank".

49. The response at Exhibit "L" also advises that $15,804.22 was paid, which was identified as payment for HST on October 25, 2022 (these funds were actually used to pay source deductions). It is unknown if this is the entire amount owing, but it is noted that the payment rendered the Operations Account into overdraft by approximately $3,500.

50. The response does not address the money which has been taken out of the Operations Account. Those funds are still missing from the Operations Account.

51. It is our understanding that the business has regular monthly operating expenses which need to be paid. These include employee salaries in the amount of $32,000, water, heat and light expenses in the amount of $34,000, and food service expenses in the amount of $21,500. There are no funds in the Operations Account to pay these expenses.

52. In addition, upon reviewing the parcel abstract for the Property it was brought to our attention that, in direct contravention of the terms of the Commitment Letter, and in direct contravention to personal assurances which the Guarantor gave to me at the time the loan was made to SMS, SMS apparently sought and received a mortgage from a third-party called Sub-Prime Mortgage Corporation which it registered against the Property, in the amount of $3,350,000 on May 24, 2022. A copy of the mortgage is attached hereto as **Exhibit "M"** (the "**Collateral Mortgage**").

53. We note that the Collateral Mortgage is a collateral mortgage registered on the Property and five other properties presumably either owned by the Guarantor or his companies, or for which a personal guarantee has been given. I do not know how much is owing under the Collateral Mortgage.

54. Remembering that the purchase price paid in May, 2022 for the Property was $8,000,000, the total value of the mortgages on the Property now exceed the purchase price by $100,000.

55. In investigating this further, I was advised by counsel for Sub-Prime Mortgage Corporation (Terry Walman) that the Guarantor is having financial difficulties with the other properties listed on the Collateral Mortgage, and that those properties might be subject to other enforcement proceedings as he has received Notices of Sale.

56. We have completely lost faith in SMS and the Guarantor. In fact, I am concerned that he may have entered into the transaction to acquire the Property in order to be able to syphon

cash from the Property for his other business ventures. The fact that he is now attempting to pay debts of this Property through an account held in the name of another company, appears to suggest that funds from SMS have ended up in that other entity.

57. In light of the foregoing, on October 28, 2022 the Applicant made demand for repayment of the debt, in the amount of $4,750,000 and issued a notice of intention to enforce security under the BIA (the "**244 Notice**"). Attached hereto as **Exhibit "N"** is a copy of the demand letter and 244 Notice sent by our counsel to SMS.

58. Although the 244 Notice indicates, in accordance with what our counsel has advised is set out in section 244 of the BIA, that the debtor has 10 days to comply, the demand letter clarifies that we may seek recourse to the Courts on or before the expiry of that 10-day period, with or without notice to SMS, if we determine it appropriate to do so.

Urgency and Payment of Rent

59. The principal revenue of the business is the collection of rent from the residents and tenants. The rent is due on November 1st. I understand that the rent is collected and processed within ten days of that date, with some of the rent arriving as soon as November 1st by cheques, and other rent is paid through electronic fund transfers taking up to ten days to clear.

60. The total monthly rent for the Property is approximately $227,000.

61. Given the facts set out above, I am deeply concerned that if further rental funds are paid into the Operations Account prior to the appointment of a receiver, they will similarly be removed for purposes beyond the purposes allowed under the OOA.

62. Indeed, I am concerned that if notice of this application is provided to SMS or the Guarantor he may take other steps to stop payments he has made, collect rent or otherwise prefer the interests of others over those of McKellar Place.

63. I am also concerned that basic services to the residents may be jeopardized by failure to make payments, and that the lack of payment for food services or staffing could jeopardize the food security and safety of the residents, particularly with the imminent onset of the Northern Ontario winter.

64. The residents of the Property are seniors who require those facilities to be reliably available at all times, especially at this time of year. It is my understanding that while the residents have limited kitchens in most units, almost all of the residents rely on the meal plan for their meals.

65. In my view, the appointment of a receiver is not only immediately necessary to ensure that funds are properly collected and monitored, but also to give confidence to the residents that the Property will continue to be properly managed until such time has these defaults can be resolved.

66. I understand, from discussions with my counsel, that a receiver may also have or be given powers to investigate or recover those funds which have been taken from the Operations Account.

67. I have contacted Grant Thornton LLP to act as receiver in this matter. I am advised by Jon Krieger that Grant Thornton is well known to this Court, is a licenced trustee, and has acted in multiple retirement community receiverships in the past.

68. They have consented to act as receiver in order to take control of the operations. In addition, I am advised that the receiver, if the order sought is granted, will be able to borrow up to $300,000 and to give first priority security for said borrowings once appointed.

69. BKCM is prepared to immediately advance Three Hundred Thousand Dollars ($300,000) to the receiver at market rates to provide it with capital to stabilize the situation. These funds will be sufficient to pay the entire electrical bill, the outstanding realty taxes and water bill, plus one month of salary, one month of anticipated food service costs and one month payment of the Charge. Those funds, plus the rent to be collected on November 1, should be sufficient to ensure fiscal stability for the Property at least long enough to allow the receiver to then report to the court on next steps.

70. In order to keep costs down and minimize the involvement of the receiver in the day to day operations, and to capitalize on our relationship with the existing staff of McKellar Place, we are prepared to again be actively involved in the operation of the business should the receiver determine it appropriate and helpful that we do so. In that event, we would charge the same default management fees as we charged to McKellar Place Inc. when we performed similar functions from 2018-2022 or such other amount as the Receiver determined appropriate.

71. We also have asked Grant Thornton to engage our counsel, Blaney McMurtry LLP, as its counsel, again to keep costs down.

72. At this time, we do not necessarily require that the Receiver be given the power to sell the Property. It is not currently our intention to ask the Receiver to market the Property for

sale. If we determine that it is impossible for the Borrower to regain our confidence or otherwise operate the Property, we will encourage the Receiver to return to Court at some point to seek additional powers, so the Property can be put into safer hands.

AFFIRMED REMOTELY BEFORE ME BY Charles Barrett at the City of Toronto, in Province of Ontario, on this 28th day of October 2022, in accordance with O.Reg. 431/20 Administering Oath or Declaration Remotely.

Chuck Barrett
Chuck Barrett (Oct 28, 2022 16:00 EDT)

A Commissioner for Taking Affidavits
Lea Nebel

Charles (Chuck) Barrett

Court File No. CV-22-00689565-00CL

EPIREON MORTGAGE CAPITAL CORPORATION and **SMS PROPERTY TRUST INC.**
Applicant | Respondent

ONTARIO

SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

AFFIDAVIT OF CHUCK BARRETT
(Appointment of Receiver)

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON, M5C 3G5

David T. Ullmann (LSO # 42357I)
Tel: (416) 596-4289
Email: DUllmann@blaney.com

Lea Nebel (LSO #45484C)
Tel: (416) 593-3914
Email: LNebel@blaney.com

Counsel for the Applicant

TAB 4

Court File No. CV-22-00689565-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	WEDNESDAY, THE 30th
	)	
JUSTICE OSBORNE	)	DAY OF NOVEMBER, 2022

B E T W E E N:

BARRETT KUDLOW CAPITAL MANAGEMENT INC.

Applicant

- and -

SMS PROPERTY TRUST INC.

Respondent

APPLICATION UNDER SUBSECTION 47 (1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED

DISCHARGE ORDER

THIS MOTION, made by Barrett Kudlow Capital Management Inc. ("**BKCM**" or the "**Applicant**"), for an order:

1. Approving the activities of the Court-appointed interim receiver (the "**Interim Receiver**"), Grant Thornton Limited ("**GTL**") without security, of all assets, undertakings, and properties of SMS Property Trust Inc. (the "**Debtor**" or "**SMS**") as set out in the report of the Interim Receiver dated November [insert date] (the "**First Report**");

2. Approving the fees and disbursements of the Interim Receiver;

3. Discharging GTL as Interim Receiver without security, of all assets, undertakings, and properties of the Debtor; and

4. Releasing GTL from any and all liability, as set out in paragraph 5 of this Order.

was heard this day by Zoom conference at 330 University Avenue, Toronto, Ontario.

ON READING the First Report, the affidavit of the Interim Receiver as to fees (the "**Fee Affidavit**"), the Affidavit of Charles Barrett affirmed November 24, 2022, and the exhibits thereto, and the affidavit of Charles Barrett affirmed October 28 ,2022, and exhibits thereto (collectively, the "**Barrett Affidavits**"), and on hearing submissions from the Interim Receiver, and on hearing submissions of counsel for the Applicant, and such other counsel as were present, no one appearing for any other stakeholder although duly served as appears from the affidavit of service of Ariyana Botejue sworn November 25, 2022, filed, and being advised of the consent of the Debtor, and on reading the consent of GLT to act as Monitor:

SERVICE

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

APPROVAL OF ACTIVITIES

2. **THIS COURT ORDERS** that the activities of the Interim Receiver, as set out in the First Report, are hereby approved.

3. **THIS COURT ORDERS** that the fees and disbursements of the Interim Receiver and its counsel, as set out in the First Report and the Fee Affidavits, are hereby approved.

4. **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved, the Interim Receiver shall transfer the remaining funds in its hands to itself in its capacity as Monitor.

DISCHARGE

5. **THIS COURT ORDERS** that upon transfer of the amounts set out in paragraph 4 hereof the Interim Receiver shall be discharged as Interim Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Interim Receiver shall remain Interim Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Interim Receiver shall continue to have the benefit of the provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of GTL in its capacity as Interim Receiver.

6. **THIS COURT ORDERS AND DECLARES** that GTL is hereby released and discharged from any and all liability that GTL now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of GTL while acting in its capacity as Interim Receiver herein, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part.

Without limiting the generality of the foregoing, GTL is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part.

Signature

Court File No. CV-22-00689565-00CL

BARRETT KUDLOW CAPITAL MANAGEMENT INC. and **SMS PROPERTY TRUST INC.**

Applicant Respondent

Email Address of Recipients: See Service List

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

Proceeding commenced at Toronto

DISCHARGE ORDER

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON, M5C 3G5

David T. Ullmann (LSO # 42357I)
Tel: (416) 596-4289
Email: DUllmann@blaney.com

Lea Nebel (LSO #45484C)
Tel: (416) 593-3914
Email: LNebel@blaney.com

Counsel for the Applicant

TAB 5

~~Revised: May 11, 2010~~

Court File No. ~~—~~CV-22-00689565-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	~~)~~	~~WEEKDAY~~ WEDNESDAY, THE ~~#~~
~~JUSTICE~~	~~)~~	~~DAY OF MONTH, 20YR~~30th
	)	
	)	
JUSTICE OSBORNE	)	DAY OF NOVEMBER, 2022

B E T W E E N:

~~**PLAINTIFF**~~

~~Plaintiff~~

BARRETT KUDLOW CAPITAL MANAGEMENT INC.

Applicant

- and ~~—~~-

~~**DEFENDANT**~~

~~Defendant~~

SMS PROPERTY TRUST INC.

Respondent

APPLICATION UNDER SUBSECTION 47 (1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED

- -

THIS MOTION, made by ~~[RECEIVER'S NAME] in its capacity as the Court-appointed receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor"~~Barrett Kudlow Capital Management Inc. (“**BKCM**” or the “**Applicant**”), for an order:

1. ~~approving~~Approving the activities of the ~~Receiver~~Court-appointed interim receiver (the “**Interim Receiver**”), Grant Thornton Limited (“**GTL**”) without security, of all assets, undertakings, and properties of SMS Property Trust Inc. (the “**Debtor**” or “**SMS**”) as set out in the report of the Interim Receiver dated ~~[DATE~~November [insert date] (the ~~"~~“**First Report**~~"~~”);

2. ~~approving~~Approving the fees and disbursements of the Interim Receiver ~~and its counsel~~;

~~3. approving the distribution of the remaining proceeds available in the estate of the Debtor; **[and]**~~

3. ~~4. discharging [RECEIVER'S NAME]~~Discharging GTL as Interim Receiver ~~of the undertaking, property and~~without security, of all assets, undertakings, and properties of the Debtor~~[~~; and

4. ~~5. **releasing [RECEIVER'S NAME]**~~Releasing GTL from any and all liability, as set out in paragraph 5 of this Order~~]~~[1]~~;~~.

was heard this day by Zoom conference at 330 University Avenue, Toronto, Ontario.

ON READING the First Report, the ~~affidavits~~affidavit of the Interim Receiver ~~and its counsel~~ as to fees (the ~~"~~“**Fee Affidavit**”), the Affidavit of Charles Barrett affirmed November

~~[1] If this relief is being sought, stakeholders should be specifically advised, and given ample notice. See also Note 4, below.~~

24, 2022, and the exhibits thereto, and the affidavit of Charles Barrett affirmed October 28 ,2022, and exhibits thereto (collectively, the "**Barrett Affidavits**~~"~~"), and on hearing ~~the~~submissions from the Interim Receiver, and on hearing submissions of counsel for the ~~Receiver~~Applicant, and such other counsel as were present, no one ~~else~~ appearing for any other stakeholder although duly served as ~~evidenced by~~appears from the ~~Affidavit~~affidavit of ~~[NAME]~~service of Ariyana Botejue sworn ~~[DATE]~~November 25, 2022, filed[2]~~;~~ , and being advised of the consent of the Debtor, and on reading the consent of GLT to act as Monitor:

SERVICE

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

[2] ~~This model order assumes that the time for service does not need to be abridged.~~

APPROVAL OF ACTIVITIES

2. ~~1.~~ **THIS COURT ORDERS** that the activities of the Interim Receiver, as set out in the First Report, are hereby approved.

3. ~~2.~~ **THIS COURT ORDERS** that the fees and disbursements of the Interim Receiver and its counsel, as set out in the First Report and the Fee Affidavits, are hereby approved.

4. ~~3.~~ **THIS COURT ORDERS** that, after payment of the fees and disbursements herein approved, the Interim Receiver shall ~~pay~~transfer the ~~monies~~ remaining funds in its hands to ~~[NAME OF PARTY]~~[3]itself in its capacity as Monitor.

DISCHARGE

5. ~~4.~~ **THIS COURT ORDERS** that upon ~~payment~~transfer of the amounts set out in paragraph ~~3~~4 hereof ~~[and upon~~ the ~~Receiver filing a certificate certifying that it has completed the other activities described in the Report], the~~Interim Receiver shall be discharged as Interim Receiver of the undertaking, property and assets of the Debtor, provided however that notwithstanding its discharge herein (a) the Interim Receiver shall remain Interim Receiver for the performance of such incidental duties as may be required to complete the administration of the receivership herein, and (b) the Interim Receiver shall continue to have the benefit of the

[3] ~~This model order assumes that the material filed supports a distribution to a specific secured creditor or other party.~~

- -

provisions of all Orders made in this proceeding, including all approvals, protections and stays of proceedings in favour of ~~[RECEIVER'S NAME]~~GTL in its capacity as Interim Receiver.

6. ~~5. [~~**THIS COURT ORDERS AND DECLARES** that **~~[RECEIVER'S NAME]~~**GTL is hereby released and discharged from any and all liability that **~~[RECEIVER'S NAME]~~**GTL now has or may hereafter have by reason of, or in any way arising out of, the acts or omissions of **~~[RECEIVER'S NAME]~~**GTL while acting in its capacity as Interim Receiver herein, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part. Without limiting the generality of the foregoing, **~~[RECEIVER'S NAME]~~**GTL is hereby forever released and discharged from any and all liability relating to matters that were raised, or which could have been raised, in the within receivership proceedings, save and except for any gross negligence or wilful misconduct on the Interim Receiver's part.~~]~~[4]

Signature

~~[4] The model order subcommittee was divided as to whether a general release might be appropriate. On the one hand, the Receiver has presumably reported its activities to the Court, and presumably the reported activities have been approved in prior Orders. Moreover, the Order that appointed the Receiver likely has protections in favour of the Receiver. These factors tend to indicate that a general release of the Receiver is not necessary. On the other hand, the Receiver has acted only in a representative capacity, as the Court's officer, so the Court may find that it is appropriate to insulate the Receiver from all liability, by way of a general release. Some members of the subcommittee felt that, absent a general release, Receivers might hold back funds and/or wish to conduct a claims bar process, which would unnecessarily add time and cost to the receivership. The general release language has been added to this form of model order as an option only, to be considered by the presiding Judge in each specific case. See also Note 1, above.~~

Court File No. CV-22-00689565-00CL

BARRETT KUDLOW CAPITAL MANAGEMENT INC. and **SMS PROPERTY TRUST INC.**
Applicant Respondent

Email Address of Recipients: See Service List

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

DISCHARGE ORDER

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON, M5C 3G5

David T. Ullmann (LSO # 42357I)
Tel: (416) 596-4289
Email: DUllmann@blaney.com

Lea Nebel (LSO #45484C)
Tel: (416) 593-3914
Email: LNebel@blaney.com

Counsel for the Applicant

TAB 6

Court File No. CV-22-00689565-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE	)	TUESDAY, THE 30th
	)	
JUSTICE OSBORNE	)	DAY OF NOVEMBER, 2022

B E T W E E N:

BARRETT KUDLOW CAPITAL MANAGEMENT INC.

Applicant

- and -

SMS PROPERTY TRUST INC.

Respondent

APPLICATION UNDER SUBSECTION 47 (1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, C. B-3, AS AMENDED

ORDER
(Appointing Monitor)

THIS MOTION, made by Barrett Kudlow Capital Management Inc. ("**BKCM**" or the "**Applicant**") for an Order pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing Grant Thornton Limited ("**GTL**") as a monitor (in such capacity, the "**Monitor**") without security, of SMS Property Trust Inc. (the "**Debtor**" or "**SMS**"), was heard this day via Zoom videoconference because of the Covid-19 pandemic.

ON READING the affidavit of Charles Barrett sworn November 24, 2022 and the exhibits thereto, and the affidavit of Charles Barrett sworn October 28, 2022 (collectively, the "**Barrett Affidavits**") and the exhibits thereto, and on hearing the submissions of counsel for the Applicant, the Interim Receiver and such other counsel as were present, no one appearing for any other stakeholder although duly served as appears from the affidavit of service of Ariyana Botejue sworn Nov 24, 2022, and being advised of the consent of the Debtor and on reading the consent of GLT to act as the Monitor,

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 101 of the CJA, GTL is hereby appointed Monitor, without security, of the Debtor with the powers, rights and duties further set out herein. This Order and the appointment of the Monitor does not constitute a finding by this Court that the Debtor is insolvent.

3. **THIS COURT ORDERS AND DECLARES** that:

(a) Except as expressly set out herein with respect to the banking and deposited funds therein of the Debtor, the Monitor shall not take possession or control, nor shall it be deemed to have taken possession or control, of the Debtor's business or the assets, property or undertaking of the Debtor (the "**Property**"), and that the Debtor shall retain all operational control of their Property, business and operations;

(b) the Monitor shall not be and shall not be deemed to be a receiver for purposes of subsection 243(1) of the *Bankruptcy and Insolvency Act* (the "**BIA**") or under any other statute;

(c) the Monitor shall have none of the obligations of a receiver under Part XI of the BIA, other than section 247, and for greater certainty it shall not send notice of its appointment or this order to the Superintendent in Bankruptcy or to the known creditors of the Debtor; and

(d) the appointment of the Monitor shall not be and shall not be deemed to be a change of control of the Debtor.

MONITOR'S POWERS

4. **THIS COURT ORDERS** that the Monitor is hereby empowered and authorized, but not obligated, to act at once and, without in any way limiting the generality of the foregoing, the Monitor is hereby expressly empowered and authorized, but not obligated, to do any of the following where the Monitor considers it necessary or desirable:

(a) to monitor the business of the Debtor;

(b) to take possession of and exercise control over any and all proceeds, receipts and disbursements arising out of or from or in respect of the Property;

(c) to contact any or all financial institutions holding bank accounts or assets on behalf of the Debtor and to require such financial institutions to place said accounts on deposit only and to direct such financial institutions to allow no withdrawals or payments from said accounts other than with the prior written consent of the Monitor or a further order or of this Court;

(d) to report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property or the business of the Debtor and such other matters as may be relevant to the proceedings herein;

(e) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel, including without limitation BKCM, and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Monitor's powers and duties, including without limitation those conferred by this Order;

(f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor, including without limitation rent, and to exercise all remedies of the

Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

(g) to report to, meet with and discuss with such affected Persons (as defined below) as the Monitor deems appropriate on all matters relating to the Property, and to share information, subject to such terms as to confidentiality as the Monitor deems advisable;

(h) to monitor and report on the status of negotiations between the Debtor and the Lender; and

(i) subject to the limitations in section 3 of this Order, to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE MONITOR

5. **THIS COURT ORDERS** that (i) the Debtor, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Monitor of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Monitor.

6. **THIS COURT ORDERS** that all Persons, including but not limited to Canada Revenue Agency, shall be authorized to share information, with the Monitor, provided the Debtor shall be entitled to request and receive copies of all such information from the Monitor.

RESTRICTIONS ON OPERATING ACCOUNT OF RESPONDENT AND DISCLOSURE

7. **THIS COURT ORDERS** that any and all financial institutions, including banks, credit unions or any party holding assets of the Debtor, having received a copy of this Order from the Monitor (“**Banks**”), shall restrict any such account to be a deposit only account and to not permit the removal or transfer of monies or assets of the Debtor from said accounts or on credit on

behalf of the Debtor except with the written consent of the Monitor hereafter or upon a further Order of the Court. The Debtor may not incur any expenses outside the ordinary course of business without the prior written consent of the Monitor.

8. **THIS COURT ORDERS** that the Banks shall, upon receiving a written request from the Monitor accompanied by a copy of this Order, forthwith disclose and deliver up to the Monitor any and all records held by the Bank concerning the Debtor's assets and accounts, including the existence, nature, value and location of any monies or assets or credit, wherever situate, held on behalf of the Debtor by the Banks.

NO PROCEEDINGS AGAINST THE MONITOR

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

11. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Monitor or affecting the Property are hereby stayed and suspended except with the written consent of the Monitor or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE MONITOR

12. **THIS COURT ORDERS** that no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by the Debtor, without written consent of the Monitor or leave of this Court.

CONTINUATION OF SERVICES

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services, 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 Debtor in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Debtor, or as may be ordered by this Court.

14. **THIS COURT ORDERS** that all funds in the Post Receivership Account (as that term is defined in the Order of Justice Conway dated November 1, 2022 (the "**IR Order**"), and net of all fees of the GTL in its capacity as Interim Receiver), and all funds, monies, cheques, instruments, and other forms of payments received or collected by the Monitor from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Monitor (the "**Monitor Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Monitor to be paid in accordance with the terms of this Order or any further order of this Court. The Monitor shall pay the go forward ordinary operating expenses of the Debtor from the Monitor Accounts to the extent funds are available in those

accounts, including without limitation, the mortgage payment due to BCKM each month from the Debtor, from the Monitor Accounts.

EMPLOYEES

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

CASL

16. **THIS COURT ORDERS** that any and all interested stakeholders in this proceeding and their counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in this proceeding, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to such other interested stakeholders in this proceeding and their counsel and advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

LIMITATION ON THE MONITOR'S LIABILITY

17. **THIS COURT ORDERS** that the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by section 14.06 of the BIA or by any other applicable legislation.

MONITOR'S ACCOUNTS

18. **THIS COURT ORDERS** that the Monitor and counsel to the Monitor shall be paid their reasonable fees and disbursements by the Debtor upon presentation of such accounts to the

Debtor, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Monitor and counsel to the Monitor shall also be entitled to and are hereby granted a charge (the "**Monitor's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings limited to the amount of $250,000, and that the Monitor's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **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 Commercial List of the Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Monitor shall be at liberty to apply the monies received from the Debtor pursuant to paragraph 18 of this Order against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Monitor or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

BORROWING POWERS

21. **THIS COURT ORDERS** that the Monitor be at liberty and it is hereby empowered to borrow, on its own behalf or on the behalf of the Debtor, by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed $150,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Monitor by this Order or to provide further liquidity to the Debtor to assist it in meeting its operational liabilities and expenses. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the "**Monitor's Borrowings Charge**") as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the

Monitor's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

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

23. **THIS COURT ORDERS** that the Monitor is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "A" hereto (the "**Monitor's Certificates**") for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Monitor, or on the Debtor's behalf by the Monitor, pursuant to this Order or any further order of this Court and any and all Monitor's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Monitor's Certificates, but junior in priority to any outstanding receiver's certificates issued pursuant to the IR Order.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05 of the *Rules of Civil Procedure* (the "**Rules**") this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules. Subject to Rule 3.01(d) of the Rules and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission.

26. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Monitor is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as

last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

RETENTION OF LAWYERS

27. **THIS COURT ORDERS** that the Monitor may retain solicitors to represent and advise the Monitor in connection with the exercise of the Monitor's powers and duties, including without limitation, those conferred by this Order. The Monitor is specifically authorized and permitted to use the solicitors for the Applicant herein as its own counsel in respect of any matter where there is no conflict of interest. In respect of any legal advice or issue where a conflict may exist or arise in respect of the Applicant and the Monitor or a third party, the Monitor shall utilize independent counsel.

GENERAL

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

29. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as a trustee in bankruptcy of the Debtor.

30. **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 Monitor and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

31. **THIS COURT ORDERS** that 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.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of Applicant's security.

33. **THIS COURT ORDERS** that the balance of the relief sought by the Applicant in its application, in particular a further order to appoint the interim receiver as receiver of the Debtor, be and is adjourned until November 2, 2023 or upon a further order of the court.

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

Signature

SCHEDULE "A" - MONITOR'S CERTIFCATE

SCHEDULE "A"

MONITOR CERTIFICATE

CERTIFICATE NO. [insert number]

AMOUNT $[insert amount]

1. THIS IS TO CERTIFY that [insert name of monitor], the monitor (the "**Monitor**") of the assets, undertakings and properties [insert name of debtor] acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the [insert day] day of [insert month], 2022 (the "Order") made in an action having Court file number [insert court file number]-CL, has received as such Monitor from the holder of this certificate (the "Lender") the principal sum of $[insert amount], being part of the total principal sum of $[insert amount] which the Monitor is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the [insert day] day of each month] after the date hereof at a notional rate per annum equal to the rate of [insert rate] per cent above the prime commercial lending rate of Bank of [insert bank] from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Monitor pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the

Order and in the *Bankruptcy and Insolvency Act*, and the right of the Monitor to indemnify itself out of such Property in respect of its remuneration and expenses.

1. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

2. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Monitor to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

3. The charge securing this certificate shall operate so as to permit the Monitor to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.

4. The Monitor does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ___________, day of October, 2022.

[insert name of monitor], solely in its capacity as Monitor of the Property, and not in its personal capacity

Per: ______________________________

Name: [insert name]
Title: [insert title]

Court File No. CV-22-00689565-00CL

BARRETT KUDLOW CAPITAL MANAGEMENT INC. and **SMS PROPERTY TRUST INC.**
Applicant Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

Proceeding commenced at Toronto

ORDER
(Appointing Monitor)

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON, M5C 3G5

David T. Ullmann (LSO # 42357I)
Tel: (416) 596-4289
Email: DUllmann@blaney.com

Lea Nebel (LSO #45484C)
Tel: (416) 593-3914
Email: LNebel@blaney.com

Counsel for the Applicant

Court File No. CV-22-00689565-00CL

BARRETT KUDLOW CAPITAL MANAGEMENT INC. and **SMS PROPERTY TRUST INC.**

Applicant Respondent

Email of recipients: See Service List

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST
Proceeding commenced at Toronto

MOTION RECORD
(Discharge of Interim Receiver and Appointment of a Monitor – Returnable November 30, 2022)

BLANEY MCMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto, ON, M5C 3G5

David T. Ullmann (LSO # 42357I)
Tel: (416) 596-4289
Email: DUllmann@blaney.com

Lea Nebel (LSO #45484C)
Tel: (416) 593-3914
Email: LNebel@blaney.com

Counsel for the Applicant