



Form 109 (Rule 22-2(2) and (7))

This is the 5th affidavit
of Gurdeep Singh Kainth in this case
and was made on July 28, 2026

No. **S-264225**
Vancouver Registry

IN THE SUPREME COURT OF BRITISH COLUMBIA

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

AND

IN THE MATTER OF SYMPHONY HOMES (MOONLIGHT SONATA) LIMITED,
1168386 B.C. LTD., 1197030 B.C. LTD., 1197062 B.C. LTD., SYMPHONY HOMES
(WAYBURNE) LTD. and 663466 B.C. LTD.

PETITIONERS

AFFIDAVIT

I, Gurdeep Singh Kainth, of 1500-733 Seymour Street, Vancouver, British Columbia,
businessperson, AFFIRM THAT:

1. I am the sole director and shareholder of Symphony Homes (Moonlight Sonata) ("**Moonlight**") Limited., one of the Petitioners in these proceedings, and the Managing Director responsible for the Moonlight Sonata development (the "**Project**"). I have personal knowledge of the facts and matters herein deposed to save and except where the same are stated to be based on information and belief and where so stated I verily believe the same to be true.
2. I am authorized to make this affidavit on behalf of Moonlight.
3. This affidavit is made in support of a Notice of Application (the "**Application**") by the Petitioners to amend the Amended and Restated Initial Order (the "**ARIO**") granted on June 26, 2026. The amendment the Petitioners seek include, among other things, the following:
 - (a) Abridging, if necessary, the time for service of the Application and dispensing with service on any person other than those served;

- (b) Directing the Monitor to immediately pay essential trades necessary to begin work on the Project as identified in the 5th affidavit of Gurdeep Singh Kainth;
- (c) Directing the Monitor to immediately pay certain critical supplier pre-filing obligations of the Petitioners necessary to begin work on the Project as identified in the 5th affidavit of Gurdeep Singh Kainth;
- (d) Increasing the Administration Charge to \$100,000 for the Petitioners' counsel;
- (e) Removing the monitor, AlixPartners Restructuring Inc. (in such capacity, the "**Monitor**") and replacing them with Doane Grant Thornton LLP (the "**Proposed Monitor**");

And in the alternative

- (f) Deleting paragraph 24 of the ARIO in its entirety;

And in the further alternative

- (g) That the powers granted to the Monitor in paragraph 24 of the ARIO be vested in the Proposed Monitor as the Financial Control Officer;
- (h) That 663466 B.C. Ltd. not be subject to the disbursement approval threshold set out in section 24 of the ARIO (the "**Approval Threshold**"); and
- (i) Increasing the Approval Threshold from \$10,000 to \$150,000 and removing the aggregate limit.

Background of Petitioners

- 4. My father, Gurmel Kainth, and I have over 65 years' combined experience in real estate development. My father started construction in 1978 with the construction of his first single-family home. My father's original company expanded throughout the 1980s to the early 2000s, building single-family homes. I began as managing director of the Symphony group of companies in 2006.
- 5. Today, Symphony Homes builds custom residences and multi-family communities across the lower mainland, including:
 - (a) Spencers Ridge (24238 – 104th Avenue, Maple Ridge): a 34-lot single-family subdivision built on a 5-acre parcel;
 - (b) Mohan Park (645 & 651 West 14th Street, North Vancouver): a 9-unit multi-family subdivision;

- (c) Elenora Residences (Elenora Residences): 12-lot single-family subdivision.
6. Symphony Homes is an award-winning developer that has had great success building townhomes in the Lower Mainland. Awards include:
- (a) Georgie Awards
 - (i) 2020 Best Any Room Design;
 - (ii) 2017
 - A. Best Single Family Home over 2300 Sq.Ft. Under \$750,000 – Production;
 - B. Best Single Family Kitchen Under \$100,000;
 - C. Best Environmental Initiative; and
 - D. Best Certified Home – Production;
 - (iii) 2016
 - A. Custom Home valued between \$1,500,00 - \$3,000,000;
 - B. Best Single - Family Detached Home over 2,000 Sq.Ft. over \$750,000 – Production;
 - C. Gold Award Winner: Best Single-Family Detached Home over 2,000 Sq.Ft. over \$750,000 – Production;
 - (iv) 2012
 - A. Best Multi - Family Kitchen under \$40,000 (New);
 - B. Gold Award Winner: Best Multi-Family Kitchen under \$40,000 (New)
 - (b) Ovation Awards
 - (i) 2017
 - A. FortisBC Award for Excellence in Energy Efficiency in New Residential Construction
 - B. Excellence in Innovation and Sustainability in New Residential Construction
 - C. Best Single-Family Detached Home (2000 Sq.Ft. and over)

- (c) Canadian Home Builders' Association National Award
 - (i) 2020 New Homes Awards – Detached Homes – Production over 2,800 square feet.

Loan Overview

- 7. KingSett (the “**Lender**”) is the Petitioners' only secured lender for the Project.
- 8. The Project is currently a 130-townhome development in Burnaby to be constructed in three phases
 - (a) Phase 1A: 51 for-sale townhomes;
 - (b) Phase 1B: 40 purpose-built rental townhomes; and
 - (c) Phase 2: a further 39 townhomes to be sold on the market.
- 9. The Petitioners entered into a construction loan with the Lender under a commitment letter (the “**Commitment Letter**”) dated September 27, 2024. The total amount of the loan was \$93,800,000, which would be increased to \$95,300,000 if certain conditions were met (the “**Loan**”). The Loan was further broken down into the following facilities:
 - (a) Facility 1 comprised a loan up to \$71,900,000 to complete Phase 1A and 1B, further broken down as follows:
 - (i) \$55,300,000, increased to \$56,800,000 if certain conditions were met to service the entire site and construct 50 for sale townhomes under Phase 1A;
 - (ii) \$11,400,000 for the construction of 40 rental townhomes under Phase 1B; and
 - (iii) Cash in Lieu of a Letter of Credit Facility of \$3,700,000;
 - (b) Facility 2 comprised of a loan of \$23,400,000 for the construction of Phase 2.
- 10. The terms of the Commitment Letter also required, among other things, that BTY be appointed as project monitor. Attached as **Exhibit “A”** to this Affidavit is a copy of the Commitment Letter.
- 11. BTY would provide draw updates and recommendations on draws to the Lender on the progress of the construction. BTY was paid for by the Petitioners, but its reports were prepared solely for the Lender.
- 12. The Commitment Letter was amended on April 15, 2025, where the Petitioners pledged further security for the allocation of the Loan to be shifted (the “**Amended**”

Commitment Letter"). The total amount of the Loan remained a maximum of \$95,300,000. The updated allocation is as follows:

- (a) \$73,150,000, increased to \$75,100,000 to complete Phase 1A and 1B, further broken down as follows:
 - (i) \$58,050,000, increased to \$60,000,000 if certain conditions were met to service the entire site and construct 50 for sale townhomes under Phase 1A;
 - (ii) \$11,400,000 for the construction of 40 rental townhomes under Phase 1B; and
 - (iii) Cash in Lieu of a Letter of Credit Facility of \$3,700,000;
 - (b) \$20,200,000 for the construction of Phase 2.
13. Attached as **Exhibit "B"** to this Affidavit is a copy of the Amended Commitment Letter.
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14. In October 2025, the Lender presented a second amended commitment letter where they asked for further security (the "**Second Amended Commitment Letter**"). The Second Amended Commitment Letter was never signed by the Petitioners.
15. Attached as **Exhibit "C"** to this Affidavit is a copy of the Second Amended Commitment Letter.
16. The Petitioners would draw the loan on a monthly basis with interest being covered by a pre-determined interest reserve. The last draw the Petitioners made was in December 2025.
17. An Amended and Restated Commitment Letter was presented to Petitioners on January 8, 2026 (the "**ARCL**") which aimed to change the Loan to just Phase 1A. The ARCL was never fully executed between the Lender and the Petitioners.
18. The ARCL was countersigned by the Petitioners with hand-drawn edits. The edits were never counter-initialled or accepted by the Lender.
19. Attached as **Exhibit "D"** to this Affidavit is copy of the ARCL.

KingSett Conduct and Petitioners' Dealings with the Lender

20. I wish to outline the Lender's conduct throughout the Loan and the Petitioners' dealings with the Lender since the inception of the Loan.

Scope of Construction in Credit Facilities and Reallocation of Funds Between Facilities

21. Initially, the Loan progressed normally, but one of the first concerns that arose during the Project was the Lender and BTY's inability to fully grasp the scope of what was to be included in Facility 1.
22. In confirming and approving the budget for the Loan, the Lender and BTY, through their internal processes, had apportioned costs like foundation costs proportionally based on units across phase 1A, 1B and 2. For instance, in BTY's report 1.2 dated October 1, 2024, the budget summary apportioned about 30 percent (just over \$3.5 million) of all concrete costs under phase 2.
23. Attached as **Exhibit "E"** to this Affidavit is a copy of BTY report 1.2.
24. However, the foundation of the Project is a 4-storey concrete parkade that would cover the foundation for phases 1A, 1B and 2. This concrete foundation had to be completed first before the wood structures for the various phases could be erected. It would have been impossible to isolate and build any phase without constructing the whole foundation.
25. This naturally front-loaded the costs of the Project to Facility 1, as in effect the entire budget for concrete needed to be expended in Facility 1. The Lender chose to understand the construction of the foundation as a significant cost overrun on Facility 1 and believed the Petitioners were improperly using Facility 1 funds to complete work that was meant to be completed under Facility 2. This is despite the Commitment Letter indicating that Facility 1 would include the shared parking lot.
26. I sent a number of emails to the Lender in the months leading up to the execution of the Amended Commitment Letter in an attempt to further clarify this issue, but the Lender was not receptive to these communications.
27. As a result of the Lender's concerns, the Petitioners were required to pledge additional security and execute the Amended Commitment letter, which did not provide additional funds but only reallocated about \$3.2 million from Facility 2 to Facility 1.
28. This additional security related to a personal guarantee from Gurmel and 466 and collateral over a rental property held by 466 in New Westminster and cash.

DPI

29. DPI is Deposit Protection Insurance. It is commonly obtained by real estate developers over pre-sale deposits and allows the developers to borrow against the amount of pre-sale deposits (typically at a ratio of 2:1) at below market interest rates.
30. As part of its financing efforts, the Petitioner sought a DPI mortgage which would be funded at a 2:1 ratio based on the amount of pre-sale deposits the Petitioners had. This was an allowed encumbrance in the Commitment Letter. The amount of

this DPI mortgage would be approximately \$5.5 million at much lower interest rates than the Loan.

31. The Petitioners completed all paperwork for the DPI mortgage and provided it to the Lender by December 2024, but these amounts were never funded.
32. I followed up with the Lender throughout early 2025 and only in March 2025 was I advised by the Lender that the DPI mortgage was not funded because the Lender had yet to agree with the insurer on the terms of a subordination agreement.
33. Throughout 2025, I continued to receive conflicting communication from the Lender regarding the availability of the DPI. To date, because of the Lender's actions, the Petitioners have not been able to access the DPI mortgage.

Interest Reserve

34. As part of the Loan, the Project had an interest reserve that would be used to pay the interest accrued on the Loan.
35. At the inception of the Loan, the interest reserved reflected by the commitment letter and the Lender's own mortgage statements was \$9,025,701.
36. Attached as **Exhibit "F"** to this Affidavit is a copy of the October 31, 2024, mortgage statement.
37. However, in BTY's report 1.2 dated October 1, 2024, the interest reserve was represented as a total of \$6,145,400.
38. BTY's report 3.3 dated December 12, 2024, further records a \$725,000 reduction in the interest reserve that was approved by the Lender, but the same reduction does not appear in the Lender's mortgage statement for the same period.
39. Attached as **Exhibit "G"** to this Affidavit is a copy of BTY's report 3.3 dated December 12, 2024 and the Lender's mortgage statement dated December 20, 2024.
40. I asked the Lender on a number of occasions to provide an explanation of the difference in calculation, but none was ever provided.
41. Attached as **Exhibit "H"** to this Affidavit is a reconciliation between the Lender's mortgage statements and BTY's reports. This reconciliation shows that the divergence between the Lender and BTY was never resolved.
42. On or around August 31, 2025, the Lender unilaterally decided to pull the entirety of the interest reserve without explanation or warning. The mortgage statement from the Lender on July 31, 2025, indicated that there was \$6,572,991.04 in interest reserve, and the mortgage statement from the Lender on August 31, 2025,

indicated there was \$0 in interest reserve and all interest going forward would have to be paid directly from the Petitioners.

43. Attached as **Exhibit "I"** to this Affidavit are copies of the mortgage statement from July and August 2025.
44. When I inquired with the Lender as to why the Lender chose to pull the interest reserve, I was largely ignored. After a prolonged inquiry, I was advised by the Lender that the interest reserve was also separated by Facility 1 and Facility 2 and that the interest reserve on Facility 1 had been exhausted. This was not a term in the Commitment Letter and was never discussed with me. The only communication I received was that the Lender would work with the Petitioners to the end of 2025, and I have received no further explanation.
45. From August 31, 2025, the Petitioners had to pay interest amounts out of their own financial resources. This has amounted to about **\$250,000** a month.
46. From my projections, the interest reserve on July 31, 2025 would have been sufficient to complete Phase 1A with amounts to spare, which would have resulted in a substantial paid down of the Loan.
47. From being presented the ARCL in January 2026 to about April 2026, the Petitioner tried to engage reasonably with the Lender on how to obtain additional draws, but the Lender's demands kept advancing. This included discussions of project management oversight that turned into a demand for the Petitioners to give up control of the Project entirely.

Loan Outstanding Discrepancy

48. The Petitioner's calculation of the amount outstanding is \$52,500,000.
49. The Lender's calculation of the amount outstanding as at May 4, 2026 is \$59,121,710.51
50. I have asked for a full accounting of the amount outstanding, but none has been provided.
51. This is a continued pattern of refusal by the Lender to provide me with a reconciliation of what is owing. As of today, the Lender has still not provided me with this information.

Monitor's Lack of Action and Response to Monitor's Report

No Steps Taken by the Monitor to Advance the Project

52. Since the Monitor was appointed on June 17, 2026, they have taken effectively no steps to advance the Project.

53. On June 19, 2026, I met Murtaza Tallat, a managing director of the Monitor, at the offices of Moonlight in Burnaby. He indicated that the Monitor wished for me to provide them with a preservation model and a cost-to-complete budget for phase 1A.
 54. At this meeting, I offered Mr. Tallat the opportunity to visit the work site. However, he turned this down, citing that he wanted to return earlier to Toronto to spend time with his family.
 55. As of the date of this affidavit, the Monitor has yet to visit the work site.
 56. Since the Monitor was appointed, they have contacted no consultants or trades until I repeatedly urged them to, and at my insistence they have only contacted the architect and the building code consultant.
 57. On July 28, 2026, I received an email terminating Video Monitoring Services as the Monitor has not paid.
 58. Attached as **Exhibit "J"** to this Affidavit is a copy of that email.
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Property Tax

59. When I met with Mr. Tallat on Jun 19, 2026, I advised that property taxes are outstanding and due in July 2026.
60. Towards the end of June 2026, I am advised by Jatinder Pal Singh Hothi, the senior controller on the Project, and verily believe it to be true that he sent an email to the Monitor to remind them to pay property taxes as they were due on July 1, 2026. When I received no response, I further followed up with another email to the Monitor in early July to remind them of property taxes. However, as of the date of this affidavit, the property taxes for the Project remain unpaid, and a late penalty has been added to the original amount.

The Monitor has also not authorized a return to work since they have been appointed despite being provided with both a cost-to-complete budget and master schedule.

Lack of Consultant Engagement

61. As there was urgency in getting the Project started again, I prepared and provided a Project Continuity Memorandum to the Monitor on June 23, 2026 and a Value Preservation Supplement on June 29, 2026.
62. Attached as **Exhibit "K"** to this Affidavit is a copy of the Project Continuity Memorandum Value Preservation Supplement.
63. The Project Continuity Memorandum and Value Preservation Supplement explained that consultant continuity was necessary to preserve the project,

maintain progress toward occupancy and support completion of the remaining work.

64. During discussions with the Monitor, I raised concerns regarding the Monitor's lack of communication and engagement with consultants in view of a restart date. To this concern, Mr. Tallat advised that this was a debtor-led CCAA proceeding and that the Monitor would assist in facilitating the restructuring process. He also indicated he would be prepared to participate in discussions with consultants in a virtual call.
65. Accordingly, on July 13, 2026, I organized a virtual call with the consultants and the Monitor for July 15, 2026. The intent of the call was to provide consultants with an opportunity to ask questions directly to the Monitor regarding payment, process, treatment of pre-filing amounts and re-engagement.
66. Mr. Tallat subsequently replied to my invite and stated he could attend a short call to introduce consultants to the Monitor and the CCAA process.
67. ~~The meeting proceeded on July 15, 2026 with consultants attending. During the meeting, I emailed Mr. Tallat advising that the consultants were assembled and asking whether he was joining or preferred to reschedule.~~
68. The Monitor ultimately did not participate in the meeting.
69. Following the meeting, Mr. Tallat advised the consultant group that the Monitor would be reaching out to consultants individually.
70. I am not aware of any follow-up communication from the Monitor to the consultant group generally following that email.
71. To the best of my knowledge, only limited communication occurred with certain consultants, including the Architect and the Building Code consultants. Even in those communications, matters were not resolved, and no plan was put in action for a restart date.
72. Shamus Sachs is the Architect and Chief Coordinating Profession for the Project. He is responsible for all coordinating all trades on the Project and plays an integral role in a project restart.
73. I am advised by Shamus Sachs and verily believe it to be true that he has had one call with the Monitor since its appointment and that his follow-up emails to the Monitor after that call have been met with radio silence.
74. Over the weeks that followed, consultants continued to contact Symphony directly seeking answers regarding payment, process, re-engagement and the status of the project. Several consultants expressed frustration regarding the lack of direction and uncertainty surrounding the process by the Monitor.

Letter of Credit

75. As part of the Commitment Letter, the Lender funded cash to preserve Letters of Credit ("LOCs") that were issued by National Bank to the City of Burnaby.
76. As the Project developed and progressed, my father and I were able to negotiate the release of some LOCs with the City of Burnaby.
77. I understand that the City of Burnaby has released about \$900,000 of the amount secured by the LOCs. This amount should be credited to the Loan but is not mentioned in any of the Monitor's reports. Again, the Lender has refused to acknowledge the discharge of LOCs and provide me with a reconciliation of the loan.

Response to the Monitor's Report

78. I wish to address the Monitor's findings and concerns in its second report dated July 21, 2026.

Bank Account Discrepancy

79. The delay in providing the bank accounts to the Monitor arose from TD investigating banking irregularities. I have been in regular communication with TD in this regard.
80. The banking irregularities arose from a previous employee of the Petitioner (a family member) who had created and provided an inaccurate bank statement. During a period of time when I was away, certain day-to-day banking functions had been delegated to a trusted family member. That individual provided a bank statement that did not accurately reflect the original records maintained by TD. I neither authorized nor was aware of that conduct at the time. Once I became aware of this issue, that individual was removed from all banking responsibilities and no longer has any authority over project accounts for financial matters.
81. To the best of my knowledge, the funds had been transferred between accounts but remained under the control of related entities and were ultimately delivered to the Monitor in full. The holdback account was never deficient.
82. Based on the holdback analysis and Chronological Ledger previously provided to the Monitor, the statutory holdback requirement as of June 21, 2026 was approximately \$1,214,618.65. The amount ultimately remitted to the Monitor was approximately \$1,228,036.21, meaning the Monitor received more than 100% of the required holdback funds and, in fact, received approximately \$13,417.56 in excess of the statutory requirement.

Attached as **Exhibit "L"** to this Affidavit is the Chronological Ledger

Disbursement Threshold Exceeded

83. I was not aware that the accounts of 663466 B.C. Ltd. ("**466**") were subject to the disbursement thresholds under the Amended and Restated Initial Order (the "**AIRO**").
84. I am advised by my father, Gurmel Singh Kainth, and I verily believe it to be true, that 466 is used by my father for his business and day-to-day operations and has nothing to do with the Project.
85. 466 is not a related entity of the Project. 466 was only added later as a guarantor to pledge a property it owned as security for the Project arising from the Amended Commitment Letter.
86. I do not, and never had, signing authority over 466. I am neither a shareholder or director of 366.466 should not have been included in the disbursement threshold in the ARIIO.
87. ~~We were never advised by our former counsel that 466 was subject to the disbursement threshold.~~

Presales

88. The Lender has known about the presale situation since at least October 2024. In BTY's report 1.2, BTY notes that there is a shortfall but also notes that the Lender has approved the shortfall to be included in the capital stack. The same note is reflected in all the BTY reports, and draws were recommended by BTY and approved by the Lender.
89. Given the delays in construction, the Petitioners decided to peg certain deposit amounts based on level of completion as opposed to time. Accordingly, we expect further deposits to arrive as those benchmarks are hit.
90. Of the presale units, only 2 are with non-arms-length parties. One is being sold to my sister, and one is being sold to my controller's spouse.
91. Attached as **Exhibit "M"** to this Affidavit is a copy of a pre-sale contract, addendum and disclosure statement.

Ignored Requests and Delayed Responses

92. The Petitioners have already made available extensive materials to the Monitor including:
- (a) Project Continuity Memorandum;
 - (b) Value-Preservation Supplement;

- (c) Lien Register Cover Memo;
- (d) Lien & Charge Register;
- (e) Phase 1A cost-to-complete Budget;
- (f) Budget Memo;
- (g) Phased occupancy materials;
- (h) Fire safety materials;
- (i) A master schedule;
- (j) A master schedule memo; and
- (k) Separate SharePoint/datarooms for the Monitor and BTY with supporting materials.

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93. The Monitor has been the one who has failed to provide feedback to these materials or been responsive to the Petitioners.
94. Since the Monitor's appointment, the Petitioners have repeatedly provided the Monitor with materials intended to permit the Project to restart and move toward completion, including the Project Continuity Memorandum, the Value Preservation Supplement, the Phase 1A cost-to-complete budget, the budget memorandum, the master schedule, the schedule memorandum, lien and charge materials, consultant materials, phased occupancy materials and fire safety materials.
95. Despite receiving those materials, the Monitor has not authorized construction to restart, has not implemented any meaningful trade or consultant remobilization plan, has not provided a substantive response to the preservation materials, and has not advanced a concrete plan to move the Project toward completion.
96. The Project has now remained stalled for a significant period after the Initial Order while carrying costs, consultant uncertainty, trade uncertainty and completion risk continue to increase.
97. Attached as **Exhibit "N"** to this Affidavit is a copy of all the material provided to the Monitor that was never responded to.

Open Ask Register

98. With regard to the Open Ask Register, the original Open Asks Register was created by Symphony as a working project-management tool in response to the significant volume of requests being directed to the project by the Monitor, BTY and KingSett. It was intended to track requests, ownership, timing, dependencies, status updates and completed items in a transparent manner.

99. The original register not only tracked requests being made of Symphony. It also tracked items that Symphony was awaiting from the Monitor and other parties. These included information requests, approvals, funding-related matters, BTY deliverables and other dependencies necessary to advance the project.
100. The Monitor on or around July 8 advised that they did not believe the register was current. As such, I sent the Monitor the July 8 email inviting the Monitor to revise and reprioritize the register so that everyone would be working from a common document and aligned on priorities.
101. Attached as **Exhibit "O"** to this Affidavit is an email from me to Mr. Tallat providing the register.
102. The original register included a specific section entitled "Awaiting Monitor" which tracked items Symphony was waiting to receive from the Monitor. Those items were relevant because they affected our ability to advance various workstreams and respond to other requests.
103. ~~The Monitor subsequently revised the document and circulated a new version through its counsel.~~
104. Upon reviewing the revised version, I observed that the structure and content of the register had changed significantly. In the revised version, those Monitor deliverables were largely removed from meaningful tracking or no longer presented with the same prominence.
105. The revised version contained a tab entitled "From Symphony >>". However, that tab was left blank. The Monitor did not populate that section with Symphony's outstanding questions, requests, dependencies, information requests or other matters that Symphony was awaiting from the Monitor.
106. The revised register created the impression that information flow was primarily one-directional and that outstanding matters largely related to deficiencies on the part of Symphony. This was not the case
107. Attached as **Exhibit "P"** to this Affidavit is a copy of all the sheets of the open ask register before it was modified by the Monitor, which included a sheet for open items in progress and a sheet for completed items.
108. After the Monitor's appointment, the Monitor sought payment from the Lender only once.
109. The Petitioners have also invoiced the Monitor since its appointment, and the Monitor has yet to respond.
110. Attached as **Exhibit "Q"** to this Affidavit is a copy of an invoicing email the Petitioners sent to the Monitor with invoices attached.

Response to BTY Project Review Letter

111. I wish to address the findings set out in BTY's report dated July 21, 2026, and appended to affidavit No.1 of Daniel Pollack dated July 21, 2026.
 112. I do not deny that there were some cost overruns, but they were never hidden from BTY or the Lender. Indeed, the Lender was always aware of them through BTY's draw reports. These overruns were dealt with through additional equity, deferred equity, contingency, interest-reserve adjustments or approved reallocations.
 113. BTY tries to shift the blame for budget misallocation to the Petitioners, but it goes both ways. BTY and the Lender both reviewed and approved the budget. The fact that the entire parking structure and other common concrete works were expected to be advanced under Facility 1, but there was considerable concrete budget in Facility 2, cannot be laid solely at the feet of the Petitioners.
 114. The Lender also approved the reallocation, and there was no increase in the amount of the Loan.
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115. I also do not deny there were some schedule delays, but it is unfair to pin all delays on the Petitioners' mismanagement of the Project. For example, the excavation, shoring and forming of the Project was materially affected by heavy rains from September 2024 to March 2025.
 116. The BTY reports also show that the schedule delays were gradual and not the result of a single event. Updated schedules were shared and accepted by BTY and the Lender. BTY's last report in December 2025 states that building 1-5 (phase 1A) appeared approximately aligned with the updated schedule.
 117. Further delays and increases in costs from events after the 14th report need to also be characterized differently because in January 2026, the Lender began to alter the scope of the Loan to focus on just phase 1A.
 118. This change in scope materially changed how trade schedules of values, cost-to-complete, civil works, parkade costs, underground servicing and common-area costs were presented. Trade contracts and schedules of value had been structured for the broader development. When costs are recast over only Buildings 1 to 5, upfront and common costs are naturally concentrated across a smaller scope.
 119. The Lender has also contributed delays post the 14th BTY report by withholding all draws and presenting the Petitioner with a number of conditions, like construction management oversight and change of construction management for any additional draws.
 120. BTY also expresses concern with the holdback account but does not provide a reconciliation of lienable and non-lienable costs for how it arrives at the \$4.3 million it expects in the holdback account. It seems that BTY has applied a flat 10% holdback to every project cost. There are a number of project costs like consultant

fees, municipal charges, and other non-construction costs that make up the entire project cost.

121. This is also not a concern that has been raised by BTY in any of its reports. In all of BTY's previous reports, it simply notes the amount the Petitioners have in their lien holdback account and that BTY was not monitoring the Petitioners' administration of lien holdback funds.
122. The Petitioners have maintained an overfunded lien account that is now in the possession of the Monitor.

Equity in the Project, Availability of Refinancing, and Grant Thornton's Familiarity

123. There remains considerable equity in the Project. The waterfall presented by Grant Thornton in their second pre-filing report shows that even under the stress scenario there will be around \$15 million in equity at completion.
124. Attached as **Exhibit "R"** to this Affidavit is a copy of the LW Appraisal.
125. Grant Thornton has strong familiarity with the Project. Mark Wentzell, a partner at Grant Thornton, has visited the site on a number of days and previously prepared 2 detailed pre-filing reports reviewing the project, considering the Portioners restructuring plan, analyzing recovery scenarios, and considering financing alternatives. The Monitor has provided nothing except a dossier of alleged misconduct by the Petitioners.
126. Grant Thornton already possesses substantial knowledge of the Project, the stakeholders, the restructuring alternatives and the history leading to these proceedings. I believe Grant Thornton has a better understanding of the Project than the Monitor at the time of this affidavit.
127. I understand that Grant Thornton consents to act and has provided a letter setting out what their upcoming report intends to set out.
128. Attached as **Exhibit "S"** to this Affidavit is a copy of Grant Thornton's letter.
129. I have contacted banks, credit unions and other lenders regarding refinancing of this project and have had positive discussions regarding funding.
130. The objectives of the Petitioners in this proceeding have always been as follows:
 - (a) Complete the subdivision process;
 - (b) Refinance Phase 1B through CMHC financing;
 - (c) Provide meaningful paydown to the Lender; and
 - (d) Pursue refinancing alternatives for Phase 2.

131. The Petitioners' objective in these proceedings is not to sell Phase 1B or Phase 2 before they are complete.
132. The objective is to complete Phase 1A, complete the parkade and site servicing works, complete the subdivision process, refinance Phase 1B through CMHC financing, provide a meaningful paydown to the Lender and preserve refinancing alternatives for Phase 2.
133. I believe subdivision is the key milestone required to unlock value in the future phases. Once subdivision is complete, I believe Phase 1B can be financed through CMHC or other rental financing sources and Phase 2 can be financed either as a package or on a building-by-building basis.
134. In my view, the Project continues to have a viable restructuring path. That path requires the Project to move forward rather than remain inactive or be pushed prematurely toward a sale process.

DIP Default

135. On July 27, 2026, the Lender's counsel sent a letter to me indicating that by allegedly violating the ARIO, I was in default of the Lender's interim financing. This leaves me unsure as to whether the Lender would continue to fund interim financing.
136. Attached as **Exhibit "T"** to this Affidavit is a copy of this letter.
137. This uncertainty creates practical difficulties for the Petitioners and stakeholders.
138. If the Petitioners undertake efforts to secure replacement DIP financing, including committing time, resources, diligence costs, legal costs or commitment fees, there remains a risk that the Lender could subsequently object to such financing on the basis that the replacement lender would prime or otherwise affect the Lender's position.
139. I have already contacted the previous DIP lenders in case the Lender chooses to pull out of its DIP financing. I have received one updated funding sheet from Domain Funding.
140. Attached as **Exhibit "U"** to this Affidavit is a spreadsheet comparing the various DIP offer sheets I obtained from DIP lenders in June 2026.
141. Attached as **Exhibit "V"** to this Affidavit is a copy of the updated term sheet from Domain Funding.

GST Inquiry

142. On July 27, 2026, the Monitor's counsel made an inquiry of my counsel regarding CRA GST/HST refund in the amount of \$86,185.66. This refund relates to input tax credits arising from GST paid on pre-filing invoices during the January 1, 2026 to March 31, 2026 reporting period.
143. The Lender did not fund the GST amounts that generated this refund. The GST was paid through the Wayburne account because that was the account used to process payments to trades, consultants, and suppliers. However, the funds used to make those payments originated from Symphony, related entities, Gurmel Kainth, Gurdeep Kainth and other non-Lender sources. Wayburne did not receive advances from the Lender to fund these GST payments.
144. The GST refund was subsequently issued by CRA to Symphony Homes (Wayburne) Ltd. as the GST registrant.
145. Attached as **Exhibit "W"** to this Affidavit is an email from BTY confirming how GST was to be treated throughout the draw process. In this email, BTY specifically instructed the Petitioners that GST was not to be included in any draw submissions and that all progress draws were to be prepared using pre-GST amounts only.
146. Accordingly, the GST that gave rise to the CRA refund was never submitted to, funded by, or reimbursed through the Lender's draw process. Rather, those GST amounts were funded independently by Symphony and other non-Lender sources.
147. If there is a concern regarding entitlement to these funds, the Petitioners are prepared to have the refund amount placed into our counsel's trust account pending agreement between the parties or further direction from the Court.

Rezoning and Wrongful Interference

148. The Petitioners were encouraged by the City of Burnaby to apply to rezone Phase 1B. The rezoned Phase 1B will be a 6-storey condominium up to 103 units with a day care facility. When Phase 1B is rezoned, there will be further equity in the Project.
149. By July 2025, the proposed rental use for Phase 1B was already being discussed with the Lender.
150. Attached as **Exhibit "X"** to this Affidavit is a copy of my email correspondence discussing the changes to the Project.
151. By September 2025, Bennett's Air Space Parcel drawings identified Air Space Parcel "J" as a dedicated rental parcel, identifying the new rental proposal.
152. On March 12, 2026, I provided the Lender with subdivision materials, air-space parcel drawings and site plans identifying the new rental parcel, rental building, CMHC rental units, below-market rental units and daycare component.

153. Attached as **Exhibit “Y”** to this Affidavit is a copy of this email with attachments outlining the subdivisions.
154. The Monitor on or about July 3, 2026, was further provided with a phased occupancy and fire protection report in its data room. This is not conceptual planning. It is detailed consultant-level analysis. The report specifically identifies Phase 1 occupancy, Phase 2 construction and Phase 3 construction of Building 10 (new rental proposal/building) and P2 and includes detailed code, fire protection and alternative solution analysis relating to Building 10.
155. The rezoning is at an early phase. The first reading of this rezoning is expected to go before counsel sometime this autumn. We were prompted to apply for rezoning at this time because the City of Burnaby bylaws will change in December 2026 and costs of the rezoning could considerably increase.
156. On July 24, 2026, I received an email from the Monitor asking whether I intended to attend a council meeting on July 28, 2026 on rezoning. Mr. Goldstein also stated that this was news to the Monitor. I responded that I would be.

157. On July 25, 2026, I received a letter from the Monitor stating that they were shocked that the Petitioners were seeking rezoning and requiring the Petitioners to confirm that they will not attend the council meeting on July 28, 2026. The letter also insinuated that the Petitioners were in violation of a court order if they chose to proceed and threatened legal action, including an injunction.
158. Attached as **Exhibit “Z”** to this Affidavit is a copy of the letter from the Monitor dated July 25, 2026.
159. The Monitor was provided information about the rezoning by way of a phased occupancy and fire protection report that was uploaded to the Monitor’s SharePoint data room on or about July 3.
160. On Jul 27, 2027, my counsel sent a letter to the Monitor’s counsel and Lender’s counsel outlining the Lender’s knowledge of the Petitioner’s intent to rezone Phase 1B.
161. Attached as **Exhibit “AA”** to this Affidavit is a copy of my counsel’s letter.
162. Later, on July 27, 2026, Lender’s counsel sent a letter to the City of Burnaby setting out its position that the Lender never advised the Petitioner that any rezoning of the Project would result in more funds from the Lender.
163. Attached as **Exhibit “BB”** to this Affidavit is a copy of the letter from Lender’s counsel to the City of Burnaby dated July 27, 2026.
164. This is an example of the Monitor not having sufficient information from the Lender to allow it to make decisions that would advance the viability of the development

in circumstances where it should have known that the Petitioner's intention to rezone and add additional density.

Good Faith of the Lender

165. As part of the Lender's application for enhanced Monitor's power, the Lender relies on a sealed Affidavit No. 2 of Daniel Pollack, which is supposed to set out the fact that the Lender is suffering a shortfall. I was only provided with a redacted copy to review.
166. I am advised by my counsel and verily believe it to be true that the Lender refused to allow this critical information to be reviewed by the Petitioners.
167. In this affidavit, the waterfall analysis relies on a Letter of Opinion from MLA Canada dated June 12, 2026 and an Opinion of Value prepared by Jones Lang LaSalle Real Estate Services Inc. dated June 1, 2026.
168. These documents were in the Lender's possession before the initial order was granted but were never disclosed to the Petitioners or the court. This suggests to me that the Lender never had any intention to allow the Petitioners to complete the Project, and the Lender's goal was to eventually bring an application for enhanced monitor's powers and to sell this Project from the beginning.
169. If I had known the Lender's position, the Petitioners would have never agreed to a Monitor of the Lender's choosing and relinquishing financial control. The Petitioners would have pushed for a true debtor-led CCAA.

Restart Construction

170. I have recently met with the consultants and trades required to restart construction. They have told me they are eager to get started.
171. A number of trades and consultants have expressed a willingness to work with me on unpaid pre-filing obligations if they can be confident they will be paid when construction restarts again. They are willing to work with Grant Thornton with a view to getting back to work.
172. The Petitioner intends to present an arrangement to its unsecured pre-filing obligations as part of the project restart process.
173. Currently, there are also a number of trades that owe no amounts on pre-filing obligations that can begin work immediately. The pressing work that needs to be done includes:
 - (a) Waterproofing, with a cost of \$120,000;
 - (b) Forming with a cost of \$175,000; and

- (c) Preparation work for BC Hydro with a cost of \$150,000.
174. These works will be crucial to maintain the Project's ability to have phased occupancy by the REDMA outside closing in the presales of May 31, 2027.
175. More importantly, the Project and its structures require immediate waterproofing. I have told the Monitor this is of utmost importance to preserving the integrity of the structures.
176. Based on the cost-to-complete budget, the amount needed to restart construction is \$775,000, broken down as follows:
- (a) \$300,000 for pre-filing obligations of critical suppliers; and
 - (b) \$475,000 for essential trades necessary to begin work on the Project.

AFFIRMED BEFORE ME
at Vancouver, British Columbia,
on July 28, 2026

A Commissioner for taking Affidavits for British Columbia

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