

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF SECTION 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**

B E T W E E N :

NHE CAPITAL CORP.

Applicant

- and -

111 SHERWOOD INVESTMENTS INC.

Respondent

**MOTION RECORD  
(Returnable June 3, 2024)**

May 28, 2024

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Lawyers for KSV Restructuring Inc.,  
solely in its capacity as Court-  
appointed Receiver and not in its  
personal capacity

**TO: THE ATTACHED SERVICE LIST**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF SECTION 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**

**NHE CAPITAL CORP.**

Applicant

- and -

**111 SHERWOOD INVESTMENTS INC.**

Respondent

**SERVICE LIST**

<b>As at May 28, 2024</b>	
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**TAB 1**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF SECTION 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**

B E T W E E N :

NHE CAPITAL CORP.

Applicant

- and -

111 SHERWOOD INVESTMENTS INC.

Respondent

**NOTICE OF MOTION  
(Returnable June 3, 2024)**

KSV Restructuring Inc. ("**KSV**") in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties of 111 Sherwood Investments Inc. (the "**Company**"), including, without limitation, the real property owned by the Company municipally known as 111 Sherwood Drive, Brantford, Ontario and all proceeds thereof (the "**Real Property**"), will make a motion before the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") on June 3, 2024, at 11:30 a.m. or as soon after that time as the motion can be heard.

**PROPOSED METHOD OF HEARING:** The motion is to be heard:

- In writing under subrule 37.12.1(1).
- In writing as an opposed motion under subrule 37.12.1(4).
- In person.
- By telephone conference.
- By video conference.

At a Zoom link to be provided by the Court in advance of the motion.

**THE MOTION IS FOR:**

1. An order (the "**Sale Process Approval Order**") substantially in the form attached hereto at Tab 4 of this motion record, *inter alia*:
  - (a) approving a proposed sale process (the "**Sale Process**") for the Real Property, which includes approving the listing agreement (the "**Listing Agreement**") between the Receiver and Colliers Macaulay Nicolls Inc. ("**Colliers**"); and
  - (b) approving the First Report of the Receiver dated May 28, 2024 (the "**First Report**") and the activities of the Receiver described therein.
2. Such further and other relief as this Court deems just.

**THE GROUNDS FOR THE MOTION ARE:**

***Background***

3. The Company is the registered owner of the Real Property and incorporated pursuant to the *Business Corporations Act* (Ontario), RSO 1990, c. B. 16. Its sole directors and officers are Joseph Accardi and Mark Accardi.
4. The Real Property is the Company's principal asset and comprises approximately 10.31 acres. The industrial buildings situated on the Real Property have approximately 197,914 square feet of leasable space that can be used for retail, office, flex or industrial purposes. Prior to the receivership proceedings, the Real Property was managed by Forge & Foster Asset Management Inc. and Forge & Foster Partners Inc.
5. NHE Capital Corp. ("**NHE**") is the Company's first ranking secured creditor and the applicant in these proceedings. Pursuant to the terms of a commitment letter dated February 15, 2022, NHE loaned the Company \$12,000,000 for a term of approximately one year, which was subsequently extended to April 1, 2024.
6. The Company granted NHE security in the form of, *inter alia*:



- (a) a general security agreement (which was registered under the *Personal Property Security Act (Ontario)* on March 24, 2022);
  - (b) a first charge in the amount of \$14,400,000 over the Real Property;
  - (c) a general assignment of leases and rents; and
  - (d) a general, first priority, site-specific security agreement against the present and after-acquired personal property of the Company relating solely to the Real Property.
7. The Company defaulted in respect of the NHE indebtedness by failing to pay interest on February 1, 2024 and subsequently failing to pay back the loan on April 1, 2024.
8. In addition to NHE, the Company has two other known secured creditors:
- (a) Olympia Trust Company ("**Olympia**") has a \$7,965,000 charge against the Real Property, registered on October 19, 2022; and
  - (b) Reif Financial Investments Inc., Fortunafi Asset Management LLC, Yuval Bavly, Benjamin Ames and Alison Ames have a \$500,000 charge against the Real Property, registered on April 18, 2024 pursuant to Minutes of Settlement dated December 20, 2023.
9. According to the Company's books and record, there is approximately \$297,000 owing to unsecured creditors. The Receiver is not yet aware if the Canada Revenue Agency has a claim against the Company.
10. On April 19, 2024, the Court granted an order (the "**Receivership Order**") pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended (the "**BIA**") and section 101 of the Ontario *Courts of Justice Act*, R.S.O. 1990, c. C.43 as amended (the "**CJA**"), appointing KSV as Receiver, without security, of all of the assets, undertakings and properties of the Company.

11. The Receiver's mandate is principally focused on conducting a Court-supervised sale process for the Real Property that maximizes value for the Company's stakeholders, including NHE.

***The Sales Process***

12. Following its appointment, the Receiver solicited proposals from two realtors to act as the listing agent for the Real Property, subject to Court approval. The Receiver requested that each realtor provide certain information as part of its proposal, including each firm's experience and knowledge of the Brantford market, a marketing plan for the Real Property, the indicative range of values for the Real Property and the realtor's proposed commission structure.

13. After reviewing both proposals and consulting with NHE, the Receiver believes that Colliers should be retained as listing agent for the Real Property. The Receiver has worked with Colliers to develop a Sale Process, which is described in the First Report.

***The Activities of the Receiver***

14. The Receiver's activities since the commencement of these proceedings have included, *inter alia*, the following:

- (a) reviewing NHE's receivership application materials and the Receivership Order;
- (b) corresponding on a regular basis with Bennett Jones LLP (counsel to the Receiver), NHE and Olympia regarding all aspects of its mandate;
- (c) corresponding with the Company's representatives regarding operational issues, such as collecting rent from tenants and dealing with maintenance and repairs;
- (d) corresponding with the Company regarding its books and records and reviewing same, including the rent roll, tenant delinquency report, leases, property tax information, maintenance information, property insurance, environmental reports, property condition assessments, surveys and engineering reports;
- (e) engaging Tert & Ross Ltd., a third party contractor, at the commencement of these proceedings to visit the Real Property to assess its condition and speak to the tenants;

- (f) opening a receivership bank account;
- (g) corresponding with the Company's insurance broker regarding the existing insurance policy and arranging a renewal of the insurance policy;
- (h) corresponding with tenants regarding the receivership proceedings and the collection of monthly rent payments;
- (i) engaging Markland Property Management Inc. as property manager and corresponding with same in relation to tenant, maintenance, and capital improvement matters;
- (j) corresponding with the Canada Revenue Agency regarding the Company's HST accounts;
- (k) corresponding with the Company's utility companies to continue such services during the receivership;
- (l) preparing a request for proposals to select a realtor;
- (m) reviewing and summarizing the proposals submitted by the realtors and discussing same with NHE;
- (n) negotiating the Listing Agreement with Colliers;
- (o) drafting and sending to all creditors the Notice and Statement of the Receiver pursuant to Sections 245(1) and 246(1) of the BIA;
- (p) corresponding with PayQuad Solutions, the software platform used to collect rent, regarding the collection of monthly rent;
- (q) drafting the First Report and reviewing all motion materials filed in connection with this motion; and
- (r) dealing with other matters pertaining to the administration of its mandate.

**OTHER GROUNDS:**

15. The provisions of the BIA and the inherent and equitable jurisdiction of the Court;
16. Rules 1.04, 1.05, 2.03, 3.02, 16, 37 and 39 of the *Ontario Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended and section 101 of the CJA; and
17. Such further and other grounds as counsel may advise and the Court may permit.

**DOCUMENTARY EVIDENCE:**

18. The following documentary evidence will be used at the hearing of the motion:
  - (a) the First Report;
  - (b) Affidavit of Affidavit of Ely Rechtsman sworn April 15, 2024 (without exhibits);  
and
  - (c) such further and other evidence as counsel may advise and the Court may permit.

May 28, 2024

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its capacity as Court-appointed Receiver and  
not in its personal capacity

**NHE CAPITAL CORP.**

- and -

**111 SHERWOOD INVESTMENTS INC.**

Applicant

Respondent

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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**NOTICE OF MOTION**

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Court-appointed Receiver and not in its personal capacity

**TAB 2**



**First Report of  
KSV Restructuring Inc.  
as Receiver and Manager of  
111 Sherwood Investments Inc.**

**May 28, 2024**

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COURT FILE NO: CV-23-00699908-00CL

ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

NHE CAPITAL CORP.

APPLICANT

- AND -

111 SHERWOOD INVESTMENTS INC.

RESPONDENT

FIRST REPORT OF  
KSV RESTRUCTURING INC.  
AS RECEIVER

MAY 28, 2024

## 1.0 Introduction

1. This report (“**Report**”) is filed by KSV Restructuring Inc. (“**KSV**”) in its capacity as receiver and manager (the “**Receiver**”) of all of the assets, undertakings and properties of 111 Sherwood Investments Inc. (the “**Company**”), including the real property located at 111 Sherwood Drive, Brantford, Ontario (the “**Real Property**”).
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on April 19, 2024 (the “**Receivership Order**”), KSV was appointed Receiver. A copy of the Receivership Order is attached as Appendix “A”.
3. The principal purpose of the receivership proceedings is to conduct a Court-supervised sale process for the Real Property that maximizes value for the Company’s stakeholders.

### 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about the Company, the Real Property and these proceedings;
  - b) summarize a recommended sale process (the “**Sale Process**”) for the Real Property, including the retention of Colliers Macaulay Nicolls Inc. (“**Colliers**”) to act as listing agent pursuant to a listing agreement dated May 28, 2024 (the “**Listing Agreement**”);

- c) provide an overview of the Receiver's activities since the commencement of these proceedings; and
- d) recommend that the Court issue an order:
  - approving the Sale Process, including the retention of Colliers to list the Real Property for sale pursuant to the Listing Agreement;
  - approving this Report and the Receiver's activities detailed herein.

## 1.2 Currency

1. All currency references in this Report are to Canadian dollars, unless otherwise noted.

## 1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon information, including financial information, provided by the Company's representatives, NHE Capital Corp. ("**NHE**"), the Company's senior secured creditor and the applicant in these proceedings and Markland Property Management Inc. ("**Markland**"), the property manager of the Real Property (the "**Information**").
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards ("**CAS**") pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information should perform its own diligence and the Receiver accepts no responsibility for any reliance placed on the Information in this Report by any party.
3. Additional background information regarding the Company and the reasons for the appointment of the Receiver are provided in the affidavit of Ely Rechtsman sworn May 19, 2023 (the "**Rechtsman Affidavit**"). Copies of the Court materials filed in these proceedings are available on the Receiver's case website at: <https://www.ksvadvisory.com/experience/case/111sherwood>.

## 2.0 Background

1. The Company's principal asset is the Real Property (also known as "Brantford Cordage District"). The Real Property comprises approximately 10.31 acres on which a number of industrial buildings are situated. The buildings have approximately 197,914 square feet of leasable space that can be used for retail, office, flex or industrial purposes. The Receiver understands that approximately 90% of the Real Property's floor space is occupied by 25 tenants.
2. The Company is incorporated under the laws of Ontario. Based on an Ontario corporate profile search, Joseph Accardi and Mark Accardi (the "**Accardis**") are the directors and officers of the Company.

3. Prior to the receivership proceedings, the Real Property was managed by Forge & Foster Asset Management Inc. and Forge & Foster Partners Inc. (collectively, “**Forge & Foster**”). The Receiver understands that certain entities related to Forge & Foster own or owned several properties in the southwestern Ontario market.
4. Following its appointment, the Receiver, in consultation with NHE, retained Markland to provide property management services for the Real Property. Markland is responsible for the day-to-day operations of the Real Property, including collecting rent, corresponding with tenants, arranging for ongoing repairs and maintenance, and paying expenses. The Receiver has been in frequent contact with Markland regarding the status of the Real Property.

## 3.0 Creditors

### 3.1 Secured Creditors

1. As of April 19, 2024, the following charges were registered against the Real Property<sup>1</sup>:

Secured Creditor	Date Registered	C\$
NHE	March 24, 2022	14,400,000
Olympia Trust Company (“ <b>Olympia</b> ”)	October 19, 2022	7,965,000
Reif Financial Investments Inc., Fortunafi Asset Management LLC, Yuval Bavly, Benjamin Ames and Alison Ames (collectively, “ <b>Reif</b> ”)	April 18, 2024	500,000

2. NHE is the Company’s senior secured creditor. Pursuant to the terms of a commitment letter dated February 15, 2022, NHE loaned the Company \$12,000,000 for a term of approximately one year, which was subsequently extended to April 1, 2024 through a forbearance agreement (the “**Loan**”)<sup>2</sup>. The Accardis and Forge & Foster are guarantors under the Loan.
3. The Company granted NHE security in the form of, *inter alia*:
  - a) a general security agreement (which was registered under the *Personal Property Security Act (Ontario)* on March 24, 2022);
  - b) a first charge in the amount of \$14,400,000 over the Real Property;
  - c) a general assignment of leases and rents; and

<sup>1</sup> The Receiver understands that interest, fees and costs continue to accrue.

<sup>2</sup> The Loan accrues interest at a rate equal to the greater of: (i) 8.50% per annum and (ii) the floating annual rate of interest established by Canadian Imperial Bank of Commerce from time to time on similar loans plus 6.05%, calculated and payable monthly.

- d) a general, first priority, site-specific security agreement against the present and after-acquired personal property of the Company relating solely to the Real Property.

The Receiver's counsel, Bennett Jones LLP ("**Bennett Jones**"), has provided an opinion that, subject to the standard assumptions and qualifications contained therein, the security granted by the Company to NHE, including as registered on title to the Real Property, is valid and enforceable<sup>3</sup>.

4. Olympia registered a \$7,965,000 charge against the Real Property on October 19, 2022. Forge & Foster advised that the balance owing to Olympia is approximately \$5.9 million, which will be reviewed by the Receiver in due course, if necessary.
5. Reif registered a \$500,000 charge against the Real Property on April 18, 2024, being one day before the Receivership Order was granted. The Receiver understands that the charge was registered pursuant to minutes of settlement dated December 20, 2023 between the Company, Reif, the Accardis and several companies that appear to be affiliated to Forge & Foster, among other entities (the "**Minutes of Settlement**"). The Receiver has received a copy of the Minutes of Settlement and is in the process of reviewing it.
6. At this time, the Receiver has not instructed Bennett Jones to prepare security opinions with respect to the Olympia or Reif security.

### 3.2 Unsecured Creditors

1. According to the Company's books and records, there is approximately \$297,000 owing to unsecured creditors. The Receiver is not yet aware if the Canada Revenue Agency has a claim against the Company.

## 4.0 Sale Process

### 4.1 Request for Proposals from Realtors

1. At the commencement of these proceedings, the Receiver solicited proposals from two realtors to act as the listing agent for the Real Property, subject to Court approval. The realtors are known to the Receiver as having considerable experience in the listing and sale of commercial and industrial properties in southwestern Ontario and are both well positioned to market the Real Property to potential buyers.
2. The Receiver requested that each realtor provide certain information in its proposal, including each firm's experience and knowledge of the Brantford market, a marketing plan for the Real Property, the indicative range of values for the Real Property and the realtor's proposed commission structure. A copy of the request for proposals sent to the realtors is attached as Appendix "B".

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<sup>3</sup> A copy of this opinion can be provided to the Court upon request.

3. Both realtors submitted proposals on May 13, 2024.
4. The Receiver recommends that the Court authorize the Receiver to retain Colliers as the listing agent for the Real Property for the following reasons:
  - a) NHE, as the largest and first ranking secured creditor, supports the retention of Colliers;
  - b) the Colliers team managing the mandate has significant experience selling industrial properties in the Southwestern Ontario, including Brantford;
  - c) KSV has previously retained the same Colliers team for similar mandates and the Colliers team achieved strong results;
  - d) Colliers' proposed commission rate is reasonable based on KSV's experience selling real estate and is acceptable to NHE; and
  - e) Colliers is familiar with the property as it was marketing the Real Property immediately prior to these receivership proceedings.
5. The Receiver also advised Olympia that it intended to select Colliers as its listing agent and has not received a response.
6. A copy of the Listing Agreement is attached as Appendix "C".

#### 4.2 Sale Process

1. The Receiver has worked with Colliers to develop a Sale Process for this mandate, which is summarized in the table below.

Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Due diligence	➤ Colliers to review all available documents (financial, legal and environmental reports) concerning the Real Property.	Week 1
Finalize marketing materials	➤ Colliers and the Receiver to: <ul style="list-style-type: none"> <li>○ prepare a marketing brochure;</li> <li>○ populate an online data room;</li> <li>○ prepare a confidentiality agreement ("CA"); and</li> <li>○ prepare a Confidential Information Memorandum ("CIM").</li> </ul>	
Consulting Reports	➤ The Receiver is arranging for updated and/or new consulting reports to facilitate due diligence by interested parties. These will be made available in the data rooms.	
Prospect Identification	<ul style="list-style-type: none"> <li>➤ Colliers will qualify and prioritize prospects; and</li> <li>➤ Colliers will also have pre-marketing discussions with targeted prospects.</li> </ul>	

Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 2 – Marketing and Offer Solicitation</i>		
Stage 1	<ul style="list-style-type: none"> <li>➤ Mass market introduction, including: <ul style="list-style-type: none"> <li>○ sending offering summary and marketing materials, including marketing brochure to Colliers’ client base, including specifically targeted prospects;</li> <li>○ publishing the acquisition opportunity in such journals, publications and online as Colliers and the Receiver believe appropriate to maximize interest in this opportunity;</li> <li>○ posting “for sale” signs on the Real Property;</li> <li>○ engaging in direct canvassing of most likely prospects and tailoring the pitch to each of these candidates based on the brokers’ knowledge of these parties;</li> <li>○ posting the acquisition opportunity on MLS on an unpriced basis; and</li> <li>○ meeting with prospective bidders to explain the potential of each site.</li> </ul> </li> <li>➤ Colliers to provide detailed information to qualified prospects that sign the CA, including the CIM and access to the data room;</li> <li>➤ Colliers and the Receiver to facilitate diligence by interested parties;</li> <li>➤ The Receiver and legal counsel will prepare a vendor’s form of Purchase and Sale Agreement (“PSA”) which will be made available in the data room; and</li> <li>➤ Receiver to arrange for certain updated and/or new consulting reports to facilitate due diligence. These will also be made available in the data rooms, where applicable.</li> </ul>	Week 2-6
Stage 3	<ul style="list-style-type: none"> <li>➤ “Offer not Before Date” of July 8<sup>th</sup>, 2024 (tentative date – subject to achieving previous timelines and market feedback).</li> <li>➤ Prospective purchasers encouraged to submit offers in the form of the PSA, with any changes to the PSA blacklined. Initial submissions on letters of intent (“LOI”) will be permitted to facilitate investor offerings.</li> </ul>	July 8 <sup>th</sup> , 2024 (tentative date)
<i>Phase 3 – Offer Review and Negotiations</i>		
	<ul style="list-style-type: none"> <li>➤ Short listing of bidders.</li> <li>➤ Further bidding - bidders may be asked to improve their offers. The Receiver may invite parties to participate in as many rounds of bidding as is required to maximize the consideration and minimize closing risk. The Receiver may also seek to clarify terms of the offers submitted and to negotiate such terms.</li> <li>➤ The Receiver will be at liberty to consult with the mortgagees regarding the offers received, subject to any confidentiality requirements that the Receiver believes appropriate.</li> </ul>	Week 7-8

Sale Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> <li>➤ Select successful bidder(s) and finalize definitive documents. The Receiver will select the successful bidder(s), having regards to, among other things:               <ul style="list-style-type: none"> <li>○ total consideration (cash and assumed liabilities);</li> <li>○ form of consideration being offered;</li> <li>○ third-party approvals required, if any;</li> <li>○ conditions, if any, and time required to satisfy or waive same; and</li> <li>○ such other factors affecting the speed and certainty of closing and the value of the offers as the Receiver considers relevant.</li> </ul> </li> <li>➤ 2<sup>nd</sup> round bids and further bidding - prospective purchasers may be asked to re-submit PSAs on one or more occasions. Bidders will be strongly encouraged to submit offers in the form of the PSAs in the event of 2<sup>nd</sup> or subsequent rounds of bidding.</li> </ul>	
Selection of Successful Bids	<ul style="list-style-type: none"> <li>➤ Select successful bidder and finalize definitive documents, subject to any final diligence to be performed by the purchaser.</li> <li>➤ Back up bidders will be kept “warm” in order to have options in case selected bidder does not close.</li> </ul>	Week 9
Due Diligence	<ul style="list-style-type: none"> <li>➤ Manage and monitor final due diligence process, if applicable;</li> <li>➤ Gather and/or commission missing documentation; and</li> <li>➤ Additional site visits, as required.</li> </ul>	Week 9-12
<b>Phase 4 – Closing</b>		
Sale Approval Motion	<ul style="list-style-type: none"> <li>➤ Upon execution of definitive transaction documents, the Receiver will seek Court approval of the successful offer, on not less than 7 calendar days’ notice to the service list and registered secured creditors.</li> </ul>	Approximately 15 to 30 days from the date that the selected bidder confirms all conditions have been satisfied or waived
Closing	<ul style="list-style-type: none"> <li>➤ Following Court approval</li> </ul>	ASAP

2. Additional aspects of the Sale Process include:

- a) the Receiver may be required to commission environmental studies and/or other reports prior to closing. Court approval of the Sale Process shall authorize the Receiver to take any and all steps necessary to commission such studies/reports, including requiring the tenants to cooperate with the Receiver and provide reasonable access to their property to the consultants retained for such purposes;
- b) the Real Property will be marketed on an “as is, where is” basis;

- c) to the extent permitted by law, all of the rights, title and interests of the Company in the Real Property will be sold free and clear of all pledges, liens, security interests, encumbrances and claims, pursuant to one or more approval and vesting orders to be sought by the Receiver;
- d) if the Receiver believes, in its sole discretion, that it will assist to maximize recoveries, the Receiver will have the right to: (i) waive strict compliance with the terms of the Sale Process, including any of the deadlines in the table above; and (ii) modify and adopt such other procedures that will better promote the sale of the Real Property or increase the aggregate recoveries for stakeholders;
- e) Colliers' commission will be reduced to a flat fee of \$50,000 in the event that the Real Property is acquired by NHE by way of a credit bid;
- f) any material modifications to, or the termination of, the Sale Process shall require Court approval; however, the Receiver shall have the discretion to adjust any timeline in the Sale Process to the extent it believes it to be appropriate to maximize value;
- g) the Receiver will have the right to reject any and all offers, including the highest dollar value offer(s); and
- h) any transaction will be subject to Court approval.

#### **4.3 Right of First Refusal**

1. The Receiver and/or Colliers intend to contact each tenant that holds certain rights of first refusal (the "**ROFR Holder**") to discuss such right. There are two known ROFR Holders.
2. The Receiver is of the view that the tenants are stayed from exercising their first right during the receivership proceedings. The Receiver is in the process of reviewing the tenants' lease agreements and the rights of these tenants may be addressed at a later date when Court approval of a sale transaction is recommended.

#### **4.4 Sale Process Recommendation**

1. The Receiver recommends that the Court grant an order approving the Sale Process for the following reasons:
  - a) the Sale Process is a fair, open and transparent process intended to canvass the market broadly on an orderly basis. The terms are consistent with real estate sale processes approved in the context of receivership proceedings;
  - b) there will be no delay commencing the Sale Process as Colliers has already commenced its underwriting process and has prior experience marketing the Real Property. This should allow for the process to be conducted on a timely basis, which will assist to reduce costs;



- c) the duration of the Sale Process is sufficient to allow interested parties to perform diligence and to submit an offer on or before the offer deadline, which is tentatively July 8, 2024. The marketing process is anticipated to last approximately five weeks, subject to the Receiver's right to extend or amend timelines, as appropriate;
  - d) Colliers' team for this mandate is based out of its Toronto and Southwestern Ontario offices, has experience selling industrial/commercial properties in the Brantford area and has national reach. The Receiver is of the view that Colliers' commission rate is consistent with market rates; and
  - e) NHE supports the Sale Process, including Colliers' engagement.
2. Based on the foregoing, the Receiver recommends Court approval of the Sale Process, including the retention of Colliers.

## 5.0 Overview of the Receiver's Activities

1. The Receiver's activities since the commencement of these proceedings have included, *inter alia*, the following:
  - reviewing NHE's receivership application materials and the Receivership Order;
  - corresponding on a regular basis with Bennett Jones, NHE and Olympia regarding all aspects of this mandate;
  - corresponding with the Company's representatives regarding operational issues, such as collecting rent from tenants and dealing with maintenance and repairs;
  - corresponding with the Company regarding its books and records and reviewing same, including the rent roll, tenant delinquency report, leases, property tax information, maintenance information, property insurance, environmental reports, property condition assessments, surveys and engineering reports;
  - engaging Tert & Ross Ltd., a third party contractor, at the commencement of these proceedings to visit the Real Property to assess its condition and speak to the tenants;
  - opening a receivership bank account;
  - corresponding with the Company's insurance broker regarding the existing insurance policy and arranging a renewal of the insurance policy;
  - corresponding with tenants regarding the receivership proceedings and the collection of monthly rent payments;
  - engaging Markland as property manager and corresponding with Markland in relation to tenant, maintenance, and capital improvement matters;

- corresponding with the Canada Revenue Agency regarding the Company's HST accounts;
- corresponding with the Company's utility companies to continue such services during the receivership;
- preparing a request for proposals to select a realtor;
- reviewing and summarizing the proposals submitted by the realtors and discussing same with NHE;
- negotiating the Listing Agreement with Colliers and discussing same with NHE;
- drafting and sending to all creditors the Notice and Statement of the Receiver pursuant to Sections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
- corresponding with PayQuad Solutions, the software platform used to collect rent, regarding the collection of monthly rent;
- drafting this Report and reviewing all motion materials filed in connection with this motion; and
- dealing with other matters pertaining to the administration of this mandate.

## 6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that the Court grant an order approving the relief set out in Section 1.1 (1)(d) of this Report.

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

**KSV RESTRUCTURING INC.,  
SOLELY IN ITS CAPACITY AS COURT APPOINTED RECEIVER OF  
111 SHERWOOD INVESTMENTS INC.  
AND NOT IN ITS PERSONAL CAPACITY**

## **Appendix “A”**



Court File No. CV-23-00699908-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

**IN THE MATTER OF SECTION 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**

THE HONOURABLE

)

FRIDAY, THE 19<sup>th</sup>

JUSTICE OSBORNE

)

DAY OF APRIL, 2024

)

B E T W E E N:

**NHE CAPITAL CORP.**

Applicant

- and -

**111 SHERWOOD INVESTMENTS INC.**

Respondent

**ORDER  
(Appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order appointing KSV Restructuring Inc. as receiver and manager (in such capacities, the “Receiver”), without security, of all of the assets, undertakings and properties of the Respondent 111 Sherwood Investments Inc. (the “Debtor”), was heard this day by Zoom judicial videoconference.

ON READING the affidavit of Ely Rechtsman sworn May 19, 2023 and the Exhibits thereto, the affidavit of Paul Muchnik sworn June 29, 2023 and the Exhibits thereto, and affidavit of Ely Rechtsman sworn April 15, 2024, and the Exhibits thereto, and on hearing the submissions

of counsel for the Applicant, counsel for . . . ., no one else appearing although duly served as appears from the affidavit of service of Janet Nairne sworn May 25, 2023 and the affidavit of service of David Seifer sworn April 16, 2024, and on reading the consent of KSV Restructuring Inc. to act as the Receiver,

## **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Application and Application Record 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 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “BIA”), and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, KSV Restructuring Inc. is hereby appointed Receiver, without security, of all of the assets, undertakings and properties of the Debtor, including, without limitation, the lands and premises legally described in Schedule “A” hereto, and all proceeds thereof (the “Property”).

## **RECEIVER’S POWERS**

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

- a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;



- c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor 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 settle, extend or compromise any indebtedness owing to the Debtor;
- h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- k) with the approval of this Court, to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business, and in each such case, notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required;
- l) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- m) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the Receiver's administration, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- n) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- o) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor;
- p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.
- s) and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other



Persons (as defined below), including the Debtor, and without interference from any other Person.

#### **DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER**

4. THIS COURT ORDERS that the Debtor and the Debtor's current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and, 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 Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.

5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to access make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure. For greater certainty, and without limiting the generality of the foregoing, the Receiver is authorized and empowered to access and make, retain and take away copies of the Records of the Debtor in respect of the Property located at the offices of the Debtor and the Debtor shall cooperate and shall provide reasonable assistance to the Receiver with respect to such Records and information contained in such Records.

6. THIS COURT ORDERS that if any Records are stored or otherwise contained on a computer or other electronic system of information storage, whether by independent service



provider or otherwise, all Persons in possession or control of such Records shall forthwith give unfettered access to the Receiver for the purpose of allowing the Receiver to recover and fully copy all of the information contained therein whether by way of printing the information onto paper or making copies of computer disks or such other manner of retrieving and copying the information as the Receiver in its discretion deems expedient, and shall not alter, erase or destroy any Records without the prior written consent of the Receiver. Further, for the purposes of this paragraph, all Persons shall provide the Receiver with all such assistance in gaining immediate access to the information in the Records as the Receiver may in its discretion require including providing the Receiver with instructions on the use of any computer or other system and providing the Receiver with any and all access codes, account names and account numbers that may be required to gain access to the information.

7. THIS COURT ORDERS that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

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

#### **NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY**

9. 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 Receiver 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**

10. THIS COURT ORDERS that all rights and remedies against the Debtor, Receiver, or affecting the Property, are hereby stayed and suspended except with the written consent of the Receiver 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 Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or 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 RECEIVER**

11. 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 Receiver or leave of this Court.

### **CONTINUATION OF SERVICES**

12. 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 as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver 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 Receiver, or as may be ordered by this Court.



### **RECEIVER TO HOLD FUNDS**

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver 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 Receiver (the "Post Appointment Accounts") and the monies standing to the credit of such Post Appointment Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

### **EMPLOYEES**

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver 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 Receiver 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*.

### **PIPEDA**

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada Personal Information Protection and Electronic Documents Act, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "Sale"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects

identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

### **LIMITATION ON ENVIRONMENTAL LIABILITIES**

16. THIS COURT ORDERS that nothing herein contained shall require the Receiver to occupy or to take control, care, charge, possession or management (separately and/or collectively, “Possession”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the “Environmental Legislation”), provided however that nothing herein shall exempt the Receiver from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Receiver shall not, as a result of this Order or anything done in pursuance of the Receiver’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

### **LIMITATION ON THE RECEIVER’S LIABILITY**

17. THIS COURT ORDERS that the Receiver 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, 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*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

### **RECEIVER’S ACCOUNTS**

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver



shall be entitled to and are hereby granted a charge (the “Receiver’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, and that the Receiver’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 Receiver and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Receiver 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 Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

#### **FUNDING OF THE RECEIVERSHIP**

21. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow 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 \$500,000.00 (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 Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “Receiver’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 Receiver’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 Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "Receiver'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 Receiver pursuant to this Order or any further order of this Court and any and all Receiver'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 Receiver's Certificates.

#### **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/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/experience/case/111sherwood>.

26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver 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.



## **GENERAL**

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

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

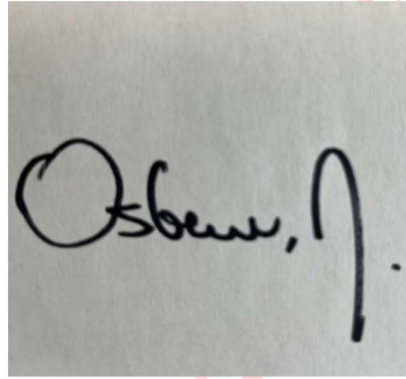
29. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

30. THIS COURT ORDERS that the Receiver 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 Receiver 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.

31. 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 the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

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

33. THIS COURT ORDERS that this Order is effective from today's date and is not required to be entered.



2024.04

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## **SCHEDULE "A"**

### **LANDS AND PREMISES**

**PIN:** 32278-0149 (LT)

PART LOT E NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PARTS 4 AND 5 2R8327 AND PART 1 2R8327 SAVE AND EXCEPT PARTS 1, 2, 3, 4, 5, 6 AND 7 2R8603; SUBJECT TO AN EASEMENT AS IN BC357075; SUBJECT TO AN EASEMENT OVER PARTS 4 AND 5 2R8327 AS IN BC107568; TOGETHER WITH AN EASEMENT OVER PART LOT C NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PART 8 2R8603 IN FAVOUR OF PARTS 1, 2, 3, 4 AND 7 2R8603 AS IN A145258; TOGETHER WITH AN EASEMENT OVER PART LOT D NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PART 15 2R8603 IN FAVOUR OF PARTS 1, 2, 3 AND 4 2R8603 AS IN BC107530; TOGETHER WITH AN EASEMENT OVER PART LOT E NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PARTS 14 AND 16 2R8603 IN FAVOUR OF PART 7 2R8603 AS IN BC122397; TOGETHER WITH AN EASEMENT OVER PART LOTS E, F AND G NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PARTS 9, 10, 11, 12, 13 AND 17 2R8603 AS IN BC357075; TOGETHER WITH AN EASEMENT OVER PART LOTS E, F AND G NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PARTS 9, 10 AND 17 2R8603 AS IN BC357075; CITY OF BRANTFORD

**PIN:** 32278-0148 (LT)

FIRSTLY: PART LOTS D, E AND F NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PART 1 2R8603 SECONDLY: PART LOTS D AND E NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PART 2 2R8603 THIRDLY: PART LOT D NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PART 3 2R8603 FOURTHLY: PART LOTS E AND F NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PART 4 2R8603 FIFTHLY: PART LOT F NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PART 5 2R8603 SIXTHLY: PART LOT E NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PARTS 6 AND 7 2R8603; TOGETHER WITH AN EASEMENT OVER PART LOT C NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PART 8 2R8603 IN FAVOUR OF PARTS 1, 2, 3, 4 AND 7 2R8603 AS IN A145258; TOGETHER WITH AN EASEMENT OVER PART LOT D NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PART 15 2R8603 IN FAVOUR OF PARTS 1, 2, 3 AND 4 2R8603 AS IN BC107530; TOGETHER WITH AN EASEMENT OVER PART LOT E NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PARTS 14 AND 16 2R8603 IN FAVOUR OF PART 7 2R8603 AS IN BC122397; TOGETHER WITH AN

EASEMENT OVER PART LOTS E, F AND G NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PARTS 9, 10, 11, 12, 13 AND 17 2R8603 AS IN BC357075; TOGETHER WITH AN EASEMENT OVER PART LOTS E, F AND G NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PARTS 9, 10 AND 17 2R8603 AS IN BC357075; SUBJECT TO AN EASEMENT OVER PART 2 2R8603 AS IN A249453; SUBJECT TO AN EASEMENT OVER PART 3 2R8603 AS IN A249454; SUBJECT TO AN EASEMENT OVER PARTS 1, 2, 3, 4, 5, 6 AND 7 2R8603 IN FAVOUR OF PART LOTS E, F AND G NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PARTS 6, 8, 9, 11, 12 AND 13 2R8327 AS IN BC357075; SUBJECT TO AN EASEMENT OVER PARTS 4 AND 5 2R8603 IN FAVOUR OF PART LOTS E, F AND G NORTH OR WEST OF SHERWOOD DRIVE PLAN CITY OF BRANTFORD SEPTEMBER 7, 1892 PARTS 6, 8, 9, 11, 12 AND 13 2R8327 AS IN BC357075; CITY OF BRANTFORD

Municipal Address: 111 Sherwood Drive, Brantford Ontario



## SCHEDULE "B"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the Receiver (the "Receiver") of all of the assets, undertakings and properties of 111 Sherwood Investments Inc. (the "Debtor"), including the lands and premises municipally known as 111 Sherwood Drive, Brantford, Ontario (the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the [DATE] (the "Order") made in an application having Court file number ....., has received as such Receiver from the holder of this certificate (the "Lender") the principal sum of \$ \_\_\_\_\_, being part of the total principal sum of \$ \_\_\_\_\_ which the 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 \_\_\_\_\_ day of each month after the date hereof at a notional rate per annum equal to the rate of \_\_\_\_\_ 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 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 Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

5. 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 Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

7. The 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 \_\_\_\_ day of \_\_\_\_\_, 2024.

KSV Restructuring Inc., solely in its capacity as  
Receiver of the Property, and not in its personal  
capacity

Per: \_\_\_\_\_

Name:

Title:

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT  
TORONTO

**ORDER  
(Appointing Receiver)**

**DICKINSON WRIGHT LLP**

Barristers & Solicitors  
199 Bay Street  
Suite 2200, Box 447  
Commerce Court Postal Station  
Toronto, ON M5L 1G4

**David P. Preger (36870L)**

Email: [dpreger@dickinsonwright.com](mailto:dpreger@dickinsonwright.com)

Tel: (416) 646-4606

**David Z. Seifer (77474F)**

Email: [dseifer@dickinsonwright.com](mailto:dseifer@dickinsonwright.com)

Tel: (416) 646-6867

Lawyers for the Applicant

4884-0302-6871 v2 [100913-1]

## **Appendix “B”**



**Ben Luder**  
**ksv restructuring inc.**  
220 Bay Street, Suite 1300  
Toronto, Ontario, M5J 2W4  
T +1 437 889 9995  
F +1 416 932 6266  
bluder@ksvadvisory.com

ksvadvisory.com

May 3, 2024

**DELIVERED BY EMAIL - [Jeremiah.Shames@colliers.com & Victor.Cotic@colliers.com]**

Colliers International  
181 Bay Street, Suite 1400  
Toronto, ON M5J 2V1

Colliers International  
401 The West Mall  
Toronto, ON M9C 5J5

**Attention: Jeremiah Shames**

**Attention: Victor Cotic**

Dear Mr. Shames and Mr. Cotic:

**Re: 111 Sherwood Investments Inc. (the "Debtor")**

Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) dated April 19, 2024 (the "Receivership Order"), KSV Restructuring Inc. was appointed receiver and manager ("Receiver") of the Debtor's real property located at 111 Sherwood Drive, Brantford (the "Real Property") and all the other property, assets and undertakings of the Debtor (together with the Real Property, the "Property"). A copy of the Receivership Order and all other materials filed in the receivership proceeding is available at <https://www.ksvadvisory.com/experience/case/111sherwood>.

The Debtor's principal asset is a multi-tenant site comprised of a number of buildings used for retail, office, flex and industrial purposes.

The principal purpose of the receivership proceedings is to solicit offers and complete a transaction for the Real Property. Accordingly, you are invited to submit a proposal to act as our agent in connection therewith. **Proposals must be submitted to the Receiver by 5:00 p.m. (EST) on May 13, 2024.**

Details concerning the process and the content to be included in your proposal are attached as Appendix "A". A confidentiality agreement is attached as Appendix "B".

Should you have any questions with respect to the above, please contact the undersigned at (437) 889-9995 or bluder@ksvadvisory.com.

Yours very truly,

**KSV RESTRUCTURING INC.  
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF  
111 SHERWOOD INVESTMENTS INC.  
AND NOT IN ITS PERSONAL CAPACITY**

*Ben Luder*

Per: Ben Luder

BL: ng



**Appendix “A”  
Request for Proposals for  
REAL ESTATE BROKER SERVICES**

**Re: 111 Sherwood Investments Inc. (the “Debtor”)**

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Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) dated April 19, 2024 (the “Receivership Order”), KSV Restructuring Inc. was appointed receiver and manager (“Receiver”) of the Debtor’s real property located at 111 Sherwood Drive, Brantford (the “Real Property”) and all the other property, assets and undertakings of the Debtor relating to the Real Property.

The Receiver invites proposals to provide real estate broker services for the listing and sale of the Real Property.

**Proposals must be submitted by email to Ben Luder, Manager, KSV Restructuring Inc., at [bluder@ksvadvisory.com](mailto:bluder@ksvadvisory.com).**

**A. Background**

- The Receiver is now accepting proposals (“Proposals”) to act as listing agent to solicit offers for the Real Property. The Receiver may engage one or more realtors to market the Real Property.
- The terms of any sale process (the “Sale Process”) and the selection of a realtor(s) are subject to Court approval.
- Copies of all Court materials filed in these proceedings are available on the Receiver’s website at:  
  
<https://www.ksvadvisory.com/experience/case/111sherwood>
- Information related to the Real Property will be provided in a data room that has been established for this proceeding (the “Data Room”). Realtors can obtain access to the Data Room once they sign the confidentiality agreement provided in Appendix “B”.
- The Property is a multi-tenant site comprised of a number of buildings used primarily for retail and industrial purposes.

**B. Proposal Submission Deadline**

- Proposals are to be submitted to the Receiver by 5:00 p.m. (EST) on May 13, 2024.

**C. Realtor’s Role**

The realtor’s role will include, *inter alia*:

- developing a detailed marketing process, including recommended timelines for the Sale Process;
- establishing an estimated value for the Real Property;
- preparing all marketing materials, with input from the Receiver;

- advertising the Real Property at the agent's expense;
- obtaining and negotiating confidentiality agreements from interested parties;
- showing the Real Property to interested parties and working with the Receiver to maintain a data room to facilitate the Sale Process;
- qualifying interested parties from a financial perspective;
- assisting interested parties with their due diligence;
- assisting the Receiver to assess offers submitted;
- providing the Receiver with a report summarizing the Sale Process, to be relied upon by the Receiver to support the Receiver's recommended transaction; and
- assisting the Receiver to close a transaction.

#### **D. Proposal Content**

The Proposal must contain the following:

1. Work Plan: proposals shall include a detailed work plan.
2. Value Estimate: proposals shall provide an estimate of the value of the Real Property, together with supporting assumptions including a discussion concerning the highest and best use for the Real Property.
3. Firm Background and Staff Experience: proposals shall provide background information concerning their firm, including the experience of their staff who will be leading this assignment (including résumés for the lead agents).
4. Liability Insurance Certificate: a copy of your liability insurance certificate is to be included.
5. Compensation Structure: proposals shall detail the proposed compensation structure for the Real Property.
6. Conflict of Interest Statement: proposals shall certify the disclosure of any professional or personal financial interests that could be a possible conflict of interest. In addition, all arrangements to derive additional compensation shall also be disclosed and certified.

#### **E. Proposal Consideration**

The factors on which each Proposal will be considered include the following:

- the marketing plan;
- experience with selling similar real estate (including the location of the Real Property);
- experience acting in Court-supervised situations;
- estimate of the value of the Real Property and the underlying assumptions;

- consideration of the development strategy for the Real Property, if applicable;
- professional qualifications of individuals leading the project;
- compensation structure; and
- other factors as determined by the Receiver at its sole discretion.

**Note: please limit your proposal to no more than 20 pages.**

\* \* \*

For more information or questions, please contact Ben Luder at the email address noted above.

**CONFIDENTIALITY AGREEMENT**

KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

Email: bluder@ksvadvisory.com  
Attention: Ben Luder

To Whom It May Concern:

**Re: 111 Sherwood Investments Inc. (the "Company")**

**WHEREAS** this agreement (the "Confidentiality Agreement") is being executed between the Receiver and the Broker (terms as defined below), as entered into as of the date on the last page hereto, for the purpose of providing real estate brokerage services concerning the Company's real property (the "Real Property") together with any and all other related property, assets and undertakings of the Company (collectively with the Real Property, the "Property").

**AND WHEREAS** We/I as undersigned (hereinafter referred to as the "Broker") requests that KSV Restructuring Inc., in its capacity as receiver and manager (the "Receiver") of the Property appointed pursuant to an order of the Ontario Superior Court of Justice made on April 19, 2024, provide the Broker with certain confidential information relating to the Real Property.

**NOW THEREFORE** for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) and in consideration of the Receiver agreeing to provide the Broker with certain Information (as defined below), the Broker hereby undertakes and agrees as follows:

- a) To treat and maintain confidentially such information and any other information that the Receiver or any of its advisors furnish to the Broker, including information furnished before or after the date of this Confidentiality Agreement, whether provided orally, in writing or otherwise recorded or gathered, and regardless of whether specifically identified as "confidential", including any documents or copies (paper, electronic or otherwise) and communications thereof (collectively, the "Information").
- b) Not to use any of the Information for any purpose other than for the exclusive purpose of evaluating the possibility of submitting a listing proposal for the Real Property. The Broker agrees that the Information will not be used in any manner that is detrimental to the Company, the Property, and/or the Receiver in the performance of its appointment concerning the Property, and that such Information will be kept confidential by the Broker, its directors, officers, employees and representatives (collectively, the "Representatives").
- c) To only provide the Information to the Representatives who require the Information for the purposes described herein, who shall be informed by the Broker of the confidential nature of the Information and who agree to be bound by the provisions of this Confidentiality Agreement. On request, the Broker shall promptly notify the Receiver of the identity of each Representative to whom any Information has been delivered or disclosed. The Broker further agrees to be held responsible for any breach of this Confidentiality Agreement made by a Representative.
- d) To not supply or disclose any data, communications or documents included in the Information to any corporation, company, partnership or individual or any combination of one or more of the foregoing (any of which are hereby defined as a "Person") other than the Broker and its Representatives, unless the prior written consent of the Receiver has been obtained.

- e) The Broker and its Representatives will not, without the prior written consent of the Receiver, disclose to any Person that this solicitation is taking place nor disclose any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.
- f) That at any time, upon the request of the Receiver, the Broker will promptly return or destroy, without any right of compensation or indemnity, all Information in its possession and will not retain any copies thereof or any notes relating thereto. The Broker will certify as to the return or destruction of all Information and any related notes, and that no Person has a copy of the Information.
- g) That in the event the Broker is required or requested by legal process to disclose any of the Information, the Broker will provide the Receiver with prompt written notice of such requirement or request so that the Receiver may take such actions as it considers appropriate.
- h) The Broker represents and warrants that it shall be responsible for any costs associated with its review of the Information. Any consultants, real estate agents/brokers, and/or advisors retained by the Broker shall be required to execute, and to be bound by, this Confidentiality Agreement. The Broker shall retain a copy of such executed Confidentiality Agreement and will provide it to the Receiver immediately following its request.
- i) The Broker acknowledges that the Receiver is acting strictly in its capacity as Receiver and that it shall have no liability for any action, omission, statement, misstatement, representation, or warranty made within the Information. The Broker further acknowledges that the Receiver makes no representations or warranties as to the accuracy or completeness of the Information and shall have no liability for any action, omission, statement, misstatement, representation, or warranty made by itself or its employees to the Broker and its Representatives, absent fraud or willful misconduct.
- j) The Broker shall indemnify the Receiver, any of its employees, and its counsel (the "Receiver's Representatives") against any loss, cost, damage, expense, legal fees or liability suffered or incurred by the Receiver or the Receiver's Representatives as a result of or in connection with any breach of this Confidentiality Agreement by the Broker or any of the Representatives to whom the Broker discloses Information.
- k) The Broker acknowledges and agrees that the execution and delivery of this Confidentiality Agreement and the delivery of the Information does not give rise to any legal obligation of the Receiver, whether in contract, in negligence or other tort, or by way of fiduciary duty or otherwise. Without limiting the generality of the foregoing, the Broker acknowledges and agrees that the Receiver is not and will not be under any obligation, express or implied, to provide or to continue to provide Information, to entertain any offers or proposals for the purchase of any property, or to complete a sale or other transaction with the Broker, unless and until a legally binding agreement is delivered and executed which expressly provides for such obligations. Furthermore, the Broker acknowledges and agrees that the Receiver has not and will not give any representations or warranties, either express or implied, concerning the accuracy or completeness of, or otherwise relating in any way to, the Information, and that the Receiver shall not incur any liability whatsoever to the Broker or any Representatives for any transaction entered into, or not entered into, or any other act, omission or decision made or taken, relying upon or in any way affected by, the Information.
- l) The Broker agrees that monetary damages would not be a sufficient remedy for any breach of this Confidentiality Agreement by the Broker and/or its Representatives and that any court having jurisdiction may enter a preliminary and/or permanent restraining order, injunction or order for specific performance in the event of an actual or threatened breach of any of the provisions of this Confidentiality Agreement, in addition to any other remedy available to the Receiver or the Company.
- m) The Broker agrees to observe all of the requirements of any applicable privacy legislation including, without limitation, the *Personal Information Protection and Electronic Documents Act* (Canada) with respect to personal information which may be contained in the Information.
- n) The Broker acknowledges and agrees that it has had an opportunity to obtain independent legal

advice as to the terms and conditions of this Confidentiality Agreement and has either received same or expressly waived its right to do so.

- o) This Confidentiality Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Each party hereto irrevocably submits to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) sitting in Toronto, Ontario, with respect to any matter arising hereunder or related hereto.
- p) This Confidentiality Agreement shall enure to the benefit of the Receiver and its successors and assigns. Any party may deliver an executed copy of this Confidentiality Agreement by facsimile or email. This Confidentiality Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.
- q) This Confidentiality Agreement shall have a term of two (2) years from the date written below.

DATED at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2024

("Broker")

\_\_\_\_\_  
Corporate Name (Please Print)

\_\_\_\_\_  
By (Authorized Signing Officer's Signature)

\_\_\_\_\_  
(Officer's Name and Title)

\_\_\_\_\_  
(Broker's  
Address)

\_\_\_\_\_  
(Telephone Number)

\_\_\_\_\_  
(Email Address)

## **Appendix “C”**



Form 593

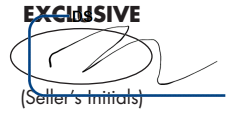
for use in the Province of Ontario

Listing Agreement - Commercial
Seller Designated Representation Agreement
Authority to Offer for Sale

This is a Multiple Listing Service® Agreement



OR Exclusive Listing Agreement



BETWEEN: Colliers Macaulay Nicolls Inc., Brokerage

401 The West Mall, Unit 800, Toronto, ON M9C 5J5 (the "Listing Brokerage") Tel. No. 416-777-2200

SELLER: KSV Restructuring Inc., the court-appointed receiver and manager of 111 Sherwood Investments Inc. (the "Seller")

DESIGNATED REPRESENTATIVE(S): Victor Cotic, Jeremiah Shames and Matthew Soper (Name of Salesperson/Broker/Broker of Record)

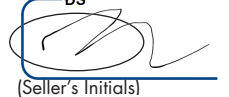
The Designated Representative will be providing services and representation to the Seller and the Brokerage provides services but not representation. In consideration of the Listing Brokerage listing the real property for sale known as 111 Sherwood Drive, Brantford, ON N3T 6J9 (the "Property")

the Seller hereby gives the Listing Brokerage the exclusive and irrevocable right to act as the Seller's agent,

commencing at 12:00 on the 28 day of May, 2024 (a.m./p.m.)

and expiring at 11:59 p.m. on the 28 day of November, 2024 (the "Listing Period"),

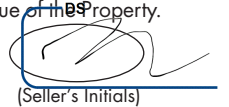
Seller acknowledges that the length of the Listing Period is negotiable between the Seller and the Listing Brokerage and, if an MLS® listing, may be subject to minimum requirements of the real estate board, however, in accordance with the Trust in Real Estate Services Act, 2002 (TRESA), the Listing Brokerage must obtain the Seller's initials.



to offer the Property for sale at a price of: One Dollar (i.e. Unpriced) Dollars (CDN\$) \$1.00 OTHER Dollars

and upon the terms particularly set out herein, or at such other price and/or terms acceptable to the Seller. It is understood that the price and/or terms set out herein are at the Seller's personal request, after full discussion with the Listing Brokerage's representative regarding potential market value of the Property.

The Seller hereby represents and warrants that the Seller is not a party to any other listing agreement for the Property or agreement to pay commission to any other real estate brokerage for the sale of the Property.



Schedule A, B attached hereto forms part of this Agreement, of which Schedule A sets out the details with respect to the services, confidentiality and representation of the Brokerage and Designated Representative.

1. DEFINITIONS AND INTERPRETATIONS: For the purposes of this Agreement ("Authority" or "Agreement"): "Seller" includes vendor and a "buyer" includes a purchaser or a prospective purchaser. "Self-represented assistance" shall mean assistance provided to a self-represented party. A purchase shall be deemed to include the entering into of any agreement to exchange, or the obtaining of an option to purchase which is subsequently exercised, or the causing of a First Right of Refusal to be exercised, or an agreement to sell or transfer shares or assets. "Real property" includes real estate as defined in the Trust in Real Estate Services Act (2002). The "Property" shall be deemed to include any part thereof or interest therein. A "real estate board" includes a real estate association. Commission shall be deemed to include other remuneration. This Agreement shall be read with all changes of gender or number required by the context. For purposes of this Agreement, anyone introduced to or shown the Property shall be deemed to include any spouse, heirs, executors, administrators, successors, assigns, related corporations and affiliated corporations. Related corporations or affiliated corporations shall include any corporation where one half or a majority of the shareholders, directors or officers of the related or affiliated corporation are the same person(s) as the shareholders, directors, or officers of the corporation introduced to or shown the Property.

2. COMMISSION: In consideration of the Listing Brokerage listing the Property, the Seller agrees to pay the Listing Brokerage a commission of 2.5% of the sale price of the Property or 3.25% in case of co-broker involvement

for any valid offer to purchase the Property from any source whatsoever obtained during the Listing Period, as may be acceptable to the Seller. The Seller authorizes the Listing Brokerage to co-operate with any other registered real estate brokerage (co-operating brokerage) and to offer to pay the co-operating brokerage a commission of 0.75% of the sale price of the Property or

out of the commission the Seller pays the Listing Brokerage. The Seller further agrees to pay such commission as calculated above if an agreement to purchase is agreed to or accepted by the Seller or anyone

on the Seller's behalf within 180 days after the expiration of the Listing Period (Holdover Period), so long as such agreement is with anyone who was introduced to the Property from any source whatsoever during the Listing Period or shown the Property during the Listing Period. If, however, the offer for the purchase of the Property is pursuant to a new agreement in writing to pay commission to another registered real estate brokerage, the Seller's liability for commission shall be reduced by the amount paid by the Seller under the new agreement.

INITIALS OF LISTING BROKERAGE: DS TM

INITIALS OF SELLER(S): DS



The Seller further agrees to pay such commission as calculated above even if the transaction contemplated by an agreement to purchase agreed to or accepted by the Seller or anyone on the Seller's behalf is not completed, if such non-completion is owing or attributable to the Seller's default or neglect, said commission to be payable on the date set for completion of the purchase of the Property.

Any deposit in respect of any agreement where the transaction has been completed shall first be applied to reduce the commission payable. Should such amounts paid to the Listing Brokerage from the deposit or by the Seller's solicitor not be sufficient, the Seller shall be liable to pay to the Listing Brokerage on demand, any deficiency in commission and taxes owing on such commission.

In the event the buyer fails to complete the purchase and the deposit or any part thereof becomes forfeited, awarded, directed or released to the Seller, the Seller then authorizes the Listing Brokerage to retain as commission for services rendered, fifty (50%) per cent of the amount of the said deposit forfeited, awarded, directed or released to the Seller (but not to exceed the commission payable had a sale been consummated) and to pay the balance of the deposit to the Seller. All amounts set out as commission are to be paid plus applicable taxes on such commission.

- 3. REPRESENTATION:** The Seller acknowledges that the Listing Brokerage has provided the Seller with written information explaining relationships, including information on Seller Representation, Sub-agency, Buyer Representation, Multiple Representation and Self-Represented Party assistance. The Seller understands that unless the Seller is otherwise informed, the co-operating brokerage is representing the interests of the buyer in the transaction. The Seller further acknowledges that the Listing Brokerage may be listing other properties that may be similar to the Seller's Property and the Seller hereby consents to the Listing Brokerage listing other properties that may be similar to the Seller's Property without any claim by the Seller of conflict of interest. The Seller hereby appoints the Listing Brokerage as the Seller's agent for the purpose of giving and receiving notices pursuant to any offer or agreement to purchase the Property. Unless otherwise agreed in writing between Seller and Listing Brokerage, any commission payable to any other brokerage shall be paid out of the commission the Seller pays the Listing Brokerage, said commission to be disbursed in accordance with the Commission Trust Agreement.

**MULTIPLE REPRESENTATION:** The Seller hereby acknowledges that the Listing Brokerage may be entering into buyer representation agreements with buyers who may be interested in purchasing the Seller's Property. In the event that the Listing Brokerage has entered into or enters into a buyer representation agreement with a prospective buyer for the Seller's Property, the Listing Brokerage will require the Seller's written consent to represent both the Seller and the buyer for the transaction. The Seller understands and acknowledges that the Listing Brokerage must be impartial when representing both the Seller and the buyer and equally protect the interests of the Seller and buyer. The Seller understands and acknowledges that when representing both the Seller and the buyer, the Listing Brokerage shall have a duty of full disclosure to both the Seller and the buyer.

However, the Seller further understands and acknowledges that the Listing Brokerage shall not disclose:

- that the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
- that the buyer may or will pay more than the offered price, unless otherwise instructed in writing by the buyer;
- the motivation of or personal information about the Seller or buyer, unless otherwise instructed in writing by the party to which the information applies or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
- the price the buyer should offer or the price the Seller should accept; and
- the Listing Brokerage shall not disclose to the buyer the terms of any other offer, unless otherwise directed in writing by the Seller.

However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the property will be disclosed to both Seller and Buyer to assist them to come to their own conclusions.

**The Brokerage shall not be appointed or authorized to be agent for either the Seller or the buyer for the purpose of giving and receiving notices where the Brokerage represents both the Seller and the buyer (multiple representation) or where the buyer or the seller is a self-represented party.**

**MULTIPLE REPRESENTATION AND DESIGNATED REPRESENTATION:** The Seller understands and acknowledges where both the Seller and buyer are represented by a designated representative of the Listing Brokerage, multiple representation will not result, unless that designated representative represents more than one client in the same trade, and will require consent in writing for such multiple representation. In the event of multiple representation and designated representation, the Brokerage duty of disclosure to both the seller and the buyer client is as more particularly set out in the agreement with the respective seller or buyer.

- 4. FINDERS FEES:** The Seller acknowledges that the Brokerage may be receiving a finder's fee, reward and/or referral incentive, and the Seller consents to any such benefit being received and retained by the Brokerage in addition to the Commission as described above.
- 5. REFERRAL OF ENQUIRIES:** The Seller agrees that during the Listing Period, the Seller shall advise the Listing Brokerage immediately of all enquiries from any source whatsoever, and all offers to purchase submitted to the Seller shall be immediately submitted to the Listing Brokerage by the Seller before the Seller accepts or rejects the same. If any enquiry during the Listing Period results in the Seller accepting a valid offer to purchase during the Listing Period or within the Holdover Period after the expiration of the Listing Period described above, the Seller agrees to pay the Listing Brokerage the amount of Commission set out above, payable within five (5) days following the Listing Brokerage's written demand therefor.
- 6. MARKETING:** The Seller agrees to allow the Listing Brokerage to show and permit prospective buyers to fully inspect the Property during reasonable hours and the Seller gives the Listing Brokerage the sole and exclusive right to place "For Sale" and "Sold" sign(s) upon the Property. The Seller consents to the Listing Brokerage including information in advertising that may identify the Property. The Seller further agrees that the Listing Brokerage shall have sole and exclusive authority to make all advertising decisions relating to the marketing of the Property for sale during the Listing Period. The Seller agrees that the Listing Brokerage will not be held liable in any manner whatsoever for any acts or omissions with respect to advertising by the Listing Brokerage or any other party, other than by the Listing Brokerage's gross negligence or wilful act.
- 7. WARRANTY:** The Seller represents and warrants that the Seller has the exclusive authority and power to execute this Authority to offer the Property for sale and that the Seller has informed the Listing Brokerage of any third party interests or claims on the Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Property, which may affect the sale of the Property.
- 8. INDEMNIFICATION AND INSURANCE:** The Seller will not hold the Listing Brokerage and representatives of the Brokerage responsible for any loss or damage to the Property or contents occurring during the term of this Agreement caused by the Listing Brokerage or anyone else by any means, including theft, fire or vandalism, other than by the Listing Brokerage's gross negligence or wilful act. The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury, including but not limited to loss of the Commission payable under this Agreement, caused or contributed to by the breach of any warranty or representation made by the Seller in this Agreement and, if attached, the accompanying data form. The Seller warrants the Property is insured, including personal liability insurance against any claims or lawsuits resulting from bodily injury or property damage to others caused in any way on or at the Property and the Seller indemnifies the Brokerage and all of its employees, representatives, salespersons and brokers (Listing Brokerage) and any co-operating brokerage and all of its employees, representatives, salespersons and brokers (co-operating brokerage) for and against any claims against the Listing Brokerage or co-operating brokerage made by anyone who attends or visits the Property.
- 9. ENVIRONMENTAL INDEMNIFICATION:** The Seller agrees to indemnify and save harmless the Listing Brokerage and representatives of the Brokerage and any co-operating brokerage from any liability, claim, loss, cost, damage or injury as a result of the Property being affected by any contaminants or environmental problems.
- 10. FAMILY LAW ACT:** The Seller hereby warrants that spousal consent is not necessary under the provisions of the Family Law Act, R.S.O. 1990, unless the spouse of the Seller has executed the consent hereinafter provided.
- 11. VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Property and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. The Seller hereby appoints the Listing Brokerage or the Listing Brokerage's authorized representative as the Seller's attorney to execute such documentation as may be necessary to effect obtaining any information as aforesaid. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

INITIALS OF LISTING BROKERAGE:

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TM

INITIALS OF SELLER(S):


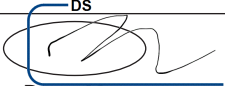
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**12. USE AND DISTRIBUTION OF INFORMATION:** The Seller consents to the collection, use and disclosure of personal information by the Brokerage for the purpose of listing and marketing the Property including, but not limited to: listing and advertising the Property using any medium including the Internet; disclosing Property information to prospective buyers, brokerages, salespersons and others who may assist in the sale of the Property; such other use of the Seller's personal information as is consistent with listing and marketing of the Property. The Seller consents, if this is an MLS® Listing, to placement of the listing information and sales information by the Brokerage into the database(s) of the MLS® System of the appropriate Board, and to the posting of any documents and other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) provided by or on behalf of the Seller into the database(s) of the MLS® System of the appropriate Board. The Seller hereby indemnifies and saves harmless the Brokerage and/or any of its employees, servants, brokers or sales representatives from any and all claims, liabilities, suits, actions, losses, costs and legal fees caused by, or arising out of, or resulting from the posting of any documents or other information (including, without limitation, photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions) as aforesaid. The Seller acknowledges that the database, within the board's MLS® System is the property of the real estate board(s) and can be licensed, resold, or otherwise dealt with by the board(s). The Seller further acknowledges that the real estate board(s) may: during the term of the listing and thereafter, distribute the information in the database, within the board's MLS® System to any persons authorized to use such service which may include other brokerages, government departments, appraisers, municipal organizations and others; market the Property, at its option, in any medium, including electronic media; during the term of the listing and thereafter, compile, retain and publish any statistics including historical data within the board's MLS® System and retain, reproduce and display photographs, images, graphics, audio and video recordings, virtual tours, drawings, floor plans, architectural designs, artistic renderings, surveys and listing descriptions which may be used by board members to conduct comparative analyses; and make such other use of the information as the Brokerage and/or real estate board(s) deem appropriate, in connection with the listing, marketing and selling of real estate during the term of the listing and thereafter. The Seller acknowledges that the information, personal or otherwise ("information"), provided to the real estate board or association may be stored on databases located outside of Canada, in which case the information would be subject to the laws of the jurisdiction in which the information is located.

In the event that this Agreement expires or is cancelled or otherwise terminated and the Property is not sold, the Seller, by initialling:     
 consent to allow other real estate board members to contact the Seller after expiration or other termination of this Agreement to discuss listing or otherwise marketing the Property.   
 Does Does Not

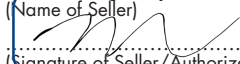
- 13. SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.
- 14. CONFLICT OR DISCREPANCY:** If there is any conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement, including any Schedule attached hereto, shall constitute the entire Authority from the Seller to the Listing Brokerage. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein.
- 15. ELECTRONIC COMMUNICATION:** This Agreement and any agreements, notices or other communications contemplated thereby may be transmitted by means of electronic systems, in which case signatures shall be deemed to be original. The transmission of this Agreement by the Seller by electronic means shall be deemed to confirm the Seller has retained a true copy of the Agreement.
- 16. ELECTRONIC SIGNATURES:** If this Agreement has been signed with an electronic signature the parties hereto consent and agree to the use of such electronic signature with respect to this Agreement pursuant to the *Electronic Commerce Act, 2000, S.O. 2000, c17* as amended from time to time.

**THE LISTING BROKERAGE AGREES TO MARKET THE PROPERTY ON BEHALF OF THE SELLER AND REPRESENT THE SELLER IN AN ENDEAVOUR TO OBTAIN A VALID OFFER TO PURCHASE THE PROPERTY ON THE TERMS SET OUT IN THIS AGREEMENT OR ON SUCH OTHER TERMS SATISFACTORY TO THE SELLER.**

DocuSigned by:  5/28/2024 | 1:37 PM PDT Tracy Macdonald  
(Authorized Signer of the Listing Brokerage) (Date) (Name of Person Signing)


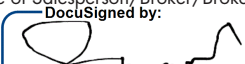
**THIS AGREEMENT HAS BEEN READ AND FULLY UNDERSTOOD BY ME, I ACCEPT THE TERMS OF THIS AGREEMENT AND I ACKNOWLEDGE ON THIS DATE I HAVE SIGNED UNDER SEAL.** Any representations contained herein or as shown on any accompanying data form respecting the Property are true to the best of my knowledge, information and belief.

SIGNED, SEALED AND DELIVERED I have hereunto set my hand and seal:

KSV Restructuring Inc., the court-appointed receiver and manager of  
DocuSigned by:  5/28/2024 | 2:02 PM PDT  
(Name of Seller) (Seal) (Date) (Tel. No.)  
(Signature of Seller/Authorized Signing Officer) (Seal) (Date) (Tel. No.)  
(Signature of Seller/Authorized Signing Officer) (Seal) (Date) (Tel. No.)

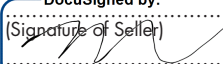
**SPOUSAL CONSENT:** The undersigned spouse of the Seller hereby consents to the listing of the Property herein pursuant to the provisions of the Family Law Act, R.S.O. 1990 and hereby agrees to execute all necessary or incidental documents to further any transaction provided for herein.

(Spouse) (Seal) (Date) (Tel. No.)

**DECLARATION OF INSURANCE**  
The Salesperson/Broker/Broker of Record Victor Cotic, Jeremiah Shames and Matthew Soper  
(Name of Salesperson/Broker/Broker of Record)  
hereby declares that he/she is insured as required by TRISA.  
DocuSigned by:  DocuSigned by:   
90B9898F387E4C9... (Signature(s) of Salesperson/Broker/Broker of Record)  
75861CE7208D7D...

**ACKNOWLEDGEMENT**

The Seller(s) hereby acknowledge that the Seller(s) fully understand the terms of this Agreement and have received a copy of this Agreement on the MAY 28th day of 2024

DocuSigned by:  5/28/2024 | 2:02 PM PDT  
(Signature of Seller) (Date)  
(Signature of Seller/Authorized Signing Officer) (Date)



**Form 593**  
for use in the Province of Ontario

# Schedule A

## Listing Agreement - Commercial Seller Designated Representation Agreement Authority to Offer for Sale

This Schedule is attached to and forms part of the Listing Agreement - Commercial Seller Designated Representation Agreement, Authority to Offer for Sale (Agreement) between:

**BROKERAGE:** Colliers Macaulay Nicolls Inc., Brokerage .....,and

**SELLER:** KSV Restructuring Inc., the court-appointed receiver and manager of 111 Sherwood Investments Inc. ....

**PROPERTY:** 111 Sherwood Drive, Brantford, ON N3T 6J9 .....

This Schedule to the Agreement, *inter alia*, sets out the details of the provision of services, confidentiality and representation by the Brokerage and Designated Representative, and subject to the terms of Clause 14 in the Agreement (Conflict or Discrepancy), is in addition to provision of services, confidentiality and representation set out in the Agreement.

Full Service

This form must be initialled by all parties to the Agreement.

**INITIALS OF LISTING BROKERAGE:** 

**INITIALS OF SELLER(S):** 

**Schedule B to OREA Listing Agreement - Commercial**

This Listing Agreement (the "**Agreement**") is entered into on May 27, 2024 between **Colliers Macaulay Nicolls Inc.** (the "**Listing Brokerage**") and **KSV Restructuring Inc.** (the "**Seller**" or the "**Receiver**") as receiver and manager of the real property located at 111 Sherwood Drive, Brantford (the "**Real Property**"), as well as all other property and assets related to the Real Property (the "**Property**"), pursuant to an order (the "**Receivership Order**") of the Ontario Superior Court of Justice (the "**Court**") issued on April 19, 2024, and without personal or corporate liability and solely in its capacity as receiver and manager under the Receivership Order.

To the extent of any inconsistency between this Agreement and the "OREA Listing Agreement - Commercial", this Agreement shall govern. Notwithstanding anything contained in the OREA Listing Agreement - Commercial, each of the Listing Brokerage and the Seller acknowledges and agrees as follows:

**1. Termination Rights.** The Seller may without penalty or cost to the Seller terminate the Agreement at any time, if the Listing Brokerage is in default hereunder or under any other agreement with the Seller. In addition, this Agreement shall automatically terminate if: (a) the Receivership Order is revoked, overturned on appeal, suspended or terminated; (b) the Seller is restricted in or enjoined from dealing with the Property by a court of competent jurisdiction; and/or (c) any of the mortgagees of the Property or any other future lenders are permitted by court order to enforce their rights and/or remedies against the Property.

**2. Price.** While it is the Seller's intention to obtain the highest and best offer for the Property, the Listing Brokerage acknowledges and agrees that the Seller need not accept the highest offers and/or the best offers or any offer, and that acceptance by the Seller of any offer for the Property is subject at all times to the Seller's approval in its sole and absolute discretion and as well as approval by the Court. No fee, commission or other compensation is payable to the Listing Brokerage (except as detailed in Section 6 below) in respect of the Property unless and until the sale of the Property has been completed and the purchase price consideration payable to the Seller has been paid in its entirety.

**3. Holdover Period Commission.** Any fee, commission or other compensation payable to the Listing Brokerage in connection with a holdover period, being six months from the termination of the Listing Agreement ("Holdover Period"), shall: (a) only apply to those purchasers who were introduced to the Seller or to the Property by the Listing Brokerage during the Listing Period (as defined in Section 18) and who the Listing Brokerage had previously disclosed in writing to the Seller no later than three (3) days following the earlier of the expiration or termination of the Agreement; and (b) be reduced by any fee, commission and/or other compensation paid to another broker or agent for the sale of the Property as the new Listing Brokerage (the "New Agent") on the basis of an agreement with the New Agent entered into with respect to the Holdover Period. If the Listing Brokerage had introduced up to a maximum of two (2) different prospective bona fide purchasers to the Seller during the Listing Period (each being a "Serious Prospect") and said Serious Prospect had entered into material negotiations with the Seller to purchase the Property, but said material negotiations had not resulted in a binding agreement of purchase and sale, then to the extent that each of the Listing Brokerage and the Seller agree in writing to designate said prospective purchaser as a Serious Prospect prior to the expiration of the Listing Period, and so long as the Seller is not prohibited from doing so, and provided that the New Agent has agreed to forego its fee should a sale to a Serious Prospect be completed, the Listing Brokerage shall be entitled to its commission in connection with the transaction being completed with the Serious Prospect upon terms and conditions acceptable to the Seller in their sole and absolute discretion, which such transaction must be subject to Court approval and a binding and unconditional agreement of purchase and sale executed by each of the parties thereto prior to the expiration of the Holdover Period. During the Holdover Period, the Listing Brokerage will not be entitled to any commission, payment or fee as the Seller's agent if the Listing Team (as defined below) represents the purchaser.

**4. Listing Brokerage's Duties.** The Listing Brokerage covenants and agrees with the Seller to:

(a) pursuant to the Seller's instructions as outlined below, offer the Property for sale on an unpriced basis (save and except as described in (b) below with respect to the Multiple Listings Service ("**MLS**"));

(b) if instructed by the Seller, offer the Property for sale on MLS, for which the listed price shall be \$1.00, or as otherwise directed by the Seller, and the Commissions to Co-operating Brokerage shall be as listed on Schedule "A";

(c) unless otherwise agreed by the Seller, diligently market the Property for sale and use commercially reasonable efforts to sell the Property pursuant to the process set out in Schedule "B" attached hereto (the "**Sale Process**");

(d) co-operate with all licensed real estate brokers and agents in the sale of the Property (collectively the "Cooperating Agents" and each a "Cooperating Agent"), with any commissions or fees of such Cooperating Agents to be paid by the Seller as set out in Schedule "A";

(e) ensure that there is continuity in the assignment of individual staff members and partners to the work performed by the Listing Brokerage under the terms of this engagement. In particular, the Listing Brokerage agrees to ensure that the individual staff members originally assigned, including Victor Cotic, Jeremiah Shames and Ron Jansen (collectively, the "Listing Team"), to perform work in connection with the Listing Brokerage's engagement, will each be available and will devote the time required to undertake the assignment contemplated herein;

(f) subject to the instructions of the Seller, to assist the Seller in negotiating binding agreements of purchase and sale subject to Court approval with those parties identified by the Seller. Only the Seller shall have authority to accept offers and the Listing Brokerage shall not have any authority whatsoever to enter into any sale, financing or other contract on behalf of the Seller and/or to otherwise bind the Seller in any manner whatsoever;

(g) continue to assist the Seller in connection with the sale of the Property and seeking Court approval after the execution of a binding agreement of purchase and sale with respect to the same until such sale has been successfully concluded; and

(h) unless the Seller's written consent is provided in advance, to act solely for the benefit of the Seller in connection with the marketing and sale of the Property and not to have any direct or indirect interest in any entity purchasing or proposing to purchase the Property and not to receive any payments or other benefits from said purchasers or potential purchasers.

**5. Commission Payable to the Listing Brokerage.** The Seller shall pay to the Listing Brokerage upon the successful completion of a sale of the Property, a commission payable in accordance with Schedule "A" attached hereto (the "Listing Fee"). The Seller acknowledges that payment of HST applies on all commissions payable. As it relates to the commission payable, a sale constitutes a Court approved sale of the Property, share transaction, exercise of first right to purchase, option or other form of sale or transfer of the rights of the Property. The Seller agrees to notify the Listing Brokerage of the successful completion or closing. The Seller hereby instructs its solicitors to distribute payment to the Listing Brokerage in the amount noted above directly out of the proceeds of sale in accordance with an accepted agreement of purchase and sale and to have same addressed as a closing cost to the transaction.

**6. Refinancing and Credit Bid Fees.** If anytime during the Listing Period, the Court approves a credit bid by NHE Capital Corp. ("NHE"), or a party related to NHE, for the purchase of the Real Property, the Listing Brokerage shall be entitled to a fee of \$50,000 (plus applicable taxes and actual disbursements) on closing of the transaction. For greater certainty, if any parties other than NHE, or a party related to NHE, are the successful purchaser, the commission payable will be as set out in Schedule "A".

**7. Acknowledgments.** The Listing Brokerage acknowledges and agrees in favour of the Seller that: (a) the Property is to be marketed and sold on an "as is, where is" basis and, accordingly, any agreement of purchase and sale shall provide an acknowledgment by such purchaser that the Property is being sold by the Seller on an "as is, where is" basis, and that no representations or warranties have been or will be made by the Seller or anyone acting on its behalf, to the Listing Brokerage or such purchaser as to the condition of the Property or any buildings located thereon; (b) the Seller may annex a schedule to the transfer/deed of land (or other registrable document with respect to the sale) expressly excluding any covenants deemed to be included pursuant to the Land Registration Reform Act of Ontario, other than one to the effect that the Seller has the right to convey the Property; (c) in lieu of a transfer/deed of land for the Property, the Seller will vest title to the Property by way of an approval and vesting order issued by the Court; and (d) the sale of the Property requires the prior approval of the Court in said Court's sole and absolute discretion.

**8. Advertisement Expenses, Third Party Consultants and Reporting.** All advertising and sales promotion shall be subject to the approval of the Seller and all such advertisement and promotional material shall be prepared, published and distributed by the Listing Brokerage and shall be at the expense of the Listing Brokerage. All third-party reports and legal service fees requested and/or approved by the Seller shall be at the expense of the Seller. The Listing Brokerage agrees to provide the Seller with detailed reporting regarding the status of the Sale Process, including weekly lists of its solicitation efforts, the parties interested in the opportunity, the status of their diligence and such other information as is reasonably requested by Seller to be kept apprised of all material developments in the Sale Process. The Listing Brokerage will participate in no less than one weekly update call with the Seller, in the Seller's discretion.



**9. Indemnity.** The Listing Brokerage confirms that it owes an obligation to the Seller and its officers, employees and agents (collectively, the "Indemnified Parties") to carry out its activities in a competent and professional manner acting reasonably and in good faith. As such, the Listing Brokerage hereby indemnifies the Indemnified Parties with respect to claims made by third parties against the Indemnified Parties arising out of the grossly negligent acts, willful misconduct or fraud by the Listing Brokerage or the Listing Brokerage's failure to comply with its obligations hereunder. This indemnity shall survive the expiration or termination of the Agreement.

**10. Confidentiality.** The Listing Brokerage shall treat and shall cause its agents to treat as confidential and shall not disclose, during or after the rendering of the services contracted herein, any confidential information, records or documents to which the Listing Brokerage becomes privy as a result of its performance of the Agreement and shall take all necessary steps to ensure the confidentiality of information in the Listing Brokerage's possession or control except for disclosure that may be required for the reasonable performance by the Listing Brokerage of its responsibilities hereunder.

**11. Assignment.** This Agreement shall not be assigned in whole or in part by the Listing Brokerage without the prior written consent of the Seller which consent may be unreasonably and/or arbitrarily withheld and any assignment made without that consent is void and of no effect.

**12. Seller's Capacity.** Notwithstanding the foregoing or anything else contained herein or elsewhere, the Listing Brokerage acknowledges and agrees that approval of the Sale Process (including the retention of the Listing Brokerage) and any transaction or transactions involving a sale of the Property require the prior approval of the Court in the Court's sole and absolute discretion.

**13. Warranty.** Subject to Section 12 above and the remainder of this Section 13, the Seller represents and warrants that upon approval by the Court the Seller will have the exclusive authority and power to execute this Agreement and to authorize the Listing Brokerage to offer the Property for sale. Notwithstanding the foregoing, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Property and cannot confirm any third-party interests or claims with respect to the Property such as rights of first refusal, options, easements, mortgages, encumbrances or other otherwise concerning the Property, which may affect the sale of the Property.

**14. Execution.** This Agreement and any other agreement delivered in connection therewith, and any amendments thereto, may be executed by electronic copy or such similar format and if so executed and transmitted, will be for all purposes as effective as if the parties had delivered an executed original of this Agreement, or such other agreement or amendment, as the case may be, and shall be deemed to be made when the receiving party confirms this Agreement, or such agreement or amendment, as the case may be, to the requesting party by electronic copy or such similar format. This Agreement may be executed in several counterparts, and each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and, notwithstanding their date of execution, shall be deemed to bear date as of the date first written above.

**15. Jurisdiction.** This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario. If any provision hereof is invalid or unenforceable in any jurisdiction where this Agreement is to be performed, such provision shall be deemed to be deleted and the remaining portions of this Agreement shall remain valid and binding on the parties hereto.

**16. Finder's Fees.** The Seller does not consent to the Listing Brokerage or any Cooperating Agents (or their respective affiliates) receiving and retaining, in addition to the commission provided for or otherwise contemplated in this Agreement, a finder's fee for any financing of the Property.

**17. Verification of Information.** The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Property and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. For greater certainty, none of the Listing Brokerage or the Listing Brokerage's representatives may bind the Seller or execute any documentation on behalf of the Seller. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

**18. Listing Period.** The term of this Agreement shall begin upon acceptance of this Agreement (the "Commencement Date") and shall expire one minute before midnight on the sixth month anniversary of the Commencement Date or upon earlier termination as otherwise prescribed herein (the "Listing Period"). Notwithstanding any other provision in this Agreement, the Listing Brokerage shall not advertise the Property on MLS until the Seller provides expressed authority to do so and all marketing materials have been approved. The Listing Brokerage shall have five (5) days following said approval to post the Property on MLS.

COLLIERS MACAULAY NICOLLS INC., BROKERAGE

DocuSigned by:

Per: Tracy Macdonald

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Name: Tracy Macdonald

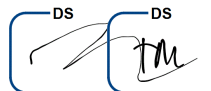
Title: Senior Managing Director, GTA Industrial

KSV RESTRUCTURING INC. SOLELY IN ITS CAPACITY  
AS COURT APPOINTED RECEIVER AND MANAGER  
OF 111 SHERWOOD INVESTMENTS INC. AND NOT  
IN ITS PERSONAL CAPACITY

Per: 

Name: Noah Goldstein

Title: Managing Director



**Schedule "A"**

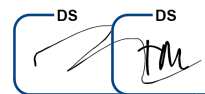
**Sale of the Property:** The Listing Fee is equal to 2.50% of the purchase price of the Property, plus applicable taxes, if solely completed by the Listing Team. If co-operating, the Listing Fee will be increased to 3.25%, with 0.75% being payable to the Cooperating Agent and 2.50% to the Listing Team, plus all applicable taxes.





Schedule "B"

Sale Process:



Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Due diligence	➤ Colliers to review all available documents (financial, legal and environmental reports) concerning the Real Property.	Week 1
Finalize marketing materials	➤ Colliers and the Receiver to: <ul style="list-style-type: none"> <li>○ prepare a marketing brochure;</li> <li>○ populate an online data room;</li> <li>○ prepare a confidentiality agreement (“CA”); and</li> <li>○ prepare a Confidential Information Memorandum (“CIM”).</li> </ul>	
Consulting Reports	➤ The Receiver is arranging for updated and/or new consulting reports to facilitate due diligence by interested parties. These will be made available in the data rooms.	
Prospect Identification	➤ Colliers will qualify and prioritize prospects; and ➤ Colliers will also have pre-marketing discussions with targeted prospects.	
<i>Phase 2 – Marketing and Offer Solicitation</i>		
Stage 1	<ul style="list-style-type: none"> <li>➤ Mass market introduction, including: <ul style="list-style-type: none"> <li>○ sending offering summary and marketing materials, including marketing brochure to Colliers’ client base, including specifically targeted prospects;</li> <li>○ publishing the acquisition opportunity in such journals, publications and online as the realtor and the Receiver believe appropriate to maximize interest in this opportunity;</li> <li>○ posting “for sale” signs on the Real Property;</li> <li>○ engaging in direct canvassing of most likely prospects and tailoring the pitch to each of these candidates based on the brokers’ knowledge of these parties;</li> <li>○ posting the acquisition opportunity on MLS on an unpriced basis; and</li> <li>○ meeting with prospective bidders to explain the potential of each site.</li> </ul> </li> <li>➤ Colliers to provide detailed information to qualified prospects that sign the CA, including the CIM and access to the data room;</li> <li>➤ Colliers and the Receiver to facilitate diligence by interested parties;</li> <li>➤ The Receiver and legal counsel will prepare a vendor’s form of Purchase and Sale Agreement (“PSA”) which will be made available in the data room; and</li> <li>➤ Receiver to arrange for certain updated and/or new consulting reports to facilitate due diligence. These will also be made available in the data rooms, where applicable.</li> </ul>	Week 2-6
Stage 3	<ul style="list-style-type: none"> <li>➤ “Offer not Before Date” of July 8<sup>th</sup>, 2024 (tentative date – subject to achieving previous timelines and market feedback)</li> <li>➤ Prospective purchasers encouraged to submit offers in the form of the PSA, with any changes to the PSA blacklined. Initial submissions on letters of intent (“LOI”) will be permitted to facilitate investor offerings.</li> </ul>	July 8 <sup>th</sup> , 2024 (tentative date)
<i>Phase 3 – Offer Review and Negotiations</i>		
	➤ Short listing of bidders.	Week 7-8

Sale Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> <li>➤ Further bidding - bidders may be asked to improve their offers. The Receiver may invite parties to participate in as many rounds of bidding as is required to maximize the consideration and minimize closing risk. The Receiver may also seek to clarify terms of the offers submitted and to negotiate such terms.</li> <li>➤ The Receiver will be at liberty to consult with the mortgagees regarding the offers received, subject to any confidentiality requirements that the Receiver believes appropriate.</li> <li>➤ Select successful bidder(s) and finalize definitive documents. The Receiver will select the successful bidder(s), having regards to, among other things: <ul style="list-style-type: none"> <li>○ total consideration (cash and assumed liabilities);</li> <li>○ form of consideration being offered;</li> <li>○ third-party approvals required, if any;</li> <li>○ conditions, if any, and time required to satisfy or waive same; and</li> <li>○ such other factors affecting the speed and certainty of closing and the value of the offers as the Receiver considers relevant.</li> </ul> </li> <li>➤ 2<sup>nd</sup> round bids and further bidding - prospective purchasers may be asked to re-submit PSAs on one or more occasions.</li> </ul>	
Selection of Successful Bids	<ul style="list-style-type: none"> <li>➤ Select successful bidder and finalize definitive documents, subject to any final diligence to be performed by the purchaser.</li> <li>➤ Back up bidders will be kept "warm" in order to have options in case selected bidder does not close.</li> </ul>	Week 9
Due Diligence	<ul style="list-style-type: none"> <li>➤ Manage and monitor final due diligence process, if applicable;</li> <li>➤ Gather and/or commission missing documentation; and</li> <li>➤ Additional site visits, as required.</li> </ul>	Week 9-12
<b>Phase 4 – Closing</b>		
Sale Approval Motion	<ul style="list-style-type: none"> <li>➤ Upon execution of definitive transaction documents, the Receiver will seek Court approval of the successful offer, on not less than 7 calendar days' notice to the service list and registered secured creditors.</li> </ul>	15 to 30 days from the date that the selected bidder confirms all conditions have been satisfied or waived
Closing	<ul style="list-style-type: none"> <li>➤ Following Court approval</li> </ul>	ASAP

**TAB 3**

Court File No. CV-23-00699908-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF SECTION 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**

B E T W E E N:

**NHE CAPITAL CORP.**

Applicant

- and -

**111 SHERWOOD INVESTMENTS INC.**

Respondent

**AFFIDAVIT OF ELY RECHTSMAN**  
*(Sworn April 15, 2024)*

**I, ELY RECHTSMAN**, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY:**

1. I am an officer and director of the Applicant NHE Capital Corp. As such, I have personal knowledge of the matters to which I hereinafter depose.

2. This affidavit is supplemental to my affidavit sworn May 19, 2023 in support of this receivership application. Unless defined otherwise, capitalized terms used in this affidavit have the meanings given to them in my affidavit sworn on May 19, 2023 (my “**First Affidavit**”). A copy of my First Affidavit, without exhibits, is attached as **Exhibit A**.

3. This matter first came on for a scheduling appearance before Justice Osborne on June 1, 2023. Justice Osborne directed this application to be heard on its merits on July 4, 2023. A copy of Justice Osborne's endorsement dated June 1, 2023 is attached as **Exhibit B**.

4. Before the July 4, 2023 return date, the Applicant and the Debtor entered into a forbearance agreement made as of June 30, 2023 (the "FA"). As a result of the FA, the within receivership application was adjourned *sine die* by endorsement of Justice Osborne dated July 4, 2023, a copy of which is attached as **Exhibit C**.

5. Pursuant to the FA, the Applicant agreed to forbear from exercising its security given in connection with the Loan until the earlier of October 1, 2023 or an event of default (the "**Forbearance Expiry Date**"), subject to certain terms and conditions, including that the Debtor would be required to make monthly payments of interest under the Loan. As a term of the FA, the Debtor consented to an Order (the "**Consent Order**") appointing KSV Restructuring Inc. as receiver and manager of the Debtor, which the Applicant would be entitled to submit to this Court for signing upon the Forbearance Expiry Date. A copy of the FA is attached as **Exhibit D**. A copy of the executed Consent Order is attached as **Exhibit E**.

6. In the FA, the Debtor agreed that, upon the Forbearance Expiry Date, the Applicant may rely upon the written demand made on them and the notice of intention to enforce security issued pursuant section 244 to the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") on April 19, 2023, and waived any obligation on the part of the Applicant to issue a further letter of demand and notice under the BIA.

7. The FA was amended by amendment made as of October 3, 2023, pursuant to which the Forbearance Expiry Date was amended to mean the earlier of April 1, 2024 or an event of default. A copy of the amendment to the FA is attached as **Exhibit F**.

8. The Debtor committed an event of default under the FA, as amended, by failing to pay interest under the Loan on February 1, 2024. The Loan has also not been repaid and interest was not paid on April 1, 2024.

9. A copy of the current parcel register for the Real Property is attached as **Exhibit G**. As appears from the parcel register, the Lien (referred to in my First Affidavit) has been removed from title to the Real Property.

10. As of April 12, 2024, \$12,351,773.92 remains owing under the Loan. Per diem interest in the amount of \$4,356.16 continues to accrue under the Loan.

11. Other than the Lien, which has been removed, the appointment of KSV Restructuring Inc. as receiver and manager of the assets, undertakings and property of the Debtor, including, without limitation, the Real Property remains just and convenient for the reasons set out in my First Affidavit. It is also just and convenient to appoint KSV as receiver and manager in the circumstances given the Debtor's execution of the Consent Order and the default under the FA, as amended.

**SWORN** by **ELY RECHTSMAN**, at the City of Toronto, before me at the City of Toronto, in the Province of Ontario, on April 15, 2024 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

*David Seifer*

\_\_\_\_\_  
Commissioner for Taking Affidavits  
(or as may be)



\_\_\_\_\_  
**ELY RECHTSMAN**

**TAB 4**



**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF SECTION 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**

THE HONOURABLE ) MONDAY, THE 3<sup>rd</sup>  
 )  
JUSTICE OSBORNE ) DAY OF JUNE, 2024

B E T W E E N :

**NHE CAPITAL CORP.**

Applicant

- and -

**111 SHERWOOD INVESTMENTS INC.**

Respondent

**SALE PROCESS APPROVAL ORDER**

**THIS MOTION**, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**"), without security, of all of the assets, undertakings and properties of 111 Sherwood Investments Inc. (the "**Debtor**"), including, without limitation, the real property owned by the Debtor municipally known as 111 Sherwood Drive, Brantford, Ontario and all proceeds thereof (the "**Property**"), for an order, among other things, approving (i) the proposed Sale Process (as defined and described in the First Report of the Receiver dated May 28, 2024 (the "**First Report**")), and (ii) the First Report and the Receiver's activities and conduct therein, was heard this day by judicial videoconference.

**ON READING** the First Report (including the appendices thereto), and on hearing the submissions of counsel for the Receiver, and such other counsel as was present, no one else appearing although properly served, as appears from the affidavit of Jamie Ernst sworn and filed.

### **SERVICE AND DEFINITIONS**

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

2. **THIS COURT ORDERS** that all capitalized terms used in this Order and not otherwise defined shall have the meanings ascribed to them in the First Report.

### **SALE PROCESS**

3. **THIS COURT ORDERS** that the proposed Sale Process be and is hereby approved. The Receiver is hereby authorized to carry out the Sale Process and to take such steps as it considers necessary or desirable in carrying out its obligation thereunder, subject to prior approval of this Court being obtained before completion of any transaction under the Sale Process. The listing agreement dated May 28, 2024 between the Receiver and Colliers Macaulay Nicolls Inc. is also hereby approved.

4. **THIS COURT ORDERS** that without limiting paragraph 3 of this Order, the Receiver is authorized to take any and all steps necessary to commission environmental studies and/or reports as may be required, in the sole discretion of the Receiver, to facilitate the Sale Process. All tenants located on the Property are required to cooperate with the Receiver and provide reasonable access

of their leased spaces to the Receiver and any professional retained to assist with the Sale Process, including any such studies or reports.

5. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of performing its duties under the Sale Process, except to the extent such losses, claims, damages or liabilities arise or result from the gross negligence or wilful misconduct of the Receiver, as determined by this Court.

#### **PIPEDA**

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

**APPROVAL OF THE RECEIVER'S ACTIVITIES AND REPORT**

7. **THIS COURT ORDERS** that the First Report is hereby approved and the activities and conduct of the Receiver as described therein is hereby ratified and approved; provided, however, that only the Receiver, in its personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approvals.

**GENERAL**

8. **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 Receiver 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 Receiver, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

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

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**NHE CAPITAL CORP.**

- and -

**111 SHERWOOD INVESTMENTS INC.**

Applicant

Respondent

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***ONTARIO***  
**SUPERIOR COURT OF JUSTICE**  
**(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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**SALE PROCESS APPROVAL ORDER**

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**BENNETT JONES LLP**

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M5X 1A4

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Counsel to KSV Restructuring Inc., solely in its  
capacity as Court-appointed Receiver and not in its  
personal capacity

**NHE CAPITAL CORP.**

- and -

**111 SHERWOOD INVESTMENTS INC.**

Applicant

Respondent

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**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

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**MOTION RECORD  
(Returnable June 3, 2024)**

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Counsel to KSV Restructuring Inc., solely in its capacity as  
Court-appointed Receiver and not in its personal capacity