

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

B E T W E E N:

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

and

**BARAKAA DEVELOPER INC., LERRATO INC. and 2145499 ONTARIO
INC.**

Respondents

MOTION RECORD

January 21, 2025

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receiver and manager of 2145499
Ontario Inc. and certain properties of
Barakaa Developer Inc. and Lerrato
Inc.**

TO: THE SERVICE LIST

**ONTARIO
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TAB 1

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

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

-and-

BARAKAA DEVELOPER INC., LERRATO INC. and 2145499 ONTARIO INC.

Respondents

NOTICE OF MOTION

KSV Restructuring Inc. ("**KSV**"), in its capacity as court-appointed receiver and manager (the "**Receiver**") of certain real properties of Barakaa Developer Inc. ("**Barakaa**") and Lerrato Inc. ("**Lerrato**") and the property, assets and undertakings of 2145499 Ontario Inc. ("**2145499**" and together with Barakaa and Lerrato, the "**Debtors**") will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the "**Court**"), on **Monday, February 3, 2025 at 12:00 pm**, or as soon after that time as the motion can be heard, via video conference.

PROPOSED METHOD OF HEARING: The motion is to be heard orally via videoconference.

THE MOTION IS FOR:

1. An Order substantially in the form attached at Tab 3 of the Motion Record, among other things:
 - (a) abridging the time for service of this motion and the supporting materials, as necessary, and deeming service thereof to be good and sufficient;
 - (b) increasing the Receiver's borrowing authority and Receiver's Borrowings Charge, as defined in paragraph 20 of the Receivership Order granted by this Honourable Court dated October 21, 2024 (the "**Receivership Order**") from \$250,000 to \$1,200,000;

- (c) declaring that the advance made by Foremost Mortgage Holding Corporation (“**Foremost**”) to the Receiver on December 13, 2024 to assist in the funding of the within proceedings constitutes an advance secured by the Receiver’s Borrowing Charge; and
- (d) such other and further relief as counsel may request and this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

Background

1. On October 21, 2024, upon an application by Foremost, a secured lender to the Debtors, KSV was appointed as Receiver 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 (the “**CJA**”).
2. The Debtors are real property developers. The Receiver was appointed in respect of:
 - (a) two fully constructed homes at 23 Madison Avenue (“**23 Madison**”) and 25 Madison Avenue (“**25 Madison**”) in Richmond Hill, Ontario owned by Barakaa;
 - (b) five fully constructed residential freehold townhouses and one parcel of residual real property (a municipal easement) in Ajax, Ontario owned by Lerrato (the “**Porte Properties**”); and
 - (c) a substantially completed 10-unit townhouse condominium project in Ajax, Ontario owned by 2145499 (the “**Doric Development**”),(collectively, the “**Receivership Assets**”).
3. The Receivership Assets are complicated by a number of factors which makes realization difficult and time-consuming, including the following:
 - (a) 23 Madison is currently occupied by a purchaser who has paid Barakaa or its principal non-market deposits in the aggregate amount of \$650,000, leaving a materially reduced purchase price balance payable on closing, and the Receiver is considering next steps, given the likely mortgagee shortfall;

- (b) 25 Madison has been listed for sale for over two months but its sale is likely to be difficult since New Home Warranty coverage is not available, and residential purchasers are unfamiliar with an approval and vesting order process;
 - (c) the five Porte Properties are subject to agreements of purchase and sale and are occupied by the proposed purchasers, three of whom have paid Lerrato or its principal substantial non-market deposits, leaving materially reduced purchase price balances payable on closing, and the Receiver is considering next steps, given the likely mortgagee shortfall if those sales are completed;
 - (d) two of the five proposed purchasers of the Porte Properties have indicated that they would like to close but have not advised the Receiver if or when they can close, nor that they have the ability to close;
 - (e) the Doric Development is not connected to the power grid and has not been registered under the *Condominium Act*. There is one unit has been contracted for sale which contract does not appear to be *Condominium Act* compliant. All of the townhome units remain vacant and cannot be occupied until the project is connected to the power grid and registration of the project in accordance with the *Condominium Act* has been completed;
 - (f) there are several secured charges registered against the Receivership Assets, in addition to those of Foremost, including charges by Sanjive Joshi, Xpert Credit Control Solutions Inc. and Xpert Law Inc. that are subject to ongoing litigation by the Debtors; and
 - (g) the deposits paid by the Porte purchasers, the 23 Madison purchaser and the Doric purchaser were not (with one exception) held in trust but used by the Debtors to pay down subsequent mortgagees to Foremost and/or fund costs related to the development of the Receivership Assets or other projects owned by the principals of the Debtors and in the case of at least three of the Porte Properties and 23 Madison, the market value of the homes are more than the balance of the purchase price owing by each of the purchasers currently occupying the homes.
4. As a result of these complicating factors, the Receiver believes that it may be necessary to proceed with an application seeking to terminate the agreements of purchase and sale

for any or all of the above properties and require the purchasers to vacate the premises, so the Receiver can re-market those properties for sale to ensure that the market value of those Receivership Assets can be realized. Further, it is not anticipated that the marketing of condominium townhouse units in the Doric Development will begin for another few months with closings not anticipated to occur until late 2025 at the earliest, given the requirements of *Condominium Act*.

Funding of the Receivership Proceedings

5. The Receivership Order provides for a Receiver's borrowing authority and Receiver's Borrowing Charge in the amount of \$250,000 for the purpose of funding the exercise of the powers and duties of the Receiver thereunder.
6. On November 12, 2024, Foremost advanced \$30,000 under the Receiver's Borrowing Charge to cover certain costs that required immediate funding.
7. On December 13, 2024, Foremost funded an additional \$801,000 to the Receiver (the "**Second Advance**") on an urgent basis for costs that needed to be paid to prevent lengthy delays in advancing the work to be performed by Elexicon Energy Inc. ("**Elexicon**") on the Doric Development, including the payment of \$433,000 for the cost of the electrical transformer, to be installed in the project, and the balance for other receivership expenditures, such as utilities, consulting costs and professional fees.
8. Since the Second Advance was made on December 13, 2024, in order to meet the Elexicon and other deadlines and critical funding needs, it was not possible to obtain court approval in advance of this funding. Foremost funded the Second Advance on the basis that the Receiver would seek approval in early 2025 that the Second Advance would be covered by an increase in the Receiver's Borrowing Charge.
9. Foremost has advanced \$831,000 since the commencement of the receivership proceedings. The amounts advanced under the Second Advance are properly considered receivership borrowings, and in the opinion of the Receiver, should be subject to the Receiver's Borrowing Charge from the date that such funds were advanced.
10. The Receiver is seeking an increase in its borrowing authority and the Receiver's Borrowing Charge to \$1,200,000 in light of the anticipated delays in realizing on any of the Receivership Assets because of the complicating factors relating to those assets

referenced above. The Receiver also believes that the increase will be needed to fund ongoing fees and costs of these proceedings. Approving this increase will reduce the need for future motions solely for the purpose of increasing the amount of the Receiver's Borrowing Charge.

11. Such further and other grounds as the Receiver may advise and this Honourable Court may permit.

AND FURTHER TAKE NOTICE that the following materials will be filed in support of this motion, namely:

- (a) the First Report of the Receiver dated January 20, 2025; and
- (b) such further and other material as counsel may advise and this Honourable Court may permit.

January 21, 2025

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TO: THE SERVICE LIST

Court File No.: CV-24-00724076-00CL

**FOREMOST MORTGAGE
HOLDING CORPORATION**

Applicant

-and- **BARAKAA DEVELOPER INC., LERRATO INC. and
2145499 ONTARIO INC.**

Respondents

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

PROCEEDINGS COMMENCED AT TORONTO

**NOTICE OF MOTION
(returnable February 3, 2025)**

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TAB 2

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

B E T W E E N:

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

- and -

BARAKAA DEVELOPER INC., LERRATO INC. and 2145499 ONTARIO INC.

Respondents

**APPLICATION UNDER section 243(1) of the *Bankruptcy and Insolvency Act*,
R.S.C. 1985, c. B-3, and section 101 of the *Courts of Justice Act*,
R.S.O. 1990, c. C.43**

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TAB 3



**First Report to Court of
KSV Restructuring Inc.
as Receiver and Manager
of 2145499 Ontario Inc. and certain properties
of Barakaa Developer Inc.,
and Lerrato Inc.**

January 20, 2025

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COURT FILE NUMBER: CV-24-00724076-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

FOREMOST MORTGAGE HOLDING CORPORATION

APPLICANT

- AND -

BARAKAA DEVELOPER INC., LERRATO INC., AND 2145499 ONTARIO INC.

RESPONDENT

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

**FIRST REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER**

JANUARY 20, 2025

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (the "**Court**") made on October 21, 2024 (the "**Receivership Order**"), KSV Restructuring Inc. ("**KSV**") was appointed receiver and manager (the "**Receiver**") without security, of the real properties listed in Appendix "A" of the Receivership Order (the "**Barakaa Properties**") owned by Barakaa Developer Inc. ("**Barakaa**"), the real properties listed in Appendix "B" of the Receivership Order (the "**Lerrato Properties**") owned by Lerrato Inc. ("**Lerrato**"), and the property, assets and undertaking owned by 2145499 Ontario Inc. ("**214**", and together with the Barakaa Properties and the Lerrato Properties, (the "**Receivership Assets**"). A copy of the Receivership Order is attached as **Appendix "A"**.
2. The application to appoint KSV as Receiver was made by Foremost Mortgage Holding Corporation ("**Foremost**"), a secured creditor of Barakaa, Lerrato and 214 (collectively, the "**Debtors**") which has, *inter alia*, mortgages on each of the Receivership Assets, each of which was registered prior to the other mortgages registered on title to the Receivership Assets.

3. The principal purpose of the receivership is to sell the Receivership Assets. For reasons summarized in this report (the “**Report**”), the Receiver has not yet been able to sell any of the Receivership Assets.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) summarize the Receiver’s activities since the date that the Receivership Order was issued;
 - b) summarize issues affecting a timely sale of the Receivership Assets; and
 - c) provide the Receiver’s rationale for recommending that the Court issue an order (i) increasing the amount of the Receiver’s borrowing authority and Receiver’s Borrowing Charge (as defined in the Receivership Order) from \$250,000 to \$1.2 million and (ii) recognizing the Second Advance (as defined in paragraph 3.2 below) as being secured by the Receiver’s Borrowing Charge from the date that the Second Advance was made, being December 13, 2024.

1.2 Currency

1. Unless otherwise noted, all currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon discussions with, and information provided by, *inter alia*:
 - a) representatives of the principals of the Debtors (the “**Principals**”), including Hitesh Jhaveri, and their legal counsel, Chaitons LLP;
 - b) Keyser Mason Ball, LLP (“**KMB**”), legal counsel retained by the Principals prior to the receivership to assist with 214’s project located at 10 Doric Street, Ajax, which is referred to herein as the Doric Development (the “**Doric Development**”);
 - c) Foremost, and its legal counsel, Paliare Roland Rosenberg Rothstein LLP (“**Paliare**”);
 - d) purchasers of homes being developed by Lerrato having municipal addresses of 369 Porte and 377 Porte Road, Ajax;
 - e) Gardiner Roberts LLP (“**Gardiner Roberts**”), legal counsel to purchasers of three homes also being developed by Lerrato, being 371, 373 and 375 Porte Road (the “**GR Clients**”);

- f) representatives of BIP Management Inc. (“**BIP**”), Tripta Dhingra and 1417999 Ontario Ltd. (collectively, the “**Subsequent Mortgagees**”¹); and
 - g) the receivership application materials,

(collectively, 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. Accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of the Information. Any party (other than the Court) wishing to place reliance on the Information is required to perform its own diligence.

2.0 Receivership Assets

1. **The Barakaa Properties** are comprised of two fully constructed homes having the municipal addresses of 23 Madison Avenue, Richmond Hill (“**23 Madison**”) and 25 Madison Avenue, Richmond Hill (“**25 Madison**”). The status of each is as follows:
- a) Barakaa entered into an agreement of purchase and sale for 23 Madison dated October 23, 2023 and an Amendment to the Agreement of Purchase and Sale dated February 9, 2024 (the “**23 Madison APS Amendment**”). Pursuant to the 23 Madison APS Amendment, the purchaser paid a \$500,000 deposit (in addition to an earlier deposit of \$150,000, which is being held in trust), following which Barakaa permitted the purchaser to immediately occupy the home without being required to pay occupancy fees or property taxes. 23 Madison is registered with Ontario New Home Warranties and Protection Plan (“**Tarion**”); and
 - b) 25 Madison has been listed for sale by ReMAX Crossroads Realty since July 17, 2024. The Receiver has been advised that the property was previously subject to an agreement of purchase and sale, however, the purchaser refused to close. 25 Madison does not have Tarion warranty protection. In an email to the Receiver dated December 16, 2024, Torsys LLP, counsel to Tarion, advised *“there is no pathway for 25 Madison Avenue, Richmond Hill, Ontario, to be enrolled in the Ontario New Home Warranties and Protection Plan”*.
2. **The Lerrato Properties** are comprised of six parcels of land, five of which are fully constructed residential freehold townhomes. Pursuant to a development agreement between Lerrato and the Town of Ajax dated August 21, 2018, the parties agreed to convey the sixth parcel, which is an easement (the “**Porte Easement**”), to the Town of Ajax.

¹ There is another Subsequent Mortgagee, Galidan Inc., associated with BIP, but the Receiver has not corresponded with this party.

3. The Lerrato Properties (excluding the Porte Easement) have the following municipal addresses: 369 Porte Road, 371 Porte Road, 373 Porte Road, 375 Porte Road and 377 Porte Road (the “**Porte Properties**”). All five homes are subject to agreements of purchase and sale which have not closed. Each purchaser has paid one or more deposits and is presently occupying their residence. The GR Clients occupy units 371, 373 and 375 Porte Road (the “**GR Client Properties**”).
4. The purchasers of the Porte Properties entered into agreements allowing them to occupy their residences prior to closing. Of these, (i) Gardiner Roberts advises that each of its clients has paid a “licence fee” of \$2,500 per month from the effective dates of their occupancy agreements² to and including December 2024; and (ii) the purchasers of 369 Porte and 377 Porte each entered into occupancy agreements for their units, but neither has paid occupancy fees. The Receiver has requested the occupancy agreements for 369 Porte and 377 Porte from Mr. Jhaveri, but he has not provided them.³ None of the purchasers of the Porte Properties is paying property taxes. The Receiver has been advised that this is because, in each instance, Mr. Jhaveri has not delivered on various commitments.
5. **The Doric Development** is a substantially completed but vacant 10-unit townhouse condominium project. One unit has been contracted for sale; the purchaser of that unit paid a deposit of \$100,000 but the transaction has not closed. The Receiver understands that the agreement of purchase and sale for this unit did not comply with the *Condominium Act*. Based on discussions with the purchaser, it is unclear if the purchaser is prepared to complete the purchase.
6. The Doric Development condominiums cannot be occupied prior to finalizing a Draft Plan of Condominium (the “**Condo Plan**”) and connecting the development to the power grid. The Receiver has been dealing with the power grid issue, which requires execution of a contract (the “**Elexicon Contract**”) with Elexicon Energy Inc. (“**Elexicon**”). Elexicon’s work includes dealing with zoning issues and sourcing and installing an electrical transformer. This work is expected to take several months to complete.
7. The tables below summarize the secured charges on the Receivership Assets, including mortgages registered on title by Sanjive Joshi, Xpert Credit Control Solutions Inc. and Xpert law Inc. (collectively, the “**Joshi Parties**”). It is the Receiver’s understanding that the Respondents challenge the mortgages registered by the Joshi Parties against the Receivership Assets (and other non-receivership properties) and there is ongoing litigation in respect of this dispute. The amounts shown in the tables below are before interest, professional fees, property tax payments made by Foremost and other costs which continue to accrue.

Barakaa

Secured Party	(\$000)
Foremost	4,133
1417199 Ontario Limited	750
BIP	1,500
Joshi Parties	5,000
Total	11,383

² Being November 5, 2023 for 373 Porte and August 1, 2024 for 371 Porte and 375 Porte.

³ The Receiver has encountered significant difficulty receiving information from Mr. Jhaveri. To the extent he has provided information, it has often been untimely and/or unreliable.

Lerrato

Secured Party	(\$000)
Foremost	3,155
BIP	700
Joshi Parties (377 Porte Road and the Porte Easement only)	5,000
Total	8,855

214

Secured Party	(\$000)
Foremost	6,185
Tripta Dhingra	1,500
BIP	2,000
BIP and Galidan Inc.	1,000
Joshi Parties	5,000
Total	15,685

8. A summary of the deposits paid by the purchasers of the Receivership Assets is provided below (the “**Deposits**”). The Receiver understands that none of the Deposits are being held in trust, except for \$150,000 of the \$650,000 paid by the purchaser of 23 Madison.

Property	(\$000)
23 Madison ⁴	650
369 Porte Road	150
371 Porte Road	355
373 Porte Road	505
375 Porte Road	205
377 Porte Road	150
10 Doric Street, Unit J	100
Total	2,115

9. A summary of the issues impairing the sale of the Receivership Assets is provided below.
- a) The Receiver understands that one of the primary reasons for the commencement of these receivership proceedings was the inability of the developers of the Receivership Assets to convey clean title to the purchasers of each of the Receivership Assets, including because of the Joshi Parties’ mortgages. It was contemplated that the receivership proceedings would provide a forum through which Court approval of the sale of the Receivership Assets subject to Joshi Parties’ mortgages could be sold pursuant to approval and vesting orders. It is the Receiver’s understanding that the Joshi Parties are not prepared to discharge their mortgages to permit sales of the relevant Receivership Assets to be completed.

⁴ As noted, \$150,000 of this amount is held in trust.

- b) The Deposits were used by Mr. Jhaveri to pay down certain Subsequent Mortgagees and/or to fund costs related to the Receivership Assets and other projects being developed by the Principals. In the case of 23 Madison and the Porte Properties, the remaining purchase price for the Receivership Assets will not be sufficient to pay, in full, some or all of the mortgagees on the Receivership Assets.
- c) The purchasers of 369 Porte and 377 Porte have both expressed an intention to close; however, neither has provided a definitive answer in this regard. It should also be noted that neither purchaser responds to the Receiver on a timely basis (weeks can pass before the Receiver receives a reply, if at all). At this time, the Receiver is prepared to consider closing these sales as the remaining purchase price (net of their deposits), approximates the values in appraisals recently obtained by the Receiver (after considering professional costs, selling costs and other factors, such as the cost to ready the homes for sale given that they are presently occupied). If the purchasers do not commit to closing in the near term, the Receiver expects to seek an order permitting it to terminate the purchase agreements, obtain vacant possession, and market these properties for sale.⁵
- d) Based on appraisals recently sourced by the Receiver, each of the GR Clients' Properties (net of market rate deposits) are worth more than the balance of the purchase price (net of deposits) owing under their respective agreements of purchase and sale. For sufficient value of the GR Clients' Properties to be realized, either the GR Clients will have to increase the amount of cash they pay on closing, or each property will be required to be re-marketed for sale, with each GR Clients required to vacate their home. The Receiver has made a proposal to the GR Clients to resolve this situation. The GR Clients did not accept that proposal and the Receiver expects that the GR Clients will contest a motion to sell their properties. The Receiver has advised Gardiner Roberts that it intends to bring a motion to terminate the APSs and obtain vacant possession for the GR Clients' Properties so they can be re-marketed, if an agreement cannot be reached.
- e) Since the commencement of these proceedings, three parties submitted offers for 25 Madison, but none have gone firm. The Receiver intends to continue to list 25 Madison for sale.
- f) Similar to the GR Clients' Properties, the remaining purchase price (net of the \$500,000 second deposit paid) for 23 Madison, appears to be less than the market value of the property. Accordingly, as with the other properties discussed in this Report, the Receiver is considering a motion to terminate the agreement of purchase and sale for 23 Madison and obtain vacant possession so it can be re-marketed.

⁵ As this Report was being finalized, the purchaser of 377 Porte advised the Receiver that it would like to close.

- g) The Receiver cannot close sales of the Doric condominiums until the condominium disclosure statement is completed, the condominium is registered and all construction is completed, the most significant of which is the work being performed by Elexicon. The Receiver does not expect to be able to close sales until late 2025 at the earliest; however, the Receiver is working to list the units for sale in the next few months.

3.0 Funding

1. Pursuant to the Receivership Order, the Receiver's Borrowing Charge is \$250,000.
2. On November 12, 2024, Foremost funded \$30,000 to cover receivership costs that required immediate funding. On December 13, 2024, Foremost funded an additional \$801,000 (the "**Second Advance**") to prevent further delays advancing the work to be performed by Elexicon, including \$433,000⁶ for an electrical transformer, and the balance for other critical expenditures, such as utility and consulting costs. Foremost funded the Second Advance on the basis that the Receiver would seek approval in early 2025 confirming that the Second Advance would be covered by an increase in the Borrowing Charge. As the Second Advance was made on December 13, 2024, it was not possible to bring a motion before the holidays to approve the Second Advance.
3. Foremost has advanced \$831,000 since the commencement of these proceedings. The amounts advanced under the Second Advance are properly considered receivership borrowings, and in the opinion of the Receiver, should be subject to the Receiver's Borrowing Charge. If time had permitted prior to the holidays, the Receiver would have sought approval of this funding in advance of receiving it from Foremost. The amounts funded were necessary to advance these proceedings and will in due course facilitate the sales of the Receivership Assets.
4. To avoid additional motions in the near term to increase the Borrowing Charge, the Receiver is recommending that the Court (i) increase the Receiver's borrowing authority and Receiver's Borrowing Charge to \$1.2 million and (ii) approve the funding from Foremost as being covered by, and having the benefit of, the Receiver's Borrowing Charge from December 13, 2024.
5. A copy of the Receiver's statement of receipts and disbursements from the date of the Receivership Order to January 19, 2025 is provided in **Appendix "B"**.

⁶ At the time the Receiver requested the Second Advance, it was believed that that Elexicon would require this amount to be paid immediately. The Receiver is still holding these funds.

4.0 Recommendation

1. For the reasons provided herein, the Receiver recommends that the Court approve an increase in the Receiver's borrowing authority and Receiver's Borrowing Charge from \$250,000 to \$1.2 million and that the Second Advance be subject to the Receiver's Borrowing Charge from December 13, 2024.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF 2145499 ONTARIO INC. AND
CERTAIN PROPERTIES OF BARAKAA DEVELOPER INC. AND LERRATO INC.,
AND NOT IN ITS PERSONAL OR CORPORATE CAPACITY**

Appendix “A”



Court File No. CV-24-00724076-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE)
JUSTICE W.D. BLACK)
)
)
)

MONDAY, THE 21ST DAY
OF OCTOBER, 2024

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

- and -

BARAKAA DEVELOPER INC., LERRATO INC., and 2145499 ONTARIO INC.

Respondents

ORDER
(Appointing Receiver)

THIS MOTION made by the Applicant for an 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 *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "CJA") appointing KSV Restructuring Inc. as receiver and manager (in such capacities, the "Receiver") without security, of the lands and premises described in Appendix "A" hereto (the "Madison Properties"), owned by Barakaa Developer Inc. ("Barakaa"), the lands and premises described in Appendix "B" hereto (the "Porte Properties"), owned by Lerrato Inc. ("Lerrato") and the property, assets and undertakings of 2145499 Ontario Inc. ("**214**" and, with Lerrato and Barakaa, the "**Debtors**"), the owner of the lands and premises described in Appendix "C" hereto (the "**Doric Property**" and, together with the Madison Properties and the Porte Properties, the "**Real Property**"), was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Andrew Stern sworn October 11, 2024 and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant and the other parties listed on the counsel slip, no one else appearing although duly served as appears from the lawyer's certificate of service of Ryan Shah dated October 15, 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 the Application is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV Restructuring Inc. is hereby appointed Receiver, without security, of:

- (a) the Madison Properties, including all proceeds thereof;
- (b) the Porte Properties, including all proceeds thereof;
- (c) Lerrato's interest in the \$184,973 presently being held by the Town of Ajax as cash collateral in respect of Lerrato's obligations pursuant to a development agreement between Lerrato and the Town of Ajax dated August 21, 2018;
- (d) all of the properties, assets and undertakings of 214 acquired for, or used in relation to a business carried on by 214, including all proceeds thereof (collectively, 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) In the case of Barakaa and Lerrato, and only in respect of the Madison Properties and the Porte Properties, respectively, as the case may be, to manage, operate, and carry on the business of the Barakaa and Lerrato, 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 Barakaa and Lerrato in respect of the Madison Properties and the Porte Properties, respectively;
- (d) In the case of 214, to manage, operate, and carry on the business of 214, 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 214;

- (e) 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;
- (f) In the case of Barakaa and Lerrato, and only in respect of the Madison Properties and the Porte Properties, respectively, as the case may be:
 - (i) to receive and collect all monies and accounts now owed or hereafter owing to Barakaa or Lerrato in relation to the Madison Properties and the Porte Properties, respectively, and to exercise all remedies of Barakaa or Lerrato in collecting such monies, including, without limitation, to enforce any security held by Barakaa or Lerrato in respect of the Madison Properties and Porte Properties, respectively;
 - (ii) to settle, extend or compromise any indebtedness owing to Barakaa or Lerrato in respect of the Madison Properties and the Porte Properties, respectively;
 - (iii) 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 Madison Properties or the Porte

Properties, respectively, 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;

- (g) In the case of 214;
 - (i) to receive and collect all monies and accounts now owed or hereafter owing to 214 and to exercise all remedies of 214 in collecting such monies, including, without limitation, to enforce any security held by 214;
 - (ii) to settle, extend or compromise any indebtedness owing to 214;
 - (iii) 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 214, 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;
- (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 Debtors, for any purpose pursuant to this Order;

- (i) 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;
- (j) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$500,000; and
 - (ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;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,
- (k) 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;
- (l) 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 receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;

- (m) to register a copy of this Order and any other Orders in respect of the Real Property against title to any of the Real Property;
- (n) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority with respect to the Property and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtors;
- (o) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtors, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtors;
- (p) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have in respect of the Property; and
- (q) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

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 Debtors, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtors, (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "Persons" and each being a "Person") shall forthwith advise the 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 Debtors in relation to the Property, 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 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.

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.

NO PROCEEDINGS AGAINST THE RECEIVER

7. 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 DEBTORS OR THE PROPERTY

8. THIS COURT ORDERS that no Proceeding against or in respect of the Debtors in relation to the Property 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 Debtors in relation to the Property or the Property are hereby stayed and suspended pending further Order of this Court.

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtors in relation to the Property, the 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 Debtors to carry on any business which the Debtors is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtors 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

10. 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 Debtors in relation to the Property, without written consent of the Receiver or leave of this Court.

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtors 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 Debtors 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 Debtors' 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 Debtors 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

12. 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 Receivership Accounts") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

13. THIS COURT ORDERS that all employees of the Debtors shall remain the employees of the Debtors. 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

14. 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 Debtors, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

15. 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

16. 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

17. 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.

18. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its 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.

19. 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

20. 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 \$250,000 or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the 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.

21. 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.

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

23. 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

24. 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.

25. 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 Debtors' creditors or other interested parties at their respective addresses as last shown on the records of the Debtors 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

26. 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.

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

28. 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.

29. 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.

30. 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 Debtors' estate with such priority and at such time as this Court may determine.

31. 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.



APPENDIX "A"

PIN 03206-4245

Lot 741 and Part Lots 740 and 742, Plan 133, part 2, Plan 65R38228; Town of Richmond Hill

PIN 03206-4246

Lot 743 and Part Lot 742, Plan 133, Part 1, Plan 65R38228; Town of Richmond Hill

APPENDIX "B"

PIN 26454-0553

PT LT 6 CON 1, PT 1 40R30173, PICKERING; S/T EASEMENT AS IN P131742; TOWN OF AJAX

PIN 26454-0554

PT LT 6 CON 1, PT 2 40R30173, PICKERING; S/T EASEMENT AS IN P131742; TOWN OF AJAX

PIN 26454-0555

PT LT 6 CON 1 PT 3 40R30173, PICKERING; S/T EASEMENT AS IN P13742; TOWN OF AJAX

PIN 26454-0556

PT LT 6 CON 1 PT 4 40R30173, PICKERING; S/T EASEMENT AS IN P13742; TOWN OF AJAX

PIN 26454-0557

PT LT 6 CON 1 PT 5 40R30173, PICKERING; S/T EASEMENT AS IN P13742; TOWN OF AJAX

PIN 26454-0558

PT LT 6 CON 1 PT 6 40R30173, PICKERING; S/T EASEMENT AS IN P13742; TOWN OF AJAX

APPENDIX "C"

PIN 26452-0789

PART LOTS 108, 109, 110 AND 111 PLAN 377, PARTS 1 AND 2 PLAN 40R30571;
SUBJECT TO AN EASEMENT OVER PART LOT 108 PLAN 377 PART 2 PLAN
40R30571 IN FAVOUR OF THE CORPORATION OF THE TOWN OF AJAX AS IN
DR309514; SUBJECT TO AN EASEMENT IN FAVOUR OF ENBRIDGE GAS INC. AS
IN DR2203728; TOWN OF AJAX

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "Receiver") of, among other things, the assets and undertakings of 2145499 Ontario Inc. and the real property having the legal description set out in Appendices "A" and "B" to Order of Justice Black dated October 21, 2024 (the "Order") made in an application having Court file number CV-24-00724076-00CL, including all proceeds thereof (collectively, the "Property"), 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 [daily][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 above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the 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 _____, 202__.

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

Per: _____

Name:

Title:

**FOREMOST MORTGAGE HOLDING
CORPORATION**
Applicant

-and- **BARAKAA DEVELOPER INC. et al.**
Respondent

Court File No. CV-24-00724076-00CL

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

**ORDER
(Appointing Receiver)**

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Lawyers for the Applicant

Appendix “B”

Receivership of Barakaa Developer Inc., Lerrato Inc. and 2145499 Ontario Inc.

Combined Interim Statement of Receipts and Disbursements

For the Period October 21, 2024 to January 19, 2025

(\$; unaudited)

<u>Description</u>	<u>Amount</u>
<i>Receipts</i>	
Funding	831,000
Interest	37
	<u>831,037</u>
<i>Disbursements</i>	
Receiver fees	108,107
Legal fees and disbursements	73,441
HST	25,189
Insurance	14,244
Utilities	7,577
Repairs and maintenance	5,599
Appraisals	3,600
Ascend Fee	975
Filing Fees	241
Bank charges	121
Postage	3
	<u>239,098</u>
Balance in Receiver's account, before accrued liabilities	<u>591,939</u>

All of the Receivership Assets are subject to the Receiver's Borrowing Charge under the Receivership Order, and accordingly, this R&D has been prepared on a combined basis. The Receiver's Borrowing Charge ranks in priority to all other claims against the Receivership Assets, except for the Receiver's Charge. Accordingly, subject to the repayment in full of the Receiver's Borrowing Charge, amounts advanced under that charge shall be allocated among the Receivership Assets in due course.

TAB 4

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

THE HONOURABLE) MONDAY, THE 3RD DAY
)
JUSTICE CAVANAGH) OF FEBRUARY, 2025

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

-and-

BARAKAA DEVELOPER INC., LERRATO INC. and 2145499 ONTARIO INC.

Respondents

ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as court-appointed receiver and manager of certain real properties of Barakaa Developer Inc. and Lerrato Inc. and the property, assets and undertakings of 2145499 Ontario Inc. (in such capacity, the “**Receiver**”) pursuant to the Order of Justice Black made October 21, 2024 (the “**Receivership Order**”) was heard this day at 330 University Avenue, Toronto, Ontario via videoconference.

ON READING the First Report of Receiver dated January 20, 2025, and on hearing the submissions of counsel for the Receiver and such other counsel listed on the counsel slip, no one else appearing although properly served as appears from the affidavit of service of Edmond Lamek sworn ♦, 2025, filed:

SERVICE

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

RECEIVER'S BORROWING CHARGE

2. **THIS COURTS ORDERS** that the Receiver's borrowing authority and Receiver's Borrowing Charge (as defined and set out in paragraph 20 of the Receivership Order), be and are hereby increased from \$250,000 to \$1,200,000.

3. **THIS COURT ORDERS** that the advance made by Foremost Mortgage Holding Corporation to the Receiver in the amount of \$801,000 to fund receivership costs on an emergency basis (the "**Second Advance**") be and is hereby subject to and secured by the Receiver's Borrowing Charge with effect from December 13, 2024.

GENERAL

4. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, or any other jurisdiction, 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, to grant representative status to the Receiver in any foreign proceeding, or to assist the Receiver and its agents in carrying out the terms of this Order.

5. **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.

Court File No.: CV-24-00724076-00CL

**FOREMOST MORTGAGE
HOLDING CORPORATION**

Applicant

-and- **BARAKAA DEVELOPER INC., LERRATO INC. and
2145499 ONTARIO INC.**

Respondents

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

PROCEEDINGS COMMENCED AT TORONTO

**ORDER – February 3, 2025
(Receiver’s Borrowing Authority and Charge)**

DLA PIPER (CANADA) LLP
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Court File No.: CV-24-00724076-00CL

**FOREMOST MORTGAGE
HOLDING CORPORATION**

Applicant

-and- **BARAKAA DEVELOPER INC., LERRATO INC. and
2145499 ONTARIO INC.**

Respondents

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

PROCEEDINGS COMMENCED AT TORONTO

**MOTION RECORD
(returnable February 3, 2025)**

DLA PIPER (CANADA) LLP
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