

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

**2557386 ONTARIO INC. AND 2363823 ONTARIO INC.
O/A MARIMAN HOMES**

Respondents

**MOTION RECORD
(returnable March 27, 2024)**

March 20, 2024

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TO: SERVICE LIST

SERVICE LIST
(as at March 20, 2024)

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**ONTARIO
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BETWEEN:

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- and -

**2557386 ONTARIO INC. AND 2363823 ONTARIO INC.
O/A MARIMAN HOMES**

Respondents

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TAB 1

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

BETWEEN:

MARSHALLZEHR GROUP INC.

Applicant

- and -

**2557386 ONTARIO INC. AND 2363823 ONTARIO INC.
O/A MARIMAN HOMES**

Respondents

NOTICE OF MOTION

KSV RESTRUCTURING INC. (“**KSV**”), in its capacity as receiver (the “**Receiver**”) of the assets, undertakings, and properties of 2557386 Ontario Inc. (“**2557**”) and 2363823 Ontario Inc. o/a Mariman Homes (“**Mariman**”, and together with 2557, the “**Companies**”) acquired for, or used in relation to a business carried on by the Companies, will make a motion to a judge presiding over the Superior Court of Justice, Commercial List (the “**Court**”) on Wednesday, March 27, 2024, at 12:00pm, or as soon after that time as the motion can be heard.

THE PROPOSED METHOD OF HEARING:

- In writing under subrule 37.12.1 (1) because it is (insert one of on consent, unopposed or made without notice);
- In writing as an opposed motion under subrule 37.12.1 (4);
- In person;
- By telephone conference;
- BY VIDEO CONFERENCE.**

Videoconference link to be posted on the Court’s Caselines portal for this matter.

THE MOTION IS FOR:

1. an order approving the York Property Sale Process¹;
2. an order approving the termination of the Vickery APS;
3. an order approving the Vickery Sale Process;
4. an order sealing the confidential appendix to the First Report pending completion of the sale of the Vickery Property or further order of the Court;
5. an order approving the Receiver's activities as described in the First Report; and
6. such further and other relief that the Receiver may request and this Honourable Court may consider just.

THE GROUNDS FOR THE MOTION ARE:

Background

1. Pursuant to an Order of this Court made on January 16, 2024, KSV was appointed Receiver.
2. 2557 is the registered owner of approximately 70 acres of land in Haldimand, Ontario (the "**York Property**").
3. Mariman is the registered owner of several properties, including a house under construction located at 2051 Vickery Drive, Oakville, Ontario (the "**Vickery Property**").

¹ All capitalized terms not defined herein have the meaning defined in the First Report of the Receiver dated March •, 2024 (the "**First Report**").

York Property

4. The Receiver understands that 2557 acquired the York Property in 2021 to build 66 detached custom estate homes for a project known as “Grand York Estates”, of which 54 lots are subject to agreements of purchase and sale that pre-date the Receiver’s appointment.
5. The Receiver understands that the deposits of approximately \$10 million provided by the purchasers of these lots (the “**York Purchasers**”) were spent prior to commencement of this proceeding. The Receiver has notified the York Purchasers of this proceeding but has not, to date, taken any action regarding their sale agreements.
6. Following its appointment, the Receiver solicited proposals from five realtors to act as listing agent to market and sell the York Property.
7. The Receiver recommends that the Court approve the Receiver retaining Colliers as listing agent for the York Property for the following reasons:
 - the Colliers team managing the mandate has experience selling residential sites, including in the Haldimand region;
 - KSV has previously retained the Colliers team that will be responsible for this mandate on other similar mandates where the Colliers team achieved strong results;
 - Colliers’s proposed commission rate (3%) is reasonable based on KSV’s experience selling real estate. Colliers agreed to accept a flat fee of \$200,000 (plus HST) if there is a credit bid by MarshallZehr Group Inc. (“**MarshallZehr**”) or if one of four parties introduced to this opportunity by MarshallZehr is the successful bidder; and

- MarshallZehr, as the largest secured creditor, supports the retention of Colliers.
8. The recommended York Property Sale Process is summarized in the First Report.
9. The Receiver recommends that the Court issue an order approving the York Property Sale Process for the following reasons:
- it is a fair, open and transparent process intended to canvass the market broadly on an orderly basis in order to obtain the highest and best price;
 - the duration of the process is sufficient to allow interested parties to perform diligence and to submit offers. The Receiver will also have the right to extend or amend timelines, as it considers necessary, to maximize value. Colliers believes that the duration of the process is sufficient to fully canvass the market;
 - the process includes procedures commonly used to sell real estate development projects, including by KSV in other court-supervised real property sale processes; and
 - there will be no delay commencing the process as Colliers is currently preparing its marketing materials, working on its prospect list and, with the Receiver, updating its data room.

Vickery Property

10. The Receiver has been provided with a copy of an agreement of purchase and sale dated February 3, 2021 (the “**Vickery APS**”) with Arshed Omer Bhatti, as purchaser (the “**Vickery Purchaser**”), for a purchase price of \$2.85 million and deposits paid of \$500,000.

11. The Vickery APS provides for the completion of a 4,244 square foot two-storey home on the Vickery Property and a \$30,000 allowance to purchase appliances. Construction of the house is partially completed as the exterior is nearly finished and the interior is at the drywall stage.
12. The Receiver's understanding is that any deposit paid by the Vickery Purchaser was not held in trust and has since been spent
13. The Receiver has notified the Vickery Purchaser and his agent that the Receiver intends to terminate the Vickery APS and to list the Vickery Property for sale as, among other things, it does not intend to complete construction (which is estimated to cost \$800,000 to \$1.4 million) and is not in a position to complete that transaction.²
14. The Receiver recommends that ReMax Escarpment be engaged as the brokerage for the Vickery Property and list it with a purchase price of \$2.5 million for the following reasons:
 - Morris Wright supports the retention of ReMax Escarpment;
 - the ReMax Escarpment listing team has several years of experience selling detached family homes in the Oakville region;
 - ReMax Escarpment will market the property extensively to its contact database and, among other things, take professional photos and videos, prepare a pre-listing teaser, develop a custom website with a virtual tour of the Vickery Property, conduct open houses and distribute print and direct mail flyers;

² The Receiver, the Vickery Purchaser and the first-ranking mortgagee on the Vickery Property, Morris Wright Mortgage Company Ltd. ("**Morris Wright**") are presently in discussions regarding the Vickery Property and the terms of a potential transaction. The Receiver will file a supplementary report should an agreement be reached before the return of the Receiver's motion which may avoid the need to list the Vickery Property for sale.

- the proposed listing price is reasonable based on comparable transactions identified by ReMax Escarpment and adjusted to reflect the condition of the Vickery Property; and
- ReMax Escarpment's proposed commission structure is 5% of the sale price, with 2.5% being payable to a co-operating brokerage, if applicable. The commission structure is reasonable based on KSV's experience selling real estate. The commission rate is also acceptable to Morris Wright.

Sealing Order

15. ReMax Escarpment provided the Receiver with support for the proposed listing price for the Vickery Property. That support includes information which, if not sealed, could affect the amount that bidders would be prepared to offer for the Vickery Property. The Receiver proposes that the support from ReMax Escarpment be made publicly available following a closing for the Vickery Property.
16. No party will be prejudiced if this information is sealed at this time. Accordingly, the Receiver believes the proposed sealing order is appropriate in the circumstances.
17. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so in the circumstances. The Receiver is of the view that the sealing order requested is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25. Accordingly, the Receiver believes the proposed sealing of the confidential appendix is appropriate in the circumstances.

Receiver's activities

18. The Receiver's activities since its appointment are summarized in the First Report.

Other

19. Rules 2.03, 3.02, 16.01 and 37 of the *Rules of Civil Procedure* (Ontario).
20. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. The First Report.
2. Such further and other material as counsel may advise and this Honourable Court may permit.

March 20, 2024

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capacity as Court-Appointed Receiver**

TO: SERVICE LIST

MARSHALLZEHR GROUP INC.
Applicant

- and-

2557386 ONTARIO INC., et al.
Respondents

Court File No. CV-00699432-00CL

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

PROCEEDING COMMENCED AT
TORONTO

NOTICE OF MOTION
(returnable March 27, 2024)

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**Lawyers for KSV Restructuring Inc., in its capacity as
Court-Appointed Receiver**

TAB 2



**First Report of
KSV Restructuring Inc.
as Receiver of 2557385 Ontario Inc. and
2363823 Ontario Inc. o/a Mariman Homes**

March 20, 2024

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COURT FILE NO.: CV-23-00699432-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

MARSHALLZEHR GROUP INC.

APPLICANT

- AND -

2557386 ONTARIO INC. AND 2363823 ONTARIO INC.
O/A MARIMAN HOMES

RESPONDENT

FIRST REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER

MARCH 20, 2024

1.0 Introduction

1. This report ("Report") is filed by KSV Restructuring Inc. ("KSV") in its capacity as receiver (the "Receiver") of the assets, undertakings, and properties of 2557386 Ontario Inc. ("2557") and 2363823 Ontario Inc. o/a Mariman Homes ("Mariman", and together with 2557, the "Companies") acquired for, or used in relation to a business carried on by the Companies.
2. Pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on January 16, 2024 (the "Receivership Order"), KSV was appointed Receiver. A copy of the Receivership Order is provided as Appendix "A". The application to appoint the Receiver was brought by Marshallzehr Group Inc. ("Marshallzehr") which was owed approximately \$15.1 million by the Companies as of April 4, 2023.
3. 2557 is the registered owner of approximately 70 acres of land in Haldimand, Ontario (the "York Property"). Mariman partially built a model home on one of the lots located on the York Property.
4. Mariman is the registered owner of several properties, as more fully discussed below, including the following:
 - a) a property, including a house under construction, located at 2051 Vickery Drive, Oakville, Ontario (the "Vickery Property"); and
 - b) a vacant lot located at 178 Moore's Road, Haldimand, Ontario (the "Moore's Property").

5. The purpose of this receivership proceeding to take control over and realize on the Companies' assets under Court supervision for the benefit of all stakeholders.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide information on the Companies;
 - b) summarize a process pursuant to which the York Property is to be marketed for sale by the Receiver (the "York Property Sale Process"), including the retention of Colliers Macaulay Nicolls Inc. ("Colliers") to act as listing agent;
 - c) summarize a process pursuant to which the Vickery Property is to be marketed for sale by the Receiver (the "Vickery Sale Process"), including the retention of ReMax Escarpment Golfi Realty Inc. ("ReMax Escarpment") to act as listing agent;
 - d) summarize the Receiver's activities since its appointment; and
 - e) recommend that the Court make an Order sealing the confidential appendix to this Report and approving:
 - the York Property Sale Process;
 - termination of the Vickery APS (as defined below);
 - the Vickery Sale Process; and
 - this Report and the Receiver's activities described 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 and discussions with the Companies and Marshallzehr. The Receiver has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. The Receiver expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Receiver in preparing this Report. Any party wishing to place reliance on the Companies' financial information should perform its own diligence.

2.0 Background

1. The Receiver understands that 2557 is a single purpose entity that owns the York Property whereas Mariman has operated as a custom home builder.
2. Mike Bettiol is the sole officer and director of each of the Companies (“Bettiol”).

2.1 York Property

1. The Receiver understands that 2557 acquired the York Property in 2021 to build 66 detached custom estate homes for a project known as “Grand York Estates”, of which 54 lots are subject to agreements of purchase and sale that pre-date the Receiver’s appointment (the “York Project”).
2. Bettiol advised the Receiver that the deposits of approximately \$10 million provided by the purchasers of these lots (the “York Purchasers”) were spent prior to commencement of this proceeding. The Receiver has notified the York Purchasers of this proceeding but has not, to date, taken any action regarding their sale agreements.

2.2 Vickery Property

1. Morris Wright Mortgage Company Ltd. (“Morris Wright”), the first mortgagee on the Vickery Property, provided the Receiver with an agreement of purchase and sale dated February 3, 2021 (the “Vickery APS”) with Arshed Omer Bhatti, as purchaser (the “Vickery Purchaser”), for a purchase price of \$2.85 million and deposits paid of \$500,000.
2. The Vickery APS provides for the completion of a 4,244 square foot two-storey home on the Vickery Property and a \$30,000 allowance to purchase appliances. Construction of the house is partially completed as the exterior is nearly finished and the interior is at the drywall stage.
3. The Receiver’s understanding is that any deposit paid by the Vickery Purchaser was not held in trust and has since been spent.

2.3 Moore’s Property

1. The Moore’s Property is raw land. The first ranking mortgagee on this property, Morris Wright, does not presently wish to pursue a sale of this property.
2. The Receiver will review whether there is equity in this property beyond Morris Wright’s interest and may seek relief at a later date in respect of this property.

2.4 Other Properties

1. On February 6, 2024, the Receiver was contacted by Home Construction Regulatory Authority (“HCRA”) regarding its investigations of the Companies, Bettiol and certain related parties.

2. HCRA provided the Receiver with a copy of its letter to Mariman dated May 10, 2023 and Minutes of Settlement executed by HCRA and Mariman in December 2023, which among other things, referenced other development projects and properties wholly or partially owned by Mariman, including the following:
 - a) Hunter Estates – consists of 12 lots on raw land located in Scotland, Ontario. This property has been listed with CBRE Limited since April 25, 2023 under power of sale by Olympia Trust Company (“Olympia”), the first mortgagee, for \$5.8 million. The Receiver and its counsel discussed this project with counsel to Olympia and, particularly, whether Olympia intended to continue its power of sale proceeding (which would require that the stay of proceedings under the Receivership Order be lifted or waived) or have the Receiver facilitate the sale process. Olympia’s counsel advised the Receiver that it prefers to continue with the power of sale process; and
 - b) Mariman Estates – consists of a minimum of 46 lots of raw land located in Pelham, Ontario, including 39 full lots containing space for residential dwellings. 19 of the lots were owned by Mariman prior to the date of the Receivership Order, with the remaining lots owned by three different Ontario numbered companies. On the date of the Receivership Order, the lots that had been registered to Mariman were transferred to 2753904 Ontario Inc. for nominal consideration (\$2). The Receiver is investigating this matter and may seek relief at a later date in respect of this property.

2.5 Registrations on Title¹

1. The York Property is subject to the following charges/instruments registered against title:
 - a) a first-ranking charge in favour of MarshallZehr in the principal amount of \$35 million; and
 - b) a construction lien in favour of VanRooyen Earthmoving Ltd., in respect of the supply of topsoil and grading services, in the amount of approximately \$1.7 million.
2. The Vickery Property is subject to a first-ranking charge in favour of Morris Wright in the principal amount of \$3.4 million.
3. The Moore’s Property is subject to a first-ranking charge in favour of Morris Wright in the principal amount of \$1.5 million.
4. Hunter Estates is subject to the following charges/instruments registered against title:
 - a) a first-ranking mortgage in favour of Olympia in the principal amount of \$2.7 million;

¹ The Receiver has not yet obtained legal opinions regarding any of the registrations on title.

- b) three subsequent mortgages in the aggregate principal amount of approximately \$7.5 million.
5. Mariman Estates – All lots are subject to two mortgages - a first mortgage in the principal amount of \$5.5 million in favour of 2689918 Ontario Inc., and a second mortgage (vendor take-back) in the principal amount of \$2.72 million in favour of a number of individuals with the last names Montemurro and Baxter.

2.6 Other Creditors

1. According to *Personal Property Security Act* searches, Scotland Real Estate Venture Limited filed a registration against Mariman in the amount of \$1.75 million.
2. The Government of Canada is a creditor of Mariman in respect of a \$40,000 Canadian Emergency Business Account loan.
3. The Receiver understands that deposits were paid for purchases other than in respect of the York Property; the Receiver is seeking information from Bettiol regarding these deposits, including the parties who paid the deposits and the amounts paid.
4. The Receiver conducted litigation searches and identified several proceedings involving the Companies which may give rise to contingent creditor claims. The Receiver's counsel has corresponded with counsel representing the counterparties in those proceedings.

3.0 Sale Process – York Property

3.1 Request for Proposals from Realtors

1. Following its appointment, the Receiver solicited proposals from five realtors to act as listing agent to market and sell the York Property. KSV has previously worked with each of the prospective realtors, each of which has considerable experience selling residential development land.
2. The Receiver requested that each realtor provide background information regarding its experience, a marketing plan for the York Property, an estimate of the value of the York Property and its proposed commission structure.
3. Three realtors submitted proposals. The Receiver reviewed the proposals with MarshallZehr, the principal economic stakeholder, and selected Colliers to be the listing agent.
4. The Receiver recommends that the Court approve the Receiver retaining Colliers as listing agent for the York Property for the following reasons:
 - a) the Colliers team managing the mandate has experience selling residential sites, including in the Haldimand region;
 - b) KSV has previously retained the Colliers team that will be responsible for this mandate on other similar mandates where the Colliers team achieved strong results;

- c) Colliers’s proposed commission rate (3%) is reasonable based on KSV’s experience selling real estate. The commission rate is acceptable to MarshallZehr. In this regard, Colliers agreed to accept a flat fee of \$200,000 (plus HST) if there is a credit bid by MarshallZehr or if one of four parties introduced to this opportunity by MarshallZehr is the successful bidder; and
 - d) MarshallZehr, as the largest secured creditor, supports the retention of Colliers.
5. A copy of the listing agreement with Colliers is provided as Appendix “B”.

3.2 Sale Process

1. The recommended York Property Sale Process is summarized in the table below. All dates reflected below will commence running from the date that the Court grants an order approving the York Property Sale Process.

Summary of Sales Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Prepare marketing materials	<ul style="list-style-type: none"> ➤ Colliers and the Receiver to: <ul style="list-style-type: none"> ○ prepare a teaser and confidential information memorandum (“CIM”) for the York Project; ○ populate virtual data room for the York Project; and ○ prepare a confidentiality agreement (“CA”). 	2 weeks
Prospect Identification	<ul style="list-style-type: none"> ➤ Colliers to: <ul style="list-style-type: none"> ○ develop master prospect list; ○ prioritize prospects; ○ have pre-marketing discussions with targeted prospects; ○ engage in discussions with planners, consultants and municipalities; and ○ consult with the Receiver regarding the above. 	
<i>Phase 2 – Marketing and Diligence</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ sending offering summary and marketing materials, including marketing brochure to each Colliers’s client base, including specifically targeted prospects; ○ publishing the acquisition opportunity in such journals, publications and online as Colliers and the Receiver believe appropriate to maximize interest in this opportunity; ○ posting “for sale” sign on the York Property, to the extent applicable; 	3 weeks

Summary of Sales Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> o engaging in direct canvassing of most likely prospects and tailoring the pitch to each of these candidates based on Colliers’s knowledge of these parties; o posting the acquisition opportunity on MLS for the York Project on an unpriced basis, if requested by the Receiver; and o meeting with prospective bidders to discuss the York Project. <ul style="list-style-type: none"> ➤ Receiver and its legal counsel to prepare a vendor’s form of Purchase and Sale Agreement (the “PSA”) which will be made available to prospective purchasers in the virtual data room. ➤ Colliers to provide additional information to qualified prospects which execute the CA, including access to the data room and a copy of the CIM. ➤ Colliers and Receiver to facilitate diligence by interested parties. 	
Stage 2 – Bid Deadline	<ul style="list-style-type: none"> ➤ Prospective purchasers to submit offers in the form of the PSA, with any changes to the PSA blacklined. 	Estimated date is 3 weeks from the marketing launch. Subject to market response.
<i>Phase 3 – Offer Review and Negotiations</i>		
Short-listing of Offers and Selection of Successful Bids	<ul style="list-style-type: none"> ➤ Colliers to collect, summarize and provide to the Receiver commentary on initial bids. ➤ Short listing of bidders. ➤ 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. ➤ The Receiver will be at liberty to consult with MarshallZehr regarding the offers received, subject to any confidentiality requirements that the Receiver believes appropriate. ➤ The Receiver will select the successful bidder(s), having regards to, among other things: <ul style="list-style-type: none"> o total consideration (cash and assumed liabilities); o form of consideration, including the value of any carried interest; o third-party approvals required, if any; 	2 weeks from offer bid deadline.

Summary of Sales Process		
Milestone	Description of Activities	Timeline
	<ul style="list-style-type: none"> o conditions, if any, and time required to satisfy or waive same; and o such other factors affecting the speed and certainty of closing and the value of the offers as the Receiver considers relevant. 	
Sale Approval Motion(s) and Closing(s)	➤ Upon execution of definitive transaction documents, the Receiver will seek Court approval of the successful offer(s), on not less than 7 calendar days' notice to the service list and registered secured creditors.	15 to 30 days from the date that the selected bidder confirms all conditions have been satisfied or waived
Closings	➤ Following Court approval	ASAP

2. The York Property Sale Process will be subject to the following additional terms:
- a) the York Property will be marketed on an “as is, where is” basis;
 - b) the Receiver will be entitled to extend any deadlines in the York Property Sale Process by up to four weeks if it considers it appropriate or necessary in the circumstances;
 - c) the Receiver will have the right to reject any and all offers, including the highest dollar value offer(s);
 - d) any transaction will be subject to Court approval; and
 - e) Marshallzehr will have the right to credit bid the debt owing to it at the conclusion of the York Property Sale Process if the offers received are not sufficient to repay its mortgage in full.

3.3 Sale Process Recommendation

1. The Receiver recommends that the Court issue an order approving the York Property Sale Process for the following reasons:
 - a) the York Property Sale Process is a fair, open and transparent process intended to canvass the market broadly on an orderly basis in order to obtain the highest and best price;
 - b) the duration of the York Property Sale Process is sufficient to allow interested parties to perform diligence and to submit offers. The Receiver will also have the right to extend or amend timelines, as it considers necessary, to maximize value. Colliers believes that the duration of the York Property Sale Process is sufficient to fully canvass the market;

- c) the York Property Sale Process includes procedures commonly used to sell real estate development projects, including by KSV in other court-supervised real property sale processes; and
- d) there will be no delay commencing the York Property Sale Process as Colliers is currently preparing its marketing materials, working on its prospect list and, with the Receiver, updating its data room.

4.0 Sale Process – Vickery Property

4.1 Vickery Sale Process

1. Following its appointment, the Receiver discussed with Morris Wright the status of the Vickery Property. Morris Wright expressed an interest in the Receiver commencing a process to sell the Vickery Property, subject to Court approval.
2. As mentioned above, the Vickery APS was entered into in 2021 and construction of the house on the property is partially completed. The Receiver notified the Vickery Purchaser and RE/MAX Realty Specialists Inc., the Vickery Purchaser’s real estate agent, that the Receiver intends to terminate the Vickery APS and to list the Vickery Property for sale as, among other things, the Receiver does not intend to complete construction (which is estimated to cost \$800,000 to \$1.4 million) and is not in a position to complete that transaction.
3. Based on its previous experience with ReMax Escarpment, Morris Wright recommended that ReMax Escarpment list the Vickery Property for sale. The Receiver discussed the Vickery Property with ReMax Escarpment, which has an office close to the Vickery Property, and received a listing proposal, including a summary of comparable transactions, from ReMax Escarpment. The listing proposal and related correspondence with ReMax Escarpment is provided as Confidential Appendix “1”.
4. Based on its review of the proposal and discussions with the lead agent from ReMax Escarpment, the Receiver recommends that ReMax Escarpment be engaged as the brokerage for the Vickery Property and list it with a purchase price of \$2.5 million for the following reasons:
 - a) Morris Wright, as the first mortgagee, supports the retention of ReMax Escarpment;
 - b) the ReMax Escarpment listing team has several years of experience selling detached family homes in the Oakville region;
 - c) ReMax Escarpment will market the property extensively to its contact database and, among other things, take professional photos and videos, prepare a pre-listing teaser, develop a custom website with a virtual tour of the Vickery Property, conduct open houses and distribute print and direct mail flyers;
 - d) The proposed listing price is reasonable based on comparable transactions identified by ReMax Escarpment and adjusted to reflect the condition of the Vickery Property; and

- e) ReMax Escarpment's proposed commission structure is 5% of the sale price, with 2.5% being payable to a co-operating brokerage, if applicable. The commission structure is reasonable based on KSV's experience selling real estate. The commission rate is also acceptable to Morris Wright.
5. A copy of the listing agreement with ReMax Escarpment is provided as Appendix "C".
6. The Receiver, Morris Wright and the Vickery Purchaser are presently in discussions regarding the Vickery Property and the terms of a potential transaction. The Receiver will file a supplementary report should an agreement be reached before the return of this motion, which may avoid the need to list the Vickery Property for sale.
7. The Receiver's motion record will be served upon the Vickery Purchaser.

4.2 Confidentiality

1. ReMax Escarpment provided the Receiver with support for the proposed listing price. That support includes information which, if not sealed, could affect the amount that bidders would be prepared to offer for the Vickery Property. The Receiver proposes that the support from ReMax Escarpment be made publicly available following a closing for the Vickery Property.
2. No party will be prejudiced if the information is sealed at this time. Accordingly, the Receiver believes the proposed sealing order is appropriate in the circumstances.
3. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so in the circumstances. The Receiver is of the view that the sealing of the Confidential Appendices is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25. Accordingly, the Receiver believes the proposed sealing of the confidential appendix is appropriate in the circumstances.

5.0 Receiver's activities

1. The Receiver's activities since its appointment have included, among other things, the following:
 - a) corresponding with the Companies to obtain, among other things, agreement and purchase of sale documents, insurance documents, historical bank statements and a topography survey of the York Property;
 - b) corresponding with Toronto-Dominion Bank to restrict the Companies' bank accounts to deposit only;
 - c) corresponding with realtors to request proposals for the York Property;
 - d) corresponding regularly with MarshallZehr regarding all aspects of this mandate;
 - e) corresponding and attending a call with AJ Clarke & Associates, the surveyor for the York Property;
 - f) preparing a letter to the Companies' insurance broker to add the Receiver as a named insured on the Companies' insurance policy;

- g) attending a tour of the York Property, Vickery Property and the Moore's Property;
- h) corresponding with HCRA regarding the Companies' projects;
- i) reviewing several property searches related to the Companies' properties;
- j) setting up a virtual data room;
- k) corresponding with Canada Revenue Agency regarding the Companies' HST accounts;
- l) arranging for a redirection of mail from the Companies' leased premises to the Receiver's office;
- m) reviewing and editing a listing agreement with Colliers in relation to the York Property;
- n) reviewing and editing a listing agreement with ReMax Escarpment in relation to the Vickery Property;
- o) responding to inquiries from the Companies' creditors; and
- p) preparing this Report.

6.0 Conclusion and Recommendation

1. Based on the foregoing, the Receiver respectfully recommends that the Court make an order granting the relief detailed in Section 1.1 (1)(e) of this Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
2557386 ONTARIO INC. AND 2363823 ONTARIO INC.
O/A MARIMAN HOMES
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

Appendix “A”

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

THE HONOURABLE MR.) WEDNESDAY, THE 16TH
)
JUSTICE OSBORNE) DAY OF JANUARY, 2024
)

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

**2557386 ONTARIO INC. and 2363823 ONTARIO INC.
o/a MARIMAN HOMES**

Respondents

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

**ORDER
(Appointing Receiver)**

THIS APPLICATION 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 (the "**Receiver**") without security, of all of the assets, undertakings and properties of 2557386 Ontario Inc. and 2363823 Ontario Inc., o/a Mariman Homes (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, was heard this day via videoconference.

ON READING the affidavit of Cecil Hayes sworn May 15, 2023 and the Exhibits thereto, the affidavit of Cecil Hayes sworn January 16, 2024 and on reading the consent of KSV Restructuring Inc. to act as the Receiver and the consent of the Respondents to this Order,

APPOINTMENT

1. **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 all of the assets, undertakings and properties of the Debtors acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (the "**Property**"), including, without limitation, the real property described in **Schedule "A"** attached hereto.

RECEIVER'S POWERS

2. **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 Debtors, 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 Debtors;
- (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 Debtors or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtors and to exercise all remedies of the Debtors in collecting such monies, including, without limitation, to enforce any security held by the Debtors;
- (g) to settle, extend or compromise any indebtedness owing to the Debtors;
- (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 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 Debtors, 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) 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 \$100,000, 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;

- (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 receivership, 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 Debtors;
- (p) 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;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtors may have; and
- (r) 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

3. **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 its instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the 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.

4. **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, 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.

5. **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.

6. **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

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 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 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, 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 are 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, 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 until such time as the Receiver, on the Debtors' 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

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 \$100,000 (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 "B"** 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.

RETENTION OF COUNSEL

24. **THIS COURT ORDERS** that the Receiver may retain lawyers to represent and advise the Receiver in connection with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order. Such lawyers may include Chaitons LLP, lawyers for the Applicant herein, in respect of any matter where there is no conflict of interest. The Receiver shall, however, retain independent lawyers in respect of any legal advice or services where a conflict exists, or may exist.

SERVICE AND NOTICE

25. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) 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 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL “<https://www.ksvadvisory.com/experience/case/grand-York-estates>”.

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 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.

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

GENERAL

28. **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.

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

30. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the 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.

31. **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.

32. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of 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 Applicant from the Debtors' estate with such priority and at such time as this Court may determine.

33. **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.

34. **THIS COURT ORDERS** that this order is effective from the date it is made, and it is enforceable without any need for entry and filing, provided that any party may nonetheless submit a formal order for original, signing, entry and filing, as the case may be.

SCHEDULE "A"

Property owned by 2557386 Ontario Inc.

Municipal Address: 30 Front Street, Haldimand, Ontario

PIN: 38148-0128 (LT)

Property Description: PART WARNER NELLES TRACT DESIGNATED AS PART 1, 18R-7058; SAVE & EXCEPT PART 1, 18R-7281; T/W EASEMENT OVER PART 2, 18R-7058 AS IN HC252899; TOWNSHIP OF SENECA; HALDIMAND COUNTY

Property owned by 2363823 Ontario Inc.

Municipal Address: 178 Moores Road, Haldimand, Ontario

PIN: 38147-0005 (LT)

Property Description: PT LT 19 CON 4 SE STONEY CREEK RD SENECA AS IN HC68736; HALDIMAND COUNTY

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of 2557386 Ontario Inc. and 2363823 Ontario Inc. (collectively, the "**Debtors**") acquired for, or used in relation to a business carried on by the Debtors, including all proceeds thereof (collectively, the "**Property**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the ● day of May, 2023 (the "**Order**") made in an application having Court file number CV-23-00699432-00CL, 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:

MARSHALLZEHR GROUP INC.
Applicant

-and-

2557386 ONTARIO INC., et al.
Respondents

Court File No. CV- 23-00699432-00CL

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

PROCEEDING COMMENCED AT
TORONTO

**ORDER
(Appointing Receiver)**

CHAITONS LLP
5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

Maya Poliak (54100A)
Tel: (416) 218-1161
E-mail: maya@chaitons.com

Lawyers for the Applicant

Appendix “B”

This Listing Agreement (the "**Agreement**") is entered into between **Colliers Macaulay Nicolls Inc.** ("**Colliers**" or the "**Listing Brokerage**") and **KSV Restructuring Inc.** (the "**Seller**") in its capacity as receiver (the "**Receiver**") of all the assets, undertaking and properties of 2557386 Ontario Inc. and 2363823 Ontario Inc. o/a Mariman Homes, including the real property and development project located at 30 Front Street North, Haldimand, Ontario (the "**Real Property**" or the "**Project**"), without personal or corporate liability and solely in its capacity as Receiver. The Receiver was appointed pursuant to an order (the "**Receivership Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued on January 17, 2024. Pursuant to the Receivership Order, the Receiver is authorized to, among other things, market and sell the Real Property with the approval of the Court.

Notwithstanding anything contained in the Agreement, each of 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; and/or (b) the Seller is restricted in or enjoined from dealing with the Real Property by a court of competent jurisdiction; and/or (c) any of the mortgagees of the Real Property, lien claimants or any other future lenders are permitted by court order to enforce their rights and/or remedies against the Real Property.

2. Price. While it is the Seller's intention to obtain the highest and best offer for the Real 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 offers for the Real Property are 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 Real Property unless and until the sale of the Real 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 Real Property by the Listing Brokerage during the listing period and who the Listing Brokerage has 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 Real 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 Real 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 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 Real 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 Real 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 Real Property for sale and use commercially reasonable efforts to sell the Real 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 Real 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 Designated Agents Steve Keyzer, Jeremiah Shames and Victor Cotic (jointly, the **"Listing Team"**), assigned to represent the Seller and 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 Real 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 Real Property and not to have any direct or indirect interest in any entity purchasing or proposal to purchase the Real Property and not to receive any payments or other benefits from said purchasers or potential purchasers.

5. Commission Payable to the Listing Brokerage. Subject to the terms set out herein, the Seller shall pay to the Listing Brokerage upon the successful completion of sale of the Real 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 Real Property, share transaction, exercise of first right to purchase, option or other form of sale or transfer of the rights of the Real 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, as provided in Section 18, the Court approves: (i) a refinancing of the mortgage on the Real Property by 2557386 Ontario Inc. and 2363823 Ontario Inc. o/a Mariman Homes or people or entities related to them that results in a discontinuation of the Sale Process, the Listing Brokerage shall be entitled to a fee of \$200,000 (plus applicable taxes and actual disbursements); or (ii) a credit bid by a mortgagee of the Real Property, the Listing Brokerage shall be entitled to a fee of \$200,000 (plus applicable taxes and actual disbursements), and in either case no Listing Fee shall be payable.

7. Acknowledgments. The Listing Brokerage acknowledges and agrees in favour of the Seller that: (a) the Real 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 Real 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 Real 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 Real Property; (c) in lieu of a transfer/deed of land for the Real Property, the Seller will vest title to the Real Property by way of an approval and vesting order issued by the Court; and (d) the sale of the Real 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 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 work performed 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 as well as after the rendering of the service 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. The Listing Brokerage acknowledges that the Seller may disclose this Agreement in its sole and absolute discretion, including to stakeholders, creditors and the Court.

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 Real 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 Real Property for sale. Notwithstanding the foregoing, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Real Property and cannot confirm any third-party interests or claims with respect to the Real Property such as rights of first refusal, options, easements, mortgages, encumbrances or other otherwise concerning the Real Property, which may affect the sale of the Real 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 Real 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 Real Property and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required, provided such authorizations expressly prohibit any inspections by such regulatory authorities. 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 four month anniversary of the Commencement Date or upon earlier termination as otherwise prescribed herein. Notwithstanding any other provision in this Agreement, the Listing Brokerage shall not advertise the Real 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 Real Property on the MLS.

Colliers Macaulay Nicolls Inc., Brokerage

Per: Robert Frost

Name: Robert Frost

Title: Senior Managing Director

**KSV RESTRUCTURING INC. SOLELY IN ITS
CAPACITY AS COURT APPOINTED RECEIVER OF
2557386 ONTARIO INC. AND 2363823 ONTARIO
INC. O/A MARIMAN HOMES AND NOT IN ITS
PERSONAL OR CORPORATE CAPACITY AND
WITHOUT PERSONAL OR CORPROATE LIABILITY**

Per: Mitch Vininsky

Name: Mitch Vininsky

Title: Managing Director

Schedule "A"

Sale of the Real Property: The Listing Fee is equal to 3.00% of the purchase price of the Real Property, plus applicable taxes, if solely completed by the Listing Team. If co-operating with other Colliers agents or agents from another brokerage, the Listing Fee will be increased to 4.00%, with 2.00% being payable to the Cooperating Agent and 2.00% to the Listing Team, plus all applicable taxes.

Notwithstanding anything in this Schedule A or this agreement, if the Real Property is sold to Dunsire Developments/Drewlo Holdings, Marlin Spring/Baz Group of Companies, Empire Communities or Calibrex Developments, the Listing Fee payable will be \$200,000.

Schedule "B"

Sale Process:

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Prepare marketing materials	<ul style="list-style-type: none"> ➤ Colliers and the Receiver to: <ul style="list-style-type: none"> ○ prepare a teaser and confidential information memorandum ("CIM") for the Project; ○ populate virtual data room for the Project; and ○ prepare a confidentiality agreement ("CA"). 	2 weeks.
Prospect Identification	<ul style="list-style-type: none"> ➤ For the Real Property, Colliers to: <ul style="list-style-type: none"> ○ develop master prospect lists; ○ prioritize prospects; ○ have pre-marketing discussions with targeted prospects; ○ engage in discussions with planners, consultants and municipalities; and ○ consult with the Receiver regarding the above. 	
<i>Phase 2 – Marketing and Diligence</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ sending offering summary and marketing materials, including marketing brochure to each Colliers's client base, including specifically targeted prospects; ○ publishing the acquisition opportunity in such journals, publications and online as Colliers and the Receiver believe appropriate to maximize interest in this opportunity; ○ posting "for sale" sign on the Real Property, to the extent applicable; ○ 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; ○ posting the acquisition opportunity on MLS for the Project on an unpriced basis, if requested by the Receiver; and ○ meeting with prospective bidders to discuss the Project. ➤ Receiver and its legal counsel to prepare a Vendor's form of Purchase and Sale Agreement (the "PSA") which will be made available to prospective purchasers in the virtual data room. ➤ Colliers to provide additional information to qualified prospects which execute the CA, including access to the data room and a copy of the CIM. ➤ Colliers and Receiver to facilitate diligence by interested parties. 	3 weeks

Summary of Sale Process		
Milestone	Description of Activities	Timeline
Stage 2 – No Offers before date	<ul style="list-style-type: none"> ➤ Prospective purchasers to submit offers in the form of the PSA, with any changes to the PSA blacklined. 	Estimated date is 3 weeks from the marketing launch. Subject to market response.
<i>Phase 3 – Offer Review and Negotiations</i>		
Short-listing of Offers and Selection of Successful Bids	<ul style="list-style-type: none"> ➤ Colliers to collect, summarize and provide to the Receiver commentary on initial bids received to the Receiver. Receiver will consult with Mortgagee on the offers received. ➤ Short listing of bidders. ➤ 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. ➤ The Receiver will be at liberty to consult with the mortgage regarding the offers received, subject to any confidentiality requirements that the Receiver believes appropriate. ➤ The Receiver will select the successful bidder(s), having regards to, among other things: <ul style="list-style-type: none"> ○ total consideration (cash and assumed liabilities); ○ form of consideration, including the value of any carried interest; ○ third-party approvals required, if any; ○ conditions, if any, and time required to satisfy or waive same; and ○ such other factors affecting the speed and certainty of closing and the value of the offers as the Receiver considers relevant. 	2 weeks from offer bid deadline.
Sale Approval Motion(s) and Closing(s)	<ul style="list-style-type: none"> ➤ Upon execution of definitive transaction documents, the Receiver will seek Court approval of the successful offer(s), on not less than 7 calendar days' notice to the service list and registered secured creditors. 	15 to 30 days from the date that the selected bidder confirms all conditions have been satisfied or waived
Closings	<ul style="list-style-type: none"> ➤ Following Court approval 	ASAP

Appendix “C”



Listing Agreement Seller Representation Agreement Authority to Offer for Sale

Form 200

for use in the Province of Ontario


This is a Multiple Listing Service® Agreement


-DS
MV
(Seller's Initials)

OR

Exclusive Listing Agreement

EXCLUSIVE


(Seller's Initials)

BETWEEN:

BROKERAGE: RE/MAX Escarpment Golfi Realty Inc.

1 Markland Street Hamilton ON L8P2J5 (the "Listing Brokerage") Tel. No. (905) 575-7700

SELLER: KSV Restructuring Inc., in its capacity as Court-appointed Receiver of 2363823 Ontario Inc.

In consideration of the Listing Brokerage listing the real property for sale known as 2051 Vickery Oakville ON L6L 2J2

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 27 day of September March 2024

and expiring at 11:59 p.m. on the 26 day of July 2024

{ 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: Dollars (CDN\$) 2,500,000.00

Two Million Five Hundred Thousand 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, and A2 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.

1. DEFINITIONS AND INTERPRETATIONS: For the purposes of this Agreement ("Authority" or "Agreement"): "Seller" includes vendor, 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. 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. Commission shall be deemed to include other remuneration. This Agreement shall be read with all changes of gender or number required by the context. A "real estate board" includes a real estate association. "Public Marketing" shall have the same meaning as set out in REALTOR® Cooperation Policy as published by the Canadian Real Estate Association.

2. COMMISSION: In consideration of the Listing Brokerage listing the Property, the Seller agrees to pay the Listing Brokerage a commission of 5% of the sale price of the Property or 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 2.5% 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 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. 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. All amounts set out as commission are to be paid plus applicable taxes on such commission.

INITIALS OF LISTING BROKERAGE: 

INITIALS OF SELLER(S): 

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 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, 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. The Seller acknowledges the Brokerage in accordance with MLS® Rules and Regulations, and the Canadian Real Estate Association REALTOR® Code of Ethics, this Listing shall be, within three (3) days of Public Marketing, placed on an MLS® System for cooperation with other REALTORS®.
- 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. 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.
- 10. VERIFICATION OF INFORMATION:** The Seller authorizes the Listing Brokerage to obtain any information affecting the Property from any regulatory authorities, governments, mortgagees or others 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.
- 11. 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

INITIALS OF LISTING BROKERAGE:

DS
PG



INITIALS OF SELLER(S):

DS
MLV

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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:  Does  Does-Not 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.


- 12. **SUCCESSORS AND ASSIGNS:** The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms of this Agreement.
- 13. **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 Agreement between the Seller and the Listing Brokerage. There is no representation, warranty, collateral agreement or condition which affects this Agreement other than as expressed herein.
- 14. **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.
- 15. **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.

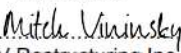
DocuSigned by:  (Authorized to bind the Listing Brokerage) Mar-19-2024 | 12:42 PM EDT Philip Golfi (Name of Person Signing)

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:  Mar-19-2024 | 8:10 AM PDT (Signature of Seller)  KSV Restructuring Inc (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 Rob Golfi (Name of Salesperson/Broker/Broker of Record) hereby declares that he/she is insured as required by TRESA.  (Signature(s) of Salesperson/Broker/Broker of Record) Philip Golfi

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 day of, 20 Mar-19-2024 | 8:10 AM PDT (Signature of Seller)  KSV Restructuring Inc (Date) (Signature of Seller) (Date)



Form 200
for use in the Province of Ontario

Schedule A

Listing Agreement

Seller Representation Agreement

Authority to Offer for Sale

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

BROKERAGE: RE/MAX Escarpment Golfi Realty Inc., and

SELLER: KSV Restructuring Inc

PROPERTY: 2051 Vickery Oakville ON L6L 2J2

This Schedule to the Agreement, *inter alia*, sets out the details of the provision of services, confidentiality and representation by the Brokerage, and subject to the terms of Clause 13 in the Agreement (Conflict or Discrepancy), is in addition to provision of services, confidentiality and representation set out in the Agreement.

COLLATERAL COMMISSION AGREEMENT

All terms and conditions of the Listing Agreement remain in full force and effect unless affected by the specific terms and conditions outlined herein:

In the event the Brokerage Representative also assists a SRP (Self Represented Party) or Buyer under Buyer Representation/Buyer Limited Representation in the sale of the Subject Property, the total commission payable by the Seller will be 5% + HST as stated in #2 on page 1 of the Listing Agreement.

This collateral agreement will become null and void if there are competing offers of "Multiple Offers" registered on the subject property. In the event of a sale resulting from competing offers by any SRPs or buyer(s), whether represented by Remax Escarpment Golfi Realty Inc., Brokerage, another Brokerage of any other source the total commission will remain as stated in #2 on page 1 of the Listing Agreement.

Further, so that there is a level playing field for all Buyers if there are competing offers, any offer by the Buyer Brokerage or any other source to reduce the commission will be respectfully declined.

I/We have read and clearly understand this Collateral Commission Agreement. DS
MV (initials)

COMMISSION - SPECIAL PROVISION AGREEMENT - SELLER BUYOUT FROM OTHER SELLER

The Seller understands and agrees that if a special provision to purchase has been exercised by one of the Sellers to buy the property from the other, the Seller agrees pay the Listing Brokerage a commission of 2.5% plus HST of the purchase price. The Seller further agrees and directs their solicitor to make payable to the Listing Brokerage as an adjustment on closing in favour of the Listing Brokerage.

I/We have read and clearly understand this Special Provision Agreement. DS
MV (initials)

SELF REPRESENTED PARTY/SRP

A Self Represented Party is not a client of the brokerage, but might have an interest in your property. If so, the SRP may receive assistance even though we have the obligation to promote YOUR best interests.

OPEN OFFERS

The Sellers, at their direction, understand and agree, that they have the option of an open-offer process to sell their property, at anytime during the transaction.

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

INITIALS OF LISTING BROKERAGE: DS
PG

INITIALS OF SELLER(S): DS
MV

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Schedule A2

Listing Agreement

This Listing Agreement (the "**Agreement**") for 2051 Vickery Dr., Oakville, Ontario is by and between RE/MAX Escarpment Golfi Realty Inc., Brokerage (the "**Listing Brokerage**") and KSV Restructuring Inc. (the "**Seller**"), without personal or corporate liability and solely in its capacity as receiver and manager pursuant to the *Bankruptcy and Insolvency Act, 2R.S.C. 1985, c. B-3*, as amended, and the Ontario *Courts of Justice Act, R.S.O. 1990, c. C.43*, as amended (in such capacity, the "**Receiver**"), of all of the assets, undertakings and properties of 2557386 Ontario Inc. and 2363823 Ontario Inc. o/s Mariman Homes (the "**Company**") acquired for, or used in relation to a business carried on by the Company and the proceeds therefrom.

Notwithstanding anything contained in the Agreement, 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 Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") appointing the Seller and/or the Seller's appointment as Receiver of the Real Property is revoked or terminated; and/or (b) the Seller is restricted in or enjoined from dealing with the Real Property by a court of competent jurisdiction; and/or (c) any party is permitted by Court order to enforce its rights and/or remedies against the Real Property.
2. **Price.** While it is the Seller's intention to obtain the highest and best offer for the Real 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 offers for the Real Property are subject at all times to the Seller's approval in its sole and absolute discretion, as well as approval by the Court if the Seller deems necessary or appropriate. Subject to the terms hereof, no fee, commission or other compensation is payable to the Listing Brokerage in respect of the Real Property unless and until the sale of the Real Property has been completed and the Seller is 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 three (3) 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 Real Property by the Listing Brokerage during the Listing Period and who the Listing Brokerage has 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 Real 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. Notwithstanding the foregoing, during the Holdover Period, the Listing Brokerage will not be entitled to any commission, payment of 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, list the Real Property for sale on the Multiple Listings Service for \$2.5 million or such other amount as the Seller will advise in writing;
 - (b) diligently market the Real Property for sale and use commercially reasonable efforts to sell the Real Property;
 - (c) co-operate with all licensed real estate brokers and agents in the sale of the Real Property (collectively the "**Cooperating Agents**" and each a "**Cooperating Agent**"), with any commissions or fees of such Cooperating Agents to be paid by the Listing Brokerage out of the Listing Fee of 5%;

- (d) 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 individual staff members originally assigned, including Phil Golfi (collectively the "**Listing Team**"), perform work in connection with the Listing Brokerage's engagement, and devote the time required to undertake the assignment contemplated herein;
- (e) subject to the instructions of the Seller, to assist the Seller in negotiating binding agreements of purchase and sale 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;
- (f) continue to assist the Seller in connection with the sale of the Real Property, and seeking Court approval if the Seller deems necessary or appropriate, after the execution of a binding agreement of purchase and sale with respect to the same until such sale has been successfully concluded; and
- (g) 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 Real Property and not to have any direct or indirect interest in any entity purchasing or proposing to purchase the Real 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 sale of the Real Property, a commission of 5% of the selling price (the "**Listing Fee**"). Any commission or fee payable to a Cooperating Agent shall be paid by the Listing Brokerage out of the Listing Fee. A Cooperating Agent may be employed at the Listing Brokerage so long that they are not a member of the Listing Team. For greater certainty, other than the Listing Team, all other agents shall be treated as third party Cooperating Agents, shall not be provided with any confidential information and shall be compensated pursuant to this Agreement as a Cooperating Agent. The Seller acknowledges that payment of HST applies on all commissions payable. The Seller agrees to notify the Listing Brokerage of the successful completion or closing. The Seller hereby instructs its solicitors to pay 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. **Acknowledgments.** The Listing Brokerage acknowledges and agrees in favour of the Seller that:

- (a) the Real Property is to be marketed and sold on an "as is, where is" basis and, accordingly, any agreement of purchase and sale shall provide for an acknowledgment by such purchaser that the Real Property is being sold by the Seller on an "as is, where is" basis, and that, except as required by law, 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 Real Property or any buildings located thereon; and
- (b) the sale of the Real Property by the Seller will be conditional upon the Court granting an order approving the sale and, if necessary, terminating any agreement of purchase and sale for the Real Property entered into prior to the parties entering into this Listing Agreement.

7. **Advertisement Expenses & Third-Party Consultants.** 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.

8. **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 confirms that it owes an obligation to the Indemnified Parties with respect to claims made by third parties against the Indemnified Parties arising out of work performed 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.

9. **Confidentiality.** The Listing Brokerage shall treat and shall cause its agents to treat as confidential and shall not disclose, during as well as after the rendering of the service 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.

10. **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.

11. **Seller's Capacity.** Notwithstanding the foregoing or anything else contained herein or elsewhere, the Listing Brokerage acknowledges and agrees that any transaction or transactions involving a sale of the Real Property may require the prior approval of the Court in the Court's sole and absolute discretion.

12. **Warranty.** Subject to Section 11 above and the remainder of this Section 12, the Seller represents and warrants that the Seller has the exclusive authority and power to execute this Agreement and to authorize the Listing Brokerage to offer the Real Property for sale. Notwithstanding the foregoing, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Real Property and cannot confirm (i) any third party interests or claims with respect to the Real Property such as rights of first refusal, options, easements, mortgages, encumbrances or otherwise concerning the Real Property, which may affect the sale of the Real Property, and/or (ii) if there are any defects that are hidden, not visible, or discoverable through a reasonable inspection of the Real Property that may render the Real Property dangerous or potentially dangerous or may affect the sale of the Real Property.

13. **Counterparts.** 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 agreement. Transmission by e-mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart.

14. **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.

15. **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 Real Property.

16. **Verification of Information.** The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Real 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.

17. **Listing Period.** The term of this Agreement shall begin on March 27, 2024 (the "**Commencement Date**") and shall expire one minute before midnight on the sixth month anniversary following 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 Real 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 Real Property on the MLS.

18. **Conflicts.** To the extent that any conflict, potential conflict or inconsistency exists or may exist, between the terms of this Agreement and the terms of any other agreement(s) the Seller has entered into with the Listing Brokerage, then the terms of this Agreement shall prevail.

[Remainder of this page left intentionally blank]

DS PG DS MV

**RE/MAX ESCARPMENT GOLFI REALTY INC.,
BROKERAGE**

Per: _____
DocuSigned by:
Phil Golfi
531293CAA30748C...
Name: Phil Golfi
Title: ~~Broker of Record~~
Sales Representative

**KSV RESTRUCTURING INC., SOLELY IN ITS
CAPACITY AS COURT-APPOINTED RECEIVER
OF THE COMPANY.**

Per: _____
DocuSigned by:
Mitch Vininsky
ACEC26DE2134466...
Name: Mitch Vininsky
Title: **Managing Director**

Schedule "A"

1. PIN: 24852-0035

MARSHALLZEHR GROUP INC.
Applicant

- and-

2557386 ONTARIO INC., et al.
Respondents

Court File No. CV-00699432-00CL

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

PROCEEDING COMMENCED AT
TORONTO

MOTION RECORD
(returnable March 27, 2024)

CHAITONS LLP

5000 Yonge Street, 10th Floor
Toronto, Ontario M2N 7E9

George Benchetrit (34163H))

Tel: (416) 218-1141

Email: george@chaitons.com

Maya Poliak (54100A)

Tel: (416) 218-1161

E-mail: maya@chaitons.com

**Lawyers for KSV Restructuring Inc., in its capacity as
Court-Appointed Receiver**