

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

BETWEEN:

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

and

2521311 ONTARIO INC. O.A. TOWNS OF THORNBURY

Respondent

**MOTION RECORD
(returnable August 15, 2024)**

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Foremost Mortgage Holding Corporation v. 2521311 Ontario Inc. o.a. Towns of Thornbury

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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and

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Respondent

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

BETWEEN:

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

and

2521311 ONTARIO INC. O.A. TOWNS OF THORNBURY

Respondent

NOTICE OF MOTION

KSV RESTRUCTURING INC. (“KSV”), in its capacity as the receiver (the “**Receiver**”) of the assets, undertakings and properties (the “**Property**”) of 2521311 Ontario Inc. o.a. Towns of Thornbury (the “**Company**”), will make a motion before a Judge of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”), on Thursday, August 15, 2024 at 10:00AM, or as soon after that time as the motion can be heard.

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

THE MOTION IS FOR:

1. an approval and vesting order (the “**AVO**”) substantially in the form attached at Tab 3 of the Motion Record, among other things:
 - (a) validating and abridging the time for service of this Notice of Motion and the Motion Record and directing that any further service of the Notice of Motion and Motion Record be dispensed with such that this Motion is properly returnable on the date scheduled for the hearing of this Motion;

- (b) approving the agreement of purchase and sale dated August 8, 2024 (the “**APS**”) between the Receiver and Foremost Mortgage Holding Corporation, as assigned to Louisa Street GP Inc., on behalf of Louisa Street Limited Partnership (the “**Purchaser**”), and the transaction contemplated therein (the “**Transaction**”) pursuant to which the Purchaser has agreed to purchase all of the Company’s right, title and interest in and to the Purchased Assets (as defined in the APS), including but not limited to the real property municipally known as Lot 10 Louisa Street, Thornbury, ON (the “**Real Property**”), and vesting the Purchased Assets in the Purchaser free and clear of any and all liens, charges, security interests, encumbrances (with the exception of any Permitted Encumbrances as set out in the APS), estates, rights and claims upon delivery by the Receiver of a certificate in the form attached as Schedule “A” to the AVO and authorizing and directing the Receiver to complete the Transaction;
- 2. an order substantially in the form attached at Tab 4 of the Motion Record, among other things:
 - (a) establishing a holdback fund to be held by the Receiver from the proceeds of the Transaction in the amount of \$66,713.24, equal to 10% of the aggregate of the contract prices set out in the registered lien claims (the “**Registered Lien Claims**”) filed by Cooper Equipment Rentals Limited (“**Cooper**”), Weatherall Enterprises Ltd. (“**Weatherall**”) and KFA Architects & Planners Inc. (“**KFA**” and together with Cooper and Weatherall, the “**Lien Claimants**”), which amount shall be held by the Receiver pending resolution (by agreement or further Order of the Court) of the Registered Lien Claims;
 - (b) approving the activities of the Receiver as set out in the First Report dated August 8, 2024 (the “**First Report**”);
 - (c) approving the fees and disbursements of the Receiver and its legal counsel, DLA Piper (Canada) LLP, for the time periods referenced in the First Report; and

(d) such other and further relief as counsel may request and this Honourable Court may allow.

THE GROUNDS FOR THE MOTION ARE:

1. pursuant to the Order of the Honourable Justice Cavanagh dated December 19, 2023, KSV was appointed as the interim receiver of the Property, including the Real Property;
2. pursuant to a further Order of the Honourable Justice Cavanagh dated February 5, 2024, KSV was appointed as Receiver and a sale process was approved for the proposed sale of the Property (the “**Sale Process**”);
3. the Company is a real estate development company that was developing a 23-unit townhome development known as the Towns of Thornbury (the “**Project**”) on the Real Property;
4. the Company pre-sold 21 townhomes and collected purchaser deposits totalling approximately \$1.64 million (the “**Deposits**”) which were insured by Berkley Insurance Company (“**Berkley**”). All but approximately \$53,000 of the Deposits were spent by the Company prior to the Receiver’s appointment;
5. closings of townhome sales were originally scheduled to be completed in January 2022, however, as at the date of the Receiver’s appointment, the Project was still under construction;
6. the Project was plagued by construction delays, cost overruns, stop work orders and material deficiencies and the Receiver was advised by Foremost that it would cost millions of dollars to address the construction deficiencies and complete the Project, which was already millions of dollars over budget, all of which was confirmed by the Receiver based on feedback received from interested parties as part of the Sale Process;

The Company's Creditors

7. Foremost holds a senior ranking mortgage and charge registered on title to the Real Property in the amount of \$9.846 million (the "**Foremost Mortgage**") as well as a general security agreement over the personal property comprising the Property. As at the commencement of the receivership proceedings, Foremost was owed approximately \$8.4 million, excluding interest and costs which continue to accrue;
8. two additional mortgages are registered on title to the Real Property. The first, in favour of Berkley, is in the amount of \$1.679 million which the Receiver understands relates to the Deposits insurance and surety provided in favour of homebuyers for pre-sold townhomes. The second is in favour of Jose Cruz ("**Cruz**"), a business partner of a director and officer of the Company, in the amount of \$1.0 million, and it is the Receiver's understanding that the mortgage relates to advances made by Cruz to assist the Company with construction;
9. in addition to the three mortgages registered on title to the Real Property, as of the date of the First Report, three construction liens have been registered against title to the Real Property in favour of the following parties (the "**Registered Lien Claims**"):
 - (i) Cooper, in the amount of \$71,634 on account of amounts claimed as owing under a contract with a contract price of \$71,634;
 - (ii) Weatherall, in the amount \$224,873 on account of amounts claimed as owing under a contract with a contract price of \$310,128.04; and
 - (iii) KFA, in the amount of \$285,369 on account of amounts claimed as owing under a contract with a contract price of \$285,369.56;
10. all advances made by Foremost to the Company and secured under the Foremost Mortgage were made prior to the registration of the Registered Lien Claims on title to the Real Property and, as such, the Registered Lien Claims are subordinate to the Foremost Mortgage (and likely the two mortgages in favour of Berkley and Cruz), save and except for the maximum amount of 10% of the contract price of the goods and services supplied by the Lien Claimants as contemplated under the *Construction Act* (Ontario);

11. in addition to the Registered Lien Claims, the Company is subject to three other construction lien claims which have been bonded off title to the Real Property;
12. based on information provided to the Receiver by the Company, as at the date of the Receiver's appointment the Company's unsecured creditors were owed approximately \$373,627.39, however, the completeness and accuracy of the Company's books and records is questionable. In any event, given the amount owed to Foremost and secured under the Foremost mortgage and the results of the Sale Process, no distributions to unsecured creditors are expected;

The Sale Process

13. as part of the Sale Process, the Receiver retained Slavens & Associates Real Estate Inc. ("**Slavens**") to list and market the Real Property;
14. the Sale Process contemplated a six-week listing period and the submission of binding offers on March 21, 2024 (the "**Offer Deadline**");
15. Slavens reached out to over 3,000 parties as part of an email marketing campaign, forty-seven of whom executed non-disclosure agreements and six of whom submitted offers by the Offer Deadline;
16. given the likelihood that the fair market value of the Project was less than the amount owed under the Foremost Mortgage, several prospective purchasers engaged directly with Foremost concerning a potential transaction where Foremost would have a continuing financial interest in the Project;
17. following the Offer Deadline, Foremost determined that its best course of recovery would be to acquire the Purchased Assets (as defined in the APS) by way of a credit bid, along with certain cash consideration determined by the Receiver so as to satisfy amounts owed in priority to Foremost's indebtedness, and to retain a construction partner to complete the Project;

18. the market was thoroughly canvassed by Slavens and the APS provides for the greatest recovery available in the circumstances;
19. such further and other grounds as set out in the First Report; and
20. Rules 1.04, 1.05, 2.01, 2.03, 16.04 and 37 of the *Rules of Civil Procedure*, R.R.O 1990, Reg. 194, as amended.

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

- (a) the First Report; and
- (b) such further and other material as counsel may advise and this Honourable Court may allow.

August 8, 2024

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FOREMOST MORTGAGE HOLDING CORPORATION
Applicant

and

2521311 ONTARIO INC. O.A. TOWNS OF THORNBURY
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

NOTICE OF MOTION
(returnable August 15, 2024)

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TAB 2



**Report to Court of
KSV Restructuring Inc. as
Receiver of 2521311 Ontario Inc.**

August 8, 2024

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Court File NO.: CV-23-00710990-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

FOREMOST FINANCIAL CORPORATION.

Applicant

- and -

2521311 ONTARIO INC. O.A. TOWNS OF THORNBURY

Respondents

REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER

August 8, 2024

1.0 Introduction

1. Pursuant to an application by Foremost Mortgage Holding Corporation ("**Foremost**"), the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued an order on December 19, 2023 (the "**Interim Receivership Order**") appointing KSV Restructuring Inc. ("**KSV**") as the interim receiver (the "**Interim Receiver**"), without security, of all of the assets, undertakings and properties of 2521311 Ontario Inc. o.a. Towns of Thornbury (the "**Company**") acquired for, or used in relation to a business carried on by the Company (the "**Property**"), including the real property municipally known as Lot 10 Louisa Street, Thornbury, ON (the "**Real Property**"), pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the "**BIA**").
2. On February 5, 2024, the Court issued an order (the "**Receivership Order**") appointing KSV as receiver (the "**Receiver**") of the Property and approving the Receiver's proposed sale process for the Property (the "**Sale Process**"). A copy of the Receivership Order is attached as **Appendix "A"**.
3. The principal focus of the receivership proceedings has been to conduct the Sale Process for the Real Property.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about these proceedings;
 - b) summarize the Sale Process and the results thereof;

- c) summarize a proposed transaction (the “**Transaction**”) in respect of the Real Property and certain other Property (the “**Purchased Assets**”) between the Receiver and Louisa Street GP Inc., on behalf of Louisa Street Limited Partnership, as assignee from Foremost Mortgage Holding Corporation (the “**Purchaser**”), pursuant to an agreement of purchase and sale dated August 8, 2024 (the “**APS**”); and
- d) recommend that the Court issue:
- (i) an Approval and Vesting Order (the “**AVO**”), among other things:
- approving the Transaction;
 - transferring and vesting all of the Company’s and the Receiver’s right, title and interest in and to Purchased Assets in the Purchaser, free and clear of all liens, charges, security interests and encumbrances, other than permitted encumbrances, following the Receiver’s delivery of the Receiver’s certificate substantially in the form attached as Schedule “A” to the proposed AVO (the “**Receiver’s Certificate**”); and
- (ii) an Order (the “**Ancillary Relief Order**”):
- establishing a holdback (the “**Lien Holdback**”) in the amount of \$66,713.24 (equal to 10% of the aggregate of the contract prices stated by the lien claimants’ Registered Lien Claims (as defined below)), to be held by the Receiver pending resolution (by agreements or further Court orders) of the Registered Lien Claims described in Section 3.2.1(3) below;
 - permitting the Receiver to pay to Foremost any of unused portion of the Cash Amount (as defined in 5.1.2 below) without further order of the Court; and
 - approving this Report, the Receiver’s fees, disbursements, conduct and activities as set out herein, as well as the fees and disbursements of DLA Piper (Canada) LLP (“**DLA**”).

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon information provided by the Company and Foremost. The Receiver has not performed an audit or other verification of such information.
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the information relied upon to prepare this Report in a manner that complies with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own due diligence.

1.3 Currency

1. All currency references in this Report are in Canadian dollars.

1.4 Court Materials

1. Court materials filed in these proceedings are available on the Receiver's website at: www.ksvadvisory.com/experience/case/towns-of-thornbury (the "Case Website").

2.0 Background

1. A copy of the affidavit of Paul Rayment, Executive Vice President of Foremost Financial Inc., an affiliate of Foremost, sworn on December 11, 2023 (the "**Rayment Affidavit**") in support of Foremost's application for the appointment of the Receiver is attached hereto as **Appendix "B"**. The Rayment Affidavit sets out, *inter alia*, the Company's background and the events that led to the commencement of these proceedings. Accordingly, a detailed discussion of the information in the Rayment Affidavit is not repeated herein.
2. The Company is a real estate development company. The Company is developing a 23-unit townhome development known as the Towns of Thornbury (the "**Project**") on the Real Property.
3. Closings of the sales of townhomes were originally scheduled to be completed in January of 2022; however, as of the date of the Receivership application herein, the Project was still under construction. The Rayment Affidavit describes the construction delays, cost overruns, stop work orders and material deficiencies on the Project.
4. Prior to these proceedings, the Receiver was advised by Foremost that it would cost millions of dollars to address the construction deficiencies and complete the Project - and that the Project was millions of dollars over budget. Feedback from interested parties who participated in the Sale Process confirmed the significant costs and uncertainties related to remediating and completing the Project.
5. The Company pre-sold 21 townhomes and received deposits from purchasers totalling approximately \$1.64 million (the "**Deposits**"). The Receiver understands that all but approximately \$53,000 of the Deposits were spent by the Company prior to the commencement of these proceedings. The Receiver understands that the Deposits are insured by Berkley Insurance Company ("**Berkley**"). Berkley has a second mortgage registered on the Real Property in the principal amount of \$1,679,000.

3.0 Creditors

3.1 Foremost

1. Foremost holds a senior ranking mortgage and charge registered on title to the Real Property (the "**Foremost Mortgage**") on September 18, 2020 in the amount of \$9,846,000, as well as a general security agreement (the "**Foremost GSA**" and together with the Foremost Mortgage, the "**Foremost Security**") over the personal property comprising the Property registered against the Company under the *Personal Property Security Act (Ontario)* on that same date. As of the commencement of these proceedings, Foremost was owed approximately \$8.4 million (the "**Loan**"), plus interest and costs that continue to accrue, all of which is secured by the Foremost Security.

2. At the Receiver's request, DLA has conducted a review of the Foremost Security and provided the Receiver with a memorandum reporting on same (the "**DLA Security Review**"). The DLA Security Review confirms the validity and sequence(s) of registration of the Foremost Security as against the Property, subject to standard qualifications and assumptions. A copy of the DLA Security Review can be made available for the Court's review.

3.2 Other Creditors

3.2.1 Secured Creditors

1. In addition to the Foremost Mortgage, Berkley holds a mortgage on the Real Property in the amount of \$1,679,000 registered against title to the Real Property on December 8, 2020, which the Receiver understands relates to the Deposit insurance and surety provided in favour of homebuyers for pre-sold townhomes.
2. Jose Cruz, a business partner of Nicklaus Sampogna, a director and officer of the Company and guarantor of Foremost's advances to the Company, registered a third mortgage on the Real Property on February 27, 2023 in the amount of \$1,000,000, which the Receiver understands he made to the Company to assist with construction.
3. As of the date of this Report, there are three construction liens registered against title to the Real Property:
 - (i) Cooper Equipment Rentals Limited ("**Cooper**") registered a construction lien in the amount of \$71,634 on December 6, 2023 for amounts claimed as owing under a contract with a contract price of \$71,634 (based on a preventient arrangement);
 - (ii) Weatherall Enterprises Ltd. ("**Weatherall**") registered a construction lien in the amount of \$224,873 on December 18, 2023 for amounts claimed as owing under a contract with a contract price of \$310,128.04; and
 - (iii) KFA Architects & Planners Inc. ("**KFA**") registered a construction lien in the amount of \$285,369 on April 10, 2024 for amounts claimed as owing under a contract with a contract price of \$285,369.56 (together, the "**Registered Lien Claims**")
4. Based on the information set out in the Rayment Affidavit and, in particular, the schedule of Foremost Loan advances forming Exhibit K thereto, all Loan advances secured by the Foremost Mortgage (and Foremost GSA) were made by Foremost to the Company prior to the registration of the three construction lien claims set out above. Based on section 78(2) of the *Construction Act (Ontario)*, the Registered Lien Claims are therefore subordinate to the Foremost Mortgage (and likely the Berkley and Jose Cruz mortgages), save and except to the maximum amount of 10% of the contract price of the goods and services actually supplied. Accordingly, the Receiver has included the sum of \$66,713.24 (being 10% of the aggregate contract amounts stated in the Registered Lien Claims) in the required cash consideration portion of the Purchase Price for the Purchased Assets, to be held by the Receiver on account of the Registered Lien Claims, which are to be vested off title to the Real Property on closing pursuant to the AVO.

5. In addition to Cooper, Weatherall and KFA, the Company is subject to construction lien claims by Toromont Industries Ltd. (\$55,421.93), Ecostar Insulation (\$20,822.06) and Northstar Spray Foam and Insulation Inc. (\$81,788.74), each of which claims has been bonded off of title to the Real Property, and as such are not affected by the Transaction or the AVO.
6. Since the date of the Receiver's appointment (February 5, 2024) there has been no construction activity taking place at the Project, and accordingly, all *Construction Act* time periods for the filing of construction lien claims by and additional parties against the Real Property have passed.

3.2.2 Unsecured Creditors

1. Based on information provided to the Receiver by the Company, as at the date of the Receivership Order, the Company's unsecured obligations totalled approximately \$373,627.39. The completeness and accuracy of the Company's books and records is unclear to the Receiver as the Company's representatives have not responded to the Receiver's information requests on a complete or timely basis throughout these proceedings.
2. Given the amount owing to Foremost secured by the Property and the results of the Sale Process, no distributions are anticipated to be made to unsecured creditors in these proceedings.

4.0 Sale Process

4.1 Marketing Process

1. With the consent of Foremost, the Receiver retained Slavens & Associates Real Estate Inc. ("**Slavens**") as a listing agent to market the Real Property for sale.
2. On February 2, 2024, the Receiver entered into an Exclusive Seller Representative Agreement with Slavens for the Real Property, which contemplated that offers would be submitted after a 6-week listing period.

4.2 Sale Process Results

1. A summary of the Sale Process (which was approved by the Court at paragraphs 28-30 of the Receivership Order) is as follows:
 - a) Slavens carried out an email marketing campaign, which was sent to approximately 3,000 parties;
 - b) the Receiver prepared a non-disclosure agreement (an "**NDA**") that was made available to prospective purchasers. To participate in the Sale Process, prospective purchasers were required to sign the NDA, following which they were provided access to a virtual data room (the "**Data Room**"), which was populated with the assistance of Slavens;
 - c) Slavens also directly contacted parties that it believed would have a high degree of interest in the Real Property;
 - d) Prospective purchasers were provided the opportunity to tour the Real Property and to perform diligence on the present state of construction so that they could attempt to estimate the costs to complete the project;

- e) Prospective purchasers were required to submit binding offers by 5:00 p.m. on March 21, 2024 (the “**Offer Deadline**”); and
 - f) 47 parties executed NDAs and were granted access to the Data Room. Six offers were received by the Offer Deadline.
2. A summary of the Offers (the “**Offer Summary**”) is attached hereto as **Appendix “C”**, none of which were sufficient to repay Foremost in full.
 3. Given the high probability that the fair market value of the Project was less than the Foremost mortgage, and based on feedback received during the Sale Process, several prospective purchasers engaged directly with Foremost concerning a potential transaction where Foremost could have a continuing financial interest. Foremost kept the Receiver advised of these discussions, and the Receiver engaged directly with several of these parties and facilitated certain of these discussions. The discussions between Foremost and the prospective purchasers took place prior to and following the Offer Deadline.
 4. Following the Offer Deadline, it became evident that any transaction that maximizes recoveries for Foremost would require Foremost to have a continuing involvement in the Project. Accordingly, after engaging with several parties, Foremost determined that its best course of recovery on the Project would be to: (i) acquire the Purchased Assets by way of credit bid through the Purchaser, a Foremost affiliate; and (ii) retain Dunn Capital Corporation as a construction partner to complete the Project, all as described in Section 5 below.

5.0 The Transaction

5.1 The APS

1. The following section summarizes the APS and the Transaction. A copy of the APS is attached as Appendix “D”.
2. The key terms of the APS are provided below:
 - Vendor: the Receiver.
 - Purchaser: Louisa Street GP Inc., on behalf of Louisa Street Limited Partnership, as assignee of Foremost.
 - Purchased Assets: all right, title and interest, if any, of the Debtor and the Beneficial Owners in and to the following:
 - a) the Real Property;
 - b) the Contracts;
 - c) the Books & Records;
 - d) the Personal Property;
 - e) the Assumed Contracts; and
 - f) the Permits, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees.

- Excluded Assets: all assets, undertakings and properties of the Company other than the Purchased Assets, including:
 - a) the Debtor's cash or cash equivalents; and
 - b) contracts other than the Assumed Contracts.
- Purchase Price: \$8,750,000 to be paid by credit bid (Debt Consideration).
- Cash Amount: In addition to the Purchase Price, Foremost will pay the sum of \$325,000 to the Receiver to; (i) fund the Lien Holdback, and (ii) fund the Receiver's and DLA's fees and costs incurred to date and go forward fees and costs secured by the Receiver's Charge to satisfy the amounts detailed in Section 1.1(d)(ii) above.
- Excluded Liabilities: include, but not limited to, the following:
 - a) all Taxes payable by the Debtor prior to the Closing Date;
 - b) all Taxes relating to any matters or assets other than the Purchased Assets;
 - c) any liability, obligation or commitment associated with the Accounts Payable or any employees of the Debtor for the period prior to closing;
 - d) any liability, obligation or commitment associated with any of the Excluded Assets; and
 - e) any liability, obligation or commitment in respect of Claims arising from or in relation to, any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.
- Representations and Warranties: consistent with the standard terms of an insolvency transaction, i.e., on an "as is, where is" basis, with limited representations and warranties.
- Permitted Encumbrances: Plan Reference, Absolute Title Application, Site Plan Notice, Transfer Easement.
- Closing Date: the date that is the later of: (i) the first Business Day following the date that is ten days following the date on which the Approval and Vesting Order is issued by the Court; and (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined, or, if the Parties agree, such other date as agreed in writing by the Parties.
- Assignment: On July 26, 2024, Foremost advised the Receiver that it was in the process of incorporating the Purchaser to take title to the Real Property on closing of the Transaction, as contemplated by Section 14.10 of the APS. Prior to the return of the Receiver's Motion seeking approval of the Transaction, Foremost, the Purchaser and the Receiver shall have entered into an Assignment and Assumption Agreement pursuant to which Foremost will assign its right, title and interest in the APS to the Purchaser and directed that title to the Real Property be taken in the name of the Purchaser, provided that Foremost shall remain liable for all obligations under the APS.

5.2 The Transaction Recommendation

1. The Receiver recommends that the Court issue the proposed AVO approving the Transaction for the following reasons:
 - a) the process undertaken to market the Real Property was commercially reasonable and consistent with processes commonly used to market real property in the nature of the Project for sale;
 - b) the Sale Process was carried out under the supervision of the Receiver and consistent with the process approved by the Court;
 - c) in Slavens' view, it is unlikely that continuing to market the Real Property will result in a superior transaction. In this regard, Slavens has provided a summary of the Sale Process (the "**Slavens Summary**") that it conducted, as well as the reasons it recommends the Transaction. A copy of Slavens Summary is provided in **Appendix "E"**;
 - d) the Transaction is unconditional except for Court approval;
 - e) the Receiver and Slavens are of the view that the Transaction provides for the best recovery available in the circumstances;
 - f) the Cash Amount will be used to satisfy any amounts that need to be paid in cash by the Receiver following closing, including establishing the Lien Holdback to satisfy the amounts owing in respect of the Registered Construction Liens, and to pay the Receiver's and DLA's fees and costs incurred to date and to complete these proceedings, with any residual amount of the Cash Amount to be paid to Foremost; and
 - g) as at the date of this Report, the Receiver is not aware of any objections to the relief being sought pursuant to the proposed AVO.

6.0 Receiver's Activities

1. In addition to dealing with the matters addressed above, the Receiver's activities since its appointment have included:
 - a) corresponding with representatives of the Company to obtain information concerning the Project and its stakeholders;
 - b) corresponding with Royal Bank of Canada to close the Company's bank account and to transfer the balance in that account to the Receiver's estate account;
 - c) corresponding with the Company's utility companies to continue services during the receivership;
 - d) preparing the statutory reports required by subsections 245(1) and 246(1) of the BIA and mailing same to all known creditors of the Company and the Official Receiver;
 - e) retaining a property manager to oversee and maintain the Property;
 - f) corresponding with Slavens and Foremost regarding the Sale Process;

- g) assisting Slavens to carry out the Sale Process and facilitate due diligence requests by interested parties;
- h) corresponding with Foremost regarding these proceedings, including the Sale Process and Transaction related issues;
- i) corresponding with the Company's creditors;
- j) corresponding with certain suppliers of appliances and materials to the Project in respect of partly-paid-for Company property in their possession;
- k) corresponding with home buyers regarding their deposits and the status of these proceedings;
- l) corresponding with Tarion Warranty Corporation and Berkley regarding deposits paid by home buyers;
- m) working with DLA in respect of the Transaction and DLA's security opinion on the Foremost Security and assessing the rights and priorities associated with the Registered Lien Claims;
- n) drafting this Report and reviewing and commenting on the motion materials in respect of the relief to be sought on the return of this motion; and
- o) maintaining the Case Website, including posting documents, such as application materials, reports, orders, notices, etc.

7.0 Professional Fees

1. Pursuant to paragraph 21 of the Receivership Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Receivership Order. Pursuant to the Receivership Order, the Receiver and its counsel shall pass their accounts from time to time.
2. The Receiver seeks to have its fees and disbursements, including those of its legal counsel, approved by the Court. The Receiver and its counsel have maintained detailed records of their professional time and costs.
3. The total fees for the Receiver and Interim Receiver from December 1, 2023 to July 31, 2024 are \$93,189.25, plus disbursements of \$385.93 and HST of \$12,164.77. The time spent by the Interim Receiver and Receiver is more particularly described in the Affidavit of Robert Kofman provided in **Appendix "F"**.
4. The total fees for DLA Piper from December 1, 2023 to July 31, 2024 are \$35,687.50, plus disbursements of \$178.30 and applicable taxes of \$4,654.73. The time spent by DLA Piper is more particularly described in the Affidavit of Edmond Lamek provided in **Appendix "G"**.
5. It is the Receiver's opinion that the fees and disbursements of the Interim Receiver/Receiver and DLA Piper accurately reflect the work done by the Interim Receiver/Receiver, and on behalf of the Interim Receiver/Receiver by DLA Piper, in connection with the receivership and the administration of the receivership for the dates of their respective invoices.

6. It is also the Receiver's opinion that the fees and disbursements of DLA Piper are fair and reasonable and justified in the circumstances. The Receiver is of the view that DLA Piper's hourly rates are consistent with the rates charged by other law firms practicing in the area of insolvency in the Toronto market, and that its fees are reasonable and appropriate in the circumstances. The Receiver recommends approval of DLA Piper's accounts by this Court.

8.0 Conclusion and Recommendation

1. For the reasons set out in this Report, the Receiver is of the view that the relief requested is reasonable and appropriate in the circumstances and respectfully recommends that this Honourable Court issue the orders granting the Receiver's requested relief.

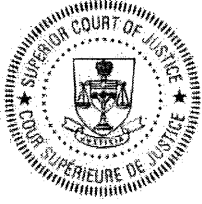
* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS RECEIVER OF
2521311 ONTARIO INC. AND NOT IN ITS PERSONAL
OR CORPORATE CAPACITY**

APPENDIX A



Court File No. CV-23-00710990-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

THE HONOURABLE MR.) MONDAY, THE
JUSTICE CAVANAGH) 5TH DAY OF FEBRUARY, 2024

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

- and -

2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY

Respondent

ORDER
(Appointing Receiver)

THIS APPLICATION made by the Applicant for an Order, *inter alia*: (i) 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. ("KSV") as receiver (in such capacities, the "Receiver") without security, of all of the assets, undertakings and properties of 2521311 Ontario Inc. o.a. Towns of Thornbury (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor; and (ii) approving the proposed Sale Process (as defined and described the Pre-Filing Report of the Proposed Receiver dated December

12, 2023 (the “Pre-Filing Report”) and as amended by the Supplemental Report (as defined below)), was heard this day.

WHEREAS KSV was appointed Interim Receiver of the Property (as defined below) pursuant to section 47(1) of the BIA and section 101 of the CJA by Order of Justice Cavanagh made December 19, 2023 (the “IR Order”);

NOW THEREFORE, ON READING the affidavit of Paul Rayment sworn December 12, 2023 and the Exhibits thereto, the Pre-Filing Report, the Supplement to the Pre-Filing Report of the Proposed Receiver (the “**Supplemental Report**”), and on hearing the submissions of counsel for the Applicant and such other counsel as were present, and on reading the consent of KSV Restructuring Inc. to act as the Receiver,

SERVICE

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

DISCHARGE

2. **THIS COURT ORDERS** that KSV is hereby discharged as Interim Receiver of the Property, provided however that notwithstanding its discharge as Receiver herein, KSV shall continue to have the benefit of the provisions of the IR Order and all other orders made in this proceeding, including all authorizations, approvals, protections and stays of proceedings in favour of KSV in its capacity as Interim Receiver.

3. **THIS COURT ORDERS** that any and all monies borrowed by the Interim Receiver under the terms of the IR Order shall constitute borrowings under this Order and shall

have the full benefit of the Receiver's Borrowing Charge (as defined below) under this Order.

APPOINTMENT

4. 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 Debtor acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the "Property").

DEFINED TERMS

5. THIS COURT ORDERS that capitalized terms used in this Order and not otherwise defined herein shall have the meaning ascribed to them under the Pre-Filing Report of the proposed Receiver.

RECEIVER'S POWERS

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

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

- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;
- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;

- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (k) 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 \$150,000, 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, and in each case the Ontario *Bulk Sales Act* shall not apply.

- (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 Debtor;

- (p) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;
- (q) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (r) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations,

and in each case where the Receiver takes any such actions or steps, it shall be exclusively authorized and empowered to do so, to the exclusion of all other Persons (as defined below), including the Debtor, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

8. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and

accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "Records") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to 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 9 or in paragraph 10 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.

9. 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.

10. 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

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

13. THIS COURT ORDERS that all rights and remedies against the Debtor, 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 Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

15. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation

services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

16. 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

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

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

19. 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

20. 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

21. 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.

22. 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.

23. 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

24. THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (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.

25. 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.

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

27. 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.

SALES PROCESS APPROVAL

28. THIS COURT ORDERS that the Sale Process be and is hereby approved. The Receiver is hereby authorized to carry out the Sale Process and to take such steps as it considers necessary or desirable in carrying out its obligations thereunder, including authorizing the Receiver to enter into realtor listing agreements and modifying the Sale Process timelines as set out in the Pre-Filing Report, all subject to prior approval of this Court before completion of any sale transaction under the Sale Process.

29. THIS COURT ORDERS that the Receiver and its affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Receiver performing its duties under the Sale Process, except to the extent such losses, claims, damages or liabilities arise or result from the gross negligence or wilful misconduct of the Receiver, as determined by this Court in a final order that is not subject to appeal or other review.

30. THIS COURT ORDERS that the Receiver may apply to the Court for directions with respect to the Sale Process at any time on at least seven (7) days' notice to the service lists established in these proceedings or such other notice as directed or permitted by the Court.

SERVICE AND NOTICE

31. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol.

32. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

GENERAL

33. 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.

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

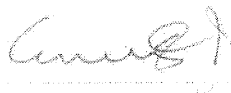
35. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Receiver and its agents in carrying out the terms of this Order. All courts, tribunals, 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.

36. 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.

37. THIS COURT ORDERS that the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.

38. 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.



Digitally signed
by Mr. Justice
Cavanagh

SCHEDULE "A"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver (the "Receiver") of the assets, undertakings and properties 2521311 Ontario Inc. o.a. Towns of Thornbury (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (collectively, the "Property") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated the ___ day of _____, 20__ (the "Order") made in an action having Court file number CV-23-00710990-00CL, 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 \$500,000 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 _____, 20__.

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

Per: _____
Name:
Title:

**FOREMOST MORTGAGE HOLDING
CORPORATION**
Applicant

-and-

2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY
Court File No. CV-23-00710990-00CL

Respondent

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

**ORDER
(Appointing Receiver)**

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APPENDIX B

Court File No: CV-23-00710990-00CL

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

B E T W E E N:

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

- and -

2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY

Respondents

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

AFFIDAVIT OF PAUL RAYMENT

I, Paul Rayment, of the City of Toronto, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am the Executive Vice President of Foremost Financial Corporation
("Foremost"), an affiliate of the Applicant, Foremost Mortgage Holding
Corporation (the "Lender"). The Lender is a secured creditor of the respondent,
2521311 Ontario Inc (the "Borrower"), as described in detail below. As such, I
have knowledge of the matters to which I hereinafter depose.

A. The Parties and the Property

2. The Lender is an Ontario corporation in the business of providing mortgage
financing and other loans. It is the first mortgagee of the Property (as defined
below).

3. The Borrower is an Ontario corporation in the business of real estate
development. The Borrower operates under the name Towns of Thornbury.

4. A corporate profile report for the Borrower is attached as **Exhibit "A"**.
5. The Borrower owns the property located at Lot #10, Louisa Street in Thornbury, Ontario, having the legal description PT PARKLT 10SW/S Louisa St PL Thornbury PT 1 Plan 16R11036; The Blue Mountains (the "**Property**"). The parcel register for the Property, dated December 4, 2023, is attached as **Exhibit "B"**.
6. Nicklaus Sampogna (the "**Guarantor**") is an individual whom I believe to be resident in Ontario. The Guarantor is an officer and director of the Borrower. I also understand that the Guarantor is a shareholder of the Borrower.
7. The Property is the site of a residential townhome development known as Towns of Thornbury (the "**Project**"). The Project is still under construction and has suffered from numerous construction deficiencies, as described below.
8. I understand that a number of residential units in the Project have been pre-sold to third-party purchasers and the Borrower has collected deposits in respect of those pre-sales. A total of approximately \$1,635,330 of deposits from 21 purchasers has been collected by Berkley Insurance Company, the Project's third-party surety provider. All but approximately \$53,000 of the deposit funds have been released to the Borrower to fund construction.

B. The Loan

9. On September 17, 2020, The Lender completed a mortgage loan transaction (the "**Loan**") with the Borrower in accordance with a Letter of

Commitment dated July 13, 2020 (the "**Commitment Letter**"), a copy of which is attached as **Exhibit "C"**.

10. The Loan initially contemplated a facility in the amount of \$8,205,000.

11. The annual interest rate on the Loan is the greater of 8.75% or HSBC Bank Canada Prime + 4.75%.

12. The Commitment Letter contemplated monthly interest-only payments and a repayment of the Loan on maturity, being 18 months from the date of the initial advance. The term of the loan was subsequently extended as detailed below.

13. The Commitment Letter was amended on or around September 15, 2021 to increase the amount of the Loan to \$8,870,000 and to amend certain other terms. A copy of the amending agreement, dated September 15, 2021, is attached as **Exhibit "D"**.

14. The Borrower's obligations under the Loan are guaranteed by the Guarantor. A copy of the guarantee (the "**Guarantee**") is attached as **Exhibit "E"**.

C. Security for the Loan

15. The Loan is secured by a first mortgage (the "**Mortgage**") registered on September 18, 2020 against the Property. The Mortgage was registered in the Land Registry Office as Instrument No GY192228 (the "**Charge**"). A copy of the Charge is attached as **Exhibit "F"**.

16. The Charge incorporated by reference Standard Charge terms 201035 (the "**Standard Charge Terms**"). The Standard Charge Terms expressly provide (at

section 36) that in the event of a default, the Lender has the right to appoint a receiver in respect of the Property and the Borrower's business being conducted at the Property. A copy the terms of the Standard Charge Terms is attached as **Exhibit "G"**.

17. There is a second mortgage registered on the Property in favour of Berkley Insurance Company, the Project's surety provider, and a third mortgage in favour of Jose Cruz, a business partner of the Guarantor, arising out of Mr. Cruz's advance of funds to the Borrower to assist in construction.

18. In addition to the Mortgage, the Borrower granted the Lender a General Security Agreement over its personal property (the "**GSA**"). A copy of the GSA is attached as **Exhibit "H"**.

19. Article 6.4 of the GSA provides the Lender with the right to appoint a receiver to carry on the business of the Borrower in the event of a default.

20. The Lender's lawyer conducted a search of the Personal Property Security Registration system in Ontario against the Borrower. A copy of the search, dated December 4, 2023, is attached as **Exhibit "I"**.

21. The search against the Borrower indicates that in addition to the Lender's registration, the following additional registration exists:

Secured Party	Collateral	Registration Date	Registration Number
Berkley Insurance Company	SECURITY INTEREST IN PURCHASERS' DEPOSIT MONIES PURSUANT TO A DEPOSIT TRUST AGREEMENT	November 26, 2020	20201126 0953 1590 7533

	DATED AS OF OCTOBER 15, 2020, BETWEEN THE DEBTOR, THE SECURED PARTY AND CHAITONS LLP, THE ESCROW AGENT, RELATING TO A CONDOMINIUM PROJECT, LOCATED AT 10 LOUISA STREET, THORNBURY, ONTARIO AND LEGALLY DESCRIBED IN PIN 37132-0173 (LT) AND KNOWN AS "TOWNS OF THORNBURY" TOGETHER WITH A GENERAL SECURITY AGREEMENT FROM THE DEBTOR IN FAVOUR OF THE SECURED PARTY		
--	---	--	--

22. The Lender's lawyer also conducted an execution search against the Borrower in all 49 Ontario enforcement offices. The search indicated that there are no executions registered against the Borrower as of December 4, 2023. A copy of this search is attached as **Exhibit "J"**.

D. Advances under the Loan

23. The Lender made 27 advances to the Borrower under the loan totalling \$9,022,454.25, as summarized in the Lender's mortgage ledger for this Loan, which is attached as **Exhibit "K"**.

E. Renewals of the maturity date

24. The Loan was initially set to mature on April 1, 2022. At that time, the Borrower was unable to repay the amounts owing under the Loan. As such, the Lender, the Borrower and the Guarantor entered into a renewal agreement dated April 21, 2022 (the "**First Renewal Agreement**") by which, among other things, the Lender agreed to extend the maturity date of the Loan to April 1, 2023. A copy of the First Renewal Agreement is attached as **Exhibit "L"**.

25. At the time of the extended maturity date of April 1, 2023, the Borrower was again unable to repay the Loan.

26. Accordingly, the Lender, the Borrower and the Guarantor entered into another renewal agreement on or around March 30, 2023 (the “**Second Renewal Agreement**”) by which, among other things, the Lender agreed to extend the maturity date of the loan to October 1, 2023. A copy of the Second Renewal Agreement is attached as **Exhibit “M”**.

27. As described below, the Borrower sought a further extension of the maturity date beyond October 1, 2023 but given the Lender’s concerns with the state of the Project, the Lender did not agree to any further extension.

F. Management and Construction Problems with the Project

28. The original construction timeline and budget for the Project contemplated initial occupancy beginning in September, 2021, final closing of unit sales in January, 2022, and a total gross budget of \$11,331,963. Attached as **Exhibit “N”** is the first report of the Project’s cost consultant, Pelican Woodcliff Inc. (the “**Cost Consultant**”), dated February 16, 2021 which contains this information.

29. The Lender has been concerned with poor construction and mismanagement of the Project since at least June 2022.

1. Initial Concerns with Construction

30. The Borrower retained KFA Architects + Planners Inc. (“**KFA**”) as the prime consultant for the Project. In this role, KFA performed routine site visits and

prepared reports to update the Borrower and the Lender on the status of the Project's construction.

31. On June 27, 2022, KFA delivered its fourth site visit report in respect of the Project, a copy of which is attached as **Exhibit "O"**.

32. Among other things, KFA's fourth site visit report advised that there were deficiencies in the brickwork on all of the blocks of the Project. Specifically, the brickworks were "bowing out," meaning that the brick exteriors of the block's walls were bending and bulging. A picture of this deficiency was included at page 3 of KFA's fourth site visit report.

33. On January 12, 2023, KFA delivered its fifth site visit report in respect of the Project, a copy of which is attached as **Exhibit "P"**.

34. KFA's fifth site visit report identified many deficiencies in the construction of the Project including a significant leak and water penetration into the brickworks, drywall and roof.

35. In or around late February, the Lender received a copy of the Cost Consultant's 21st report dated February 27, 2023, a copy of which is attached as **Exhibit "Q"**. This report indicated that the Project's gross budget had risen to \$14,137,600 – an increase of almost \$3 million from the original budget described above – and that initial occupancy of units was anticipated to commence in April, 2023, a delay of approximately 18 months from the original projection described above.

36. By this point, the Lender was seriously concerned about the Borrower's ability to complete the Project successfully.

37. The budget and timelines for the Project continued to worsen. Attached as **Exhibit "R"** is a draft version of the Cost Consultant's 22nd report dated June 5, 2023. This report indicates that the Project's gross budget had risen again to \$16,611,154 and that initial occupancy was now anticipated to commence in August, 2023.

2. Construction liens registered on the Property

38. As illustrated by the parcel register attached above as Exhibit B, in April, 2023 two trades engaged on the Project – Purdy's Mechanical Ltd. and Northstar Spray Foam and Insulation Inc. – registered construction liens on the Property.

39. It is my understanding that this occurred because the trades had gone unpaid for some period of time in respect of services performed for the Project. The Lender learned of these liens at or around the time they were registered, which contributed to our concern with the status of the Project and our sense that the Borrower was unable to complete construction on time or on budget.

40. Those construction liens have since been deleted.

3. The Borrower Requests a Second Mortgage

41. In or around June 2023, the Borrower requested the Lender provide and fund a second mortgage on the Property to facilitate the completion of the Project which was significantly delayed beyond its completion date and over budget.

42. In connection with this request, the Borrower also sought the Lender's agreement to enter into a further renewal agreement with respect to the Loan, which was set to mature on October 1, 2023 under the Second Renewal Agreement.

43. On or around August 29, 2023, the Lender retained Manorwood Homes Inc. ("**Manorwood**"), an experienced builder and developer, to provide an assessment of the outstanding work required to complete the Project in order to assist it in considering the Borrower's proposals.

4. Stop Work Orders

44. On September 26, 2023, prior to the Lender's receipt of Manorwood's report, the Town of Blue Mountains (where the Property is located) issued stop work orders, orders to comply, and orders to uncover in respect of the Project (the "**Orders**").¹ I have attached a copy of the Orders to this affidavit as **Exhibit "S"**.

45. The Orders identified extensive violations of the *Building Code* and the *Building Code Act*. The Orders provided that all work on the Project must stop until these contraventions are resolved.

46. Some of the violations identified by the Orders appear to be significant and to require significant remediation work. For example:

- (a) one violation identified in Unit 1 of the Project is that "the masonry veneer on the west wall is not adequately supported on the

¹ The Orders refer to a property with a municipal address of 25 Lansdowne St. S., Blue Mountains, ON. This is the same site as the Property, whose municipal address is immediately adjacent to 25 Lansdowne St. S.

foundation wall.” The required compliance action is to “remove the masonry wall and submit a design change to the Building Services Division for the reconstruction of the wall, or submit an engineered design which adequately supports the exiting masonry wall installation.”

- (b) another violation applicable to six of the units is that the “fire-rated drywall ... behind the stairs has not been constructed as a continuous barrier.” The required compliance action is to remove the stairs and to re-install the drywall as a continuous barrier.

47. To the best of my knowledge, the Borrower has not remedied the contraventions identified in the Orders to date.

48. The Orders were, and remain, a significant concern for the Lender.

5. Manorwood Assessment

49. On October 13, 2023, after a number of site visits, Manorwood provided the Lender with its assessment (the “**Manorwood Assessment**”). The Manorwood Assessment is attached as **Exhibit “T”**.

50. The Manorwood Assessment identified significant work to be done in completing the Project and pointed out many deficiencies in the construction done to date.

51. Among other things, the Manorwood Assessment observed:

There are significant issues with some of the blocks that are already constructed and require third party involvement to remedy them to comply with the building code.

One major issue is that the brick on some of the units are sitting on the Styrofoam of the foundation system, and not the concrete itself.

There are also major issues with some of the party walls and fire separations in some of the units.

There are a multiple of issues and that will require amending design, structural and site plans. The site has been under construction for more than 4 years and has some degradation amongst its materials. Mould was spotted in numerous units; hence the exteriors membranes have been compromised and may need to be taken down and redone.

Throughout the site we noticed timbers that were bowing and warping most likely due to the extensive time in the elements. A more thorough inspection will reveal how much will need to be removed and replaced.

52. The Manorwood Assessment concluded that in order to complete construction on the Project and to correct all deficiencies, estimated hard costs would be \$3,668,016 plus soft costs, site servicing costs, overhead costs, provisional expenses, and management fees. These additional costs were expected to be significant; Manorwood quoted a further \$1,875,000 as a general contractor fee to complete the Project. Attached as **Exhibit "U"** is the proposal from Manorwood dated October 23, 2023 setting out that quote.

53. On the basis of the issues identified in the Manorwood Assessment, the ongoing budget overruns, and in light of the Orders that had been issued subsequent to the Lender's engagement of Manorwood, the Lender concluded that the Borrower lacked the ability to complete the Project.

54. Accordingly, in or around late October 2023, the Lender determined that it was not prepared to provide and fund the Borrower's proposal of a second mortgage and did not enter into a further renewal agreement with respect to the

Loan. I am advised by Max Miller (Associate Vice-President – Mortgage Lending of Foremost), that the Lender’s reservations were communicated to the Borrower in a meeting between himself, Ivan Stone (President of Foremost), Evan Cooperman (CEO of Foremost) and representatives of the Borrower on November 13, 2023.

G. Default under the Second Renewal Agreement

55. The Borrower failed to repay the Loan by the maturity date of October 1, 2023 or since.

56. As a result, on November 6, 2023, the solicitor of the Lender sent to the Borrower a demand letter demanding payment and a Notice of Intention to Enforce Security under section 244 of the *Bankruptcy and Insolvency Act*. A copy of the demand letter and enclosed Notice of Intention to Enforce Security are attached as **Exhibit “V”**.

57. The Borrower has still not repaid the Loan.

58. As a result of the foregoing, all amounts owing to the Lender (the **“Indebtedness”**) are now due and owing pursuant to the Loan, the Commitment Letter and the Second Renewal Agreement.

59. As of December 6, 2023, the total amount of the Indebtedness is \$8,811,958.51 plus legal fees and plus a per diem of \$2,859.32 in respect of ongoing interest. Attached as **Exhibit “W”** is the Lender’s payout statement as at December 6, 2023. This amount includes unpaid interest since August, 2023.

H. Recent construction lien

60. On December 6, 2023, the Lender received correspondence from lawyers acting for Cooper Equipment Rentals Limited (“**Cooper**”), a trade engaged by the Borrower, advising that Cooper had registered a construction lien on the Property that day for the sum of \$71,634.77. A copy of the letter is attached as **Exhibit “X”**.

61. In the Lender’s view, this new construction lien is further evidence that the Borrower is unable to complete construction on the Project.

I. The Application

62. The Lender seeks the appointment of KSV Restructuring Inc. to act as Receiver of the Property.

63. The Lender is entitled under the terms of the Standard Charge Terms and GSA to appoint a Receiver in the event the Loan is in default.

64. The Lender has significant concerns with the Borrower’s conduct of the Project as a result of, among other things, the significant construction deficiencies, the Orders, the previous construction liens, and the Borrower’s general failure to advance the Project. The Property remains vacant and, in the Lender’s view, the Borrower has demonstrated an inability to complete the Project itself or maintain the Project in a manner that would facilitate its marketing and sale.

65. On or around December 3, 2023, the Lender engaged security providers to patrol the Property, and posted a notice on the Property indicating that the Lender

had taken quiet possession of the Property. The Lender has caused fencing to be installed at the Property and plans to install security cameras.

66. However, there is significant work required to ensure that the buildings on the Property do not deteriorate further.

67. Construction of the Project is currently halted and the state of the buildings on the project continue to deteriorate without adequate winterization and other measures.

68. The Manorwood Assessment, which is attached as Exhibit T, describes significant issues including with the brickworks, fire separation, mould and timber warping. As noted above, the Manorwood Assessment attributes some of this deterioration to continued exposure to the elements. To avoid further deterioration, winterization of the Project is a critical priority ahead of the upcoming winter. The extent and scope of winterization steps required remains to be determined, and the Lender has arranged for a site inspection by an experienced consultant to provide recommendations in this regard.

69. As the state of the buildings on the Project continues to deteriorate, the cost of completing the Project increases and any potential creditor recovery decreases. The Lender therefore seeks the urgent appointment of a Receiver.

AFFIRMED remotely by Paul Rayment at the City of Toronto, in the Province of Ontario, before me at the City of Toronto, in the Province of Ontario, on this 12th day of December, 2023 in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely



Commissioner for Taking Affidavits
RYAN SHAH

PAUL RAYMENT

APPENDIX C

AGREEMENT OF PURCHASE AND SALE

BETWEEN

KSV RESTRUCTURING INC.,

solely in its capacity as the Court-appointed receiver of the
property, assets and undertaking of **2521311 ONTARIO INC. o.a.**
TOWNS OF THORNBURY, and not in its personal capacity or
in any other capacity

- and -

FOREMOST MORTGAGE HOLDING CORPORATION

Dated: August 8, 2024

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AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 8th day of August, 2024.

BETWEEN:

KSV RESTRUCTURING INC.,
solely in its capacity as the Court-appointed receiver of the
property, assets and undertaking of **2521311 ONTARIO INC. o.a.**
TOWNS OF THORNBURY, and not in its personal capacity or
in any other capacity

(in such capacity, the “**Receiver**”)

- and -

FOREMOST MORTGAGE HOLDING CORPORATION

(the “**Purchaser**”)

WHEREAS pursuant to an order of The Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on February 5, 2024 (the “**Receivership Order**”), KSV Restructuring Inc. (“**KSV**”) was appointed as the Receiver, without security, of the property, assets and undertaking of 2521311 Ontario Inc. o.a. Towns of Thornbury. (the “**Debtor**”) including the real property municipally known as 10 Louisa Street, Thornbury, Ontario and having the legal description set out in Schedule “A” hereto (the “**Real Property**”);

AND WHEREAS pursuant to the Receivership Order, the Court approved the Sale Process (as defined in the Receivership Order);

AND WHEREAS the Debtor is indebted to the Purchaser in respect of advances made under a construction loan the aggregate principal amount of \$8,360,054 together with accrued and accruing interest and costs recoverable by the Purchaser, totalling approximately \$1,364,314 as of the date hereof (the “**Indebtedness**”), which Indebtedness is secured by, *inter alia* : (i) a mortgage in favour of the Purchaser over the Real Property, registered on September 18, 2020 as instrument GY192228 (the “**Foremost Mortgage**”), and General Security Agreement over all of the Debtor’s personal property, registered under the *Personal Property Security Act (Ontario)* on September 18, 2020 as registration number 20200918 1224 1862 1255 (the “**Foremost GSA**”, and together with the Foremost Mortgage, the “**Foremost Security**”).

AND WHEREAS the Purchaser wishes to purchase and the Receiver wishes to sell the Purchased Assets (as defined herein) upon the terms and subject to the conditions set out herein;

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement (as defined herein), and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined herein), the Parties agree as follows:

ARTICLE 1 DEFINED TERMS

1.1 Definitions.

In this Agreement:

“**Accounts Payable**” means all amounts relating to the Business owing to any Person in connection with the purchase of goods or services in the ordinary course of business;

“**Accounts Receivable**” means the Debtor’s accounts receivable relating to the Business, amounts recoverable by the Debtor under Contracts and the benefit of any refundable Taxes payable or paid by the Debtor or paid by the Receiver in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Debtor or the Receiver to any refund, rebate, or credit of Taxes for the period prior to the Closing Date;

“**Agreement**” means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to “**article**”, “**section**” or “**schedule**” mean the specified article, section of, or schedule to this Agreement and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

“**Applicable Law**” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

“**Approval and Vesting Order**” means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement and conveying to the Purchaser the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as **Schedule “B”** hereto;

“**Assignable Assets**” has the meaning given in section 3.1(3) herein;

“**Assumed Contracts**” means the Contracts listed in Schedule E hereto;

“**Assumed Liabilities**” means liabilities under Assumed Contracts whether arising before or after the Closing Date and Permitted Encumbrances;

“**Books & Records**” means the Debtor’s books and records relating to the Purchased Assets or the Business’

“**Business**” means the business of the Debtor;

“**Business Day**” means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

“**Cash Amount**” means the amount of \$325,000 to be paid by the Purchaser to the Receiver on Closing by wire transfer, bank draft or certified cheque to address amounts that the Receiver must satisfy in cash following Closing (collectively, the “**Cash Requirements**”) including the Receiver and its counsel’s fees to date and to complete the administration of the receivership and the priority amounts owing in respect of construction liens registered against the Real Property;

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Purchased Assets or the Debtor, and “**Claim**” means any one of them;

“**Closing**” means the successful completion of the Transaction;

“**Closing Date**” means the date that is the later of: (i) the first Business Day following the date that is ten days following the date on which the Approval and Vesting Order is issued by the Court; and (ii) the first Business Day following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined, or, if the Parties agree, such other date as agreed in writing by the Parties;

“**Closing Time**” means 2:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

“**Consents and Approvals**” means the consents and approvals of all relevant third parties, if any;

“**Contracts**” means all of the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Debtor is a party;

“**Court**” has the meaning set out in the recitals hereof;

“**Debt Consideration**” means the credit bid and set off by the Purchaser on Closing of the sum of \$8,750,000 of the Indebtedness on account of and in partial satisfaction of the Purchase Price;

“**Encumbrances**” means all liens, charges, security interests, pledges, leases, offers to lease, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever affecting the Purchased Assets;

“**ETA**” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

“**Excluded Assets**” means all assets, undertakings and properties other than the Purchased Assets, which Excluded Assets includes the following:

- (a) the Debtor’s cash or cash equivalents

(b) Contracts other than the Assumed Contracts;

“**Excluded Liabilities**” has the meaning given in section 3.3 herein;

“**Governmental Authority**” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof, including, without limitation, any municipality in which the Real Property is located; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and “**Governmental Authority**” means any one of them;

“**HST**” means harmonized sales tax imposed under Part IX of the ETA;

“**Interim Period**” means the period from and including the date that this Agreement is executed by the Parties to and including the Closing Date;

“**ITA**” means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

“**KSV**” has the meaning set out in the recitals hereof;

“**Notice**” has the meaning given in section 14.3 herein;

“**Offsite Goods**” means the Debtor’s right, title and interest in and to the appliances, flooring and other materials ordered or purchased by the Debtor which remain in the possession of the vendor(s) thereof or other third parties, including the benefit of any Prepaid Expenses in respect thereof, including without limitation the Offsite Goods referenced on Schedule D hereto.

“**Parties**” means the Receiver and the Purchaser;

“**Permits**” means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required, if any, by any Governmental Authority in respect of the Purchased Assets;

“**Permitted Encumbrances**” means all those Encumbrances described in **Schedule “C”** hereto;

“**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

“**Personal Property**” means all of the Debtor’s personal property described in and subject to the Foremost GSA, including without limitation, the Offsite Goods;

“**Prepaid Expenses**” means the Debtor’s right title, interest and the benefit of any prepaid expenses or deposits with any Person, public utility or Governmental Authority, including, without limitation, the benefit of all deposits or other amounts paid on account of Offsite Goods; and

“**Property**” has the meaning set out in the Receivership Order;

“**Purchase Price**” has the meaning set out in section 4.1 herein;

“**Purchased Assets**” means all the right, title and interest, if any, of the Debtor in and to the following:

- (a) the Real Property;
- (b) the Contracts;
- (c) the Books & Records;
- (d) the Personal Property;
- (e) the Prepaid Expenses;
- (f) the Assumed Contracts; and
- (g) the Permits, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees;

“**Purchaser**” means **FOREMOST MORTGAGE HOLDING CORPORATION**, a corporation duly formed and validly subsisting under the laws of Province of Ontario or its assignee;

“**Real Property**” has the meaning set out in the recitals hereof;

“**Receiver**” has the meaning set out in the recitals hereof;

“**Receivership Order**” has the meaning set out in the recitals hereof;

“**Taxes**” means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“**Third Party**” has the meaning given in section 3.1(3) herein; and

“**Transaction**” means the transaction of purchase and sale contemplated by this Agreement.

ARTICLE 2 SCHEDULES

2.1 Schedules.

The following schedules are incorporated in and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule A	Real Property
Schedule B	Approval and Vesting Order
Schedule C	Permitted Encumbrances
Schedule D	Offsite Goods
Schedule E	Assumed Contracts

ARTICLE 3 AGREEMENT TO PURCHASE

3.1 Purchase and Sale of Purchased Assets.

- (1) Relying on the representations and warranties herein, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, the Purchased Assets, free and clear of all Encumbrances other than the Permitted Encumbrances.
- (2) Subject to the Closing, the Receiver hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all of its rights, claims and demands whatsoever in the Purchased Assets.
- (3) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies under any Permits or Consents and Approvals (collectively, the “**Assignable Assets**”) that form part of the Purchased Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto or a Governmental Authority (collectively, the “**Third Party**”). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:
 - (a) the Receiver will, at the request, direction and sole cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and on a commercially reasonable best-efforts basis, in applying for and obtaining all consents or approvals required under the Assignable Assets in a form satisfactory to the Receiver and the Purchaser, acting reasonably, and take such actions and do such things as may be reasonably and lawfully designed to attempt to provide the benefits of the Assignable Assets to the Purchaser, including temporarily holding those Assignable Assets in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment; and
 - (b) in the event that the Receiver receives funds with respect to those Assignable Assets, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs incurred pursuant to subsection (a) above.

3.2 Excluded Assets.

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

3.3 Excluded Liabilities.

With the sole exception of the Assumed Liabilities, the Purchaser is not assuming, and shall not be deemed to have assumed, any liabilities, obligations or commitments of the Debtor, the Receiver or any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Real Property or the Debtor's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "**Excluded Liabilities**"). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Debtor prior to the Closing Date;
- (b) except as otherwise agreed in this Agreement, all Taxes relating to any matters or assets other than the Purchased Assets;
- (c) any liability, obligation or commitment associated with the Accounts Payable or any employees of the Debtor for the period prior to Closing;
- (d) except as otherwise agreed in this Agreement, any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (e) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (f) except as otherwise agreed in this Agreement, any liability, obligation or commitment in respect of Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

ARTICLE 4

PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price.

The purchase price for the Purchased Assets shall be the amount of eight million, seven hundred and fifty thousand dollars (\$8,750,000) (the "**Purchase Price**").

4.2 Satisfaction of Purchase Price.

The Purchaser shall indefeasibly pay and satisfy the Purchase Price on Closing by applying and setting-off the Debt Consideration.

4.3 Allocation of Purchase Price.

The Parties, acting reasonably and in good faith, covenant to use best efforts to agree to allocate the Purchase Price amongst the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this section of the Agreement such that each Party shall be free to make its own reasonable allocation.

4.4 No Adjustment of Purchase Price.

- (1) The Purchase Price shall not be adjusted as of the Closing Time.

ARTICLE 5 TAXES

5.1 Taxes.

The Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and other similar taxes and duties and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least five Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Receiver in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Closing.

Closing shall take place at the Closing Time on the Closing Date or at such other time as the Parties may agree in writing.

6.2 Tender.

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party.

6.3 Receiver's Closing Deliverables.

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (1) a copy of the issued and entered Approval and Vesting Order and the attached Receiver's Certificate;
- (2) an assignment and assumption agreement for all Permits and Consents and Approvals pertaining to the Purchased Assets (to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement by the Receiver to hold same in trust for the Purchaser;
- (3) a certificate from the Receiver, dated as of the Closing Date, certifying:
 - (a) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction;
 - (b) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (c) the non-merger specified in section 14.2 and elsewhere herein; and
- (4) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.1 hereof has been fulfilled, performed or waived as of the Closing Time.

6.4 Purchaser's Closing Deliverables.

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (1) the indefeasible payment and satisfaction in full of the Purchase Price according to section 4.3 hereof;
- (2) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.3 hereof has been fulfilled, performed or waived as of the Closing Time;
- (3) an assignment and assumption agreement for all Permits and Consents and Approvals pertaining to the Purchased Assets (to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser;
- (4) a certificate from the Purchaser, dated as of the Closing Date, certifying:

- (a) that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
- (b) the non-merger specified in section 14.2 and elsewhere herein;
- (5) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption and indemnification certificates to the Receiver's satisfaction, acting reasonably, with respect to HST in accordance with Article 5 hereof; and
- (6) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably, Applicable Law or any Government Authority.

6.5 Receiver's Certificate.

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in section 7.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all of the conditions contained in section 7.1, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate comprising Schedule "A" of the Approval and Vesting Order, and shall file same with the Court.

ARTICLE 7 CONDITIONS PRECEDENT TO CLOSING

7.1 Conditions in Favour of the Receiver.

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (1) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Purchaser contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (3) the Purchaser shall have complied with all the terms contained in this Agreement applicable to the Purchaser prior to the Closing Date;
- (4) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper;
- (5) the Purchaser shall have paid the Cash Amount to the Receiver provided that if there is any excess in the Cash Amount after the Receiver has satisfied the Cash Requirements, such excess amount shall be returned to the Purchaser or as it may direct; and

- (6) the Court shall have issued the Approval and Vesting Order.

7.2 Conditions in Favour of Receiver Not Fulfilled.

If any of the conditions contained in section 7.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion, and without limiting any rights or remedies available to it at law or in equity:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Receiver shall be released from its obligations under this Agreement to complete the Transaction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

7.3 Conditions in Favour of the Purchaser.

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (a) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (c) the Receiver shall have complied with all the terms contained in this Agreement applicable to the Receiver prior to the Closing Date;
- (d) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and
- (e) the Court shall have issued the Approval and Vesting Order.

7.4 Conditions in Favour of Purchaser Not Fulfilled.

If any of the conditions contained in section 7.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion:

- (a) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction; or

- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

ARTICLE 8
REPRESENTATIONS & WARRANTIES OF THE RECEIVER

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (1) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver, subject to the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;
- (2) the Receiver has been duly appointed by the Court, with the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey the Purchased Assets; and
- (3) the Receiver is not a non-resident of Canada for the purposes of the ITA.

ARTICLE 9
REPRESENTATIONS & WARRANTIES OF THE PURCHASER

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (1) the Purchaser is a corporation duly formed and validly subsisting under the laws of the Province of Ontario;
- (2) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Government Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (3) the Purchaser is or will be a resident of Canada on the Closing Date;
- (4) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and

- (5) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

ARTICLE 10 COVENANTS

10.1 Mutual Covenants.

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 7 hereof.

10.2 Receiver Covenants.

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall take all such reasonable actions as are necessary to provide to the Purchaser all necessary information in respect of the Purchased Assets reasonably required to complete, if necessary, the applicable tax elections in accordance with section 5.1 hereof and to execute all necessary forms related thereto.

10.3 Purchaser Covenants.

The Purchaser hereby covenants and agrees that, from the date hereof until the Closing Date, it shall take all such actions as are necessary to provide to the Receiver all necessary information in respect of the Purchaser reasonably required to complete, if necessary, the applicable tax elections in accordance with section 5.1 hereof and to execute all necessary forms related thereto.

ARTICLE 11 POSSESSION AND ACCESS PRIOR TO CLOSING

11.1 Possession of Purchased Assets.

At the Closing Time, the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in section 7.1 hereof.

11.2 Examination of Title and Access to the Purchased Assets.

- (1) The Purchaser acknowledges and agrees that it shall, at its own cost and expense (regardless of results), examine title to the Purchased Assets, and satisfy itself as to the state thereof, satisfy itself as to outstanding work orders affecting the Purchased Assets, satisfy itself as to the use of the Real Property being in accordance with applicable zoning requirements and satisfy itself that any and all buildings and structures on the Real Property, if any, may be insured to the satisfaction of the Purchaser. The Purchaser further acknowledges that, notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions in regard to any outstanding work orders, deficiency notices or orders to comply issued by any Governmental Authority. The Purchaser further acknowledges and agrees that it shall not call upon the Receiver to produce any title deed, abstract of title, survey or other evidence of title that is not within the Receiver's possession or control.
- (2) The Purchaser and its agents and representatives may have reasonable access to the Real Property, accompanied by a representative of the Receiver, during normal business hours in the Interim Period for the purpose of enabling the Purchaser, at its sole cost and expense (regardless of results), to conduct such non-destructive, non-invasive inspections of the Real Property as it deems appropriate. The Purchaser agrees that such tests and inspections shall not include any tests or inspections by any Governmental Authority and specifically acknowledges and agrees that it shall not request or, through its actions, prompt or cause any tests or inspections to be made by any Governmental Authority. Such inspection may, if the Receiver so desires, be conducted in the presence of a representative of the Receiver.
- (3) The Purchaser covenants and agrees to repair or pay the costs to repair any damage occasioned during or resulting from the inspection of the Real Property conducted by the Purchaser or its authorized representatives, as outlined above, and to return the Real Property to substantially the condition same was in prior to such inspections. The Purchaser covenants and agrees to indemnify and save the Receiver harmless from and against all losses, costs, claims, third party claims, damages, expenses (including actual legal costs) which the Receiver may suffer as a result of the inspection of the Real Property conducted by the Purchaser or its authorized representatives, as outlined above.

11.3 Risk.

- (1) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.
- (2) If, prior to Closing, the Purchased Assets are substantially physically damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within 15 calendar days after notification to the Purchaser by the Receiver of the occurrence of such physical damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall

complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any physical damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such physical damage or destruction. For the purposes of this section, substantial physical damage or destruction shall be deemed to have occurred if the physical loss or damage to the Purchased Assets exceeds 15% of the total Purchase Price (inclusive of the Deposit).

- (3) If, prior to the Closing Date, all or a material part of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Real Property is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Receiver or the Debtor to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith.

ARTICLE 12 AS IS, WHERE IS

12.1 Condition of the Purchased Assets.

The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an "*as is, where is*" and "*without recourse*" basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser has conducted such inspections of the condition and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.

**ARTICLE 13
TERMINATION**

13.1 Termination of this Agreement.

This Agreement may (or, in the case of section 13.1(5) below, shall) be validly terminated:

- (1) upon the mutual written agreement of the Parties;
- (2) pursuant to section 7.2 hereof by the Receiver;
- (3) pursuant to section 7.4 hereof by the Purchaser;
- (4) pursuant to section 11.3 hereof; or
- (5) automatically, should Closing have not occurred prior to the discharge of KSV as the Receiver, unless the Receiver's interest in this Agreement has been assigned prior to (or as part of) the Receiver's discharge.

13.2 Remedies for Breach of Agreement.

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver under this Agreement, then the Deposit, without deduction, shall be returned to the Purchaser forthwith (and, for greater certainty, and notwithstanding any other provision in this Agreement, this shall be the Purchaser's sole right and remedy as a result of the Receiver's breach). If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Purchaser under this Agreement, then the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances (and, for greater certainty, and notwithstanding any other provision in this Agreement, this shall be the Receiver's sole right and remedy as a result of the Purchaser's breach).

13.3 Termination If No Breach of Agreement.

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then:

- (1) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (2) the Deposit, without deduction, shall be returned to the Purchaser forthwith; and
- (3) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief.

ARTICLE 14
GENERAL CONTRACT PROVISIONS

14.1 Further Assurances.

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof.

14.2 Survival Following Completion.

Notwithstanding any other provision of this Agreement, section 4.5, article 8, article 9, section 13.2 and section 13.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of KSV as the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

14.3 Notice.

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a "**Notice**") shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

- (a) to the Receiver:

KSV Restructuring Inc.
220 Bay Street, 14th Floor
PO Box 20
Toronto, ON M5J 2W4
Attention: Bobby Kofman and Maha Shah
Email: bkofman@ksvadvisory.com,
and mshah@ksvadvisory.com

and a copy to the Receiver's counsel to:

DLA Piper (Canada) LLP
100 King Street West, 60th Floor
Toronto, ON M5X 1E2
Attention: Edmond Lamek and Jonathan Born
Email: edmond.lamek@dlapiper.com; jonathan.born@dlapiper.com

(b) to the Purchaser:

FOREMOST MORTGAGE HOLDING CORPORATION

1A - 26 Lesmill Road

Toronto, ON M3B 2T5

Attention: Andrew Stern

Email: andrew@foremost-financial.com

and a copy to the Purchaser's counsel to:

Harvey Mandel

Barrister and solicitor

55 Queen Street East, Suite 203

Toronto, Ontario M5C 1R6

Attention: Harvey Mandel

Email: harvey@harvey-mandel.com

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

14.4 Waiver.

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

14.5 Consent.

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

14.6 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to

the jurisdiction of the Court. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes between them, regardless of whether or not such disputes arose under this Agreement.

14.7 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

14.8 Time of the Essence.

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

14.9 Time Periods.

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

14.10 Assignment.

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval. Up until the granting of the Approval and Vesting Order, the Purchaser shall have the right to direct that title to the Purchased Assets be vested in the name of a corporation (presently in existence or to be incorporated) or limited partnership together with a general corporate partner, affiliated (as defined in the *Ontario Business Corporations Act*) with the Purchaser, provided that the Purchaser notifies the Receiver of the name of the assignee at least 7 Business Days prior to issuance of the Approval and Vesting Order and that the assignee shall, in writing, agree to assume and be bound by the terms and conditions of this Agreement (the "**Assumption Agreement**") and a copy of such Assumption Agreement is delivered to the Receiver forthwith after having been entered into, in which case the Purchaser shall nonetheless not be released from any and all further obligations and liabilities hereunder.

14.11 Expenses.

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

14.12 Severability.

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

14.13 No Strict Construction.

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

14.14 Cumulative Remedies.

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

14.15 Currency.

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

14.16 Receiver's Capacity.

It is acknowledged by the Purchaser that KSV is entering into this Agreement solely in its capacity as the Receiver and that KSV shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

14.17 Planning Act.

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

14.18 No Third Party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns, nothing in this Agreement shall be construed to create any rights or obligations except amongst the Parties and no other person or entity shall be regarded as a third party beneficiary of this Agreement.

14.19 Number and Gender.

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

14.20 Counterparts.

This Agreement may be executed in counterparts and by facsimile or PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

IN WITNESS WHEREOF the Receiver has duly executed this Agreement as of the date first above written.

KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver and manager of the Debtor and not in its personal capacity or in any other capacity

Per: _____
Name: Bobby Kofman
Title: President

ACCEPTED by the Purchaser this 8th day of August 2024

FOREMOST MORTGAGE HOLDING CORPORATION

Per: *Ivan Stone* _____
Name: Ivan Stone
Authorized Signing Officer

SCHEDULE A (APS)

“Real Property”

Legal Description: PT PARKLT 10 SW/S LOUISA ST PL THORNBURY PT 1 PLAN 16R11036;
THE BLUE MOUNTAINS; SUBJECT TO AN EASEMENT AS IN GY204785
(being all of PIN 37132-0173 (LT))

**SCHEDULE B (APS)
“Approval and Vesting Order”**

Court File No. CV-23-00710990-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE) DAY, THE
JUSTICE) DAY OF , 2024

BETWEEN

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

- and -

2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and properties of 2521311 Ontario Inc. o.a. Towns of Thornbury (the “**Debtor**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Foremost Mortgage Holding Corporation, as purchaser, dated August 8, 2024 (the “**Sale Agreement**”), and assigned to Louisa

Street GP Inc. on behalf of Louisa Street Limited Partnership (the “**Purchaser**”) and vesting in the Purchaser the Purchased Assets (as defined in the Sale Agreement), was heard this day.

ON READING the Receiver’s Report to the Court and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [REDACTED] sworn [REDACTED], 2024, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the “**Receiver's Certificate**”), all of the Purchased Assets described in the Sale Agreement, including, without limitation, all of the Debtor's right, title and interest in and to the real property listed on **Schedule “B”** hereto (the “**Real Property**”), shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the

"Claims") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of The Honourable Justice Cavanagh made on December 19, 2023 and February 5, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Real Property identified in **Schedule "B"** hereto in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims and Court Orders listed in **Schedule "C"** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of any of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **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.

8. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.

Schedule “A” (AVO) – Form of Receiver’s Certificate

Court File No. CV-23-00710990-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

- and -

2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY

Respondent

RECEIVER’S CERTIFICATE

WHEREAS pursuant to an Order of The Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on February 5, 2024, KSV Restructuring Inc. was appointed as receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and properties of 2521311 Ontario Inc o.a. Towns of Thornbury (the “**Debtor**”).

AND WHEREAS pursuant to an Order of the Court dated August [REDACTED], 2024, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and Foremost Mortgage

Holding Corporation whose right title and interest was assigned to Louisa Street GP Inc. on behalf of Louisa Street Limited Partnership (the “**Purchaser**”), as purchaser, dated August 8, 2024 (the “**Sale Agreement**”), and provided for the vesting in the Purchaser of the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

AND WHEREAS unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

NOW THEREFORE THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver and manager of the Debtor, and not in its personal capacity or in any other capacity

Per:

Name: Bobby Kofman

Title: President

Schedule "B" (AVO) – Real Property

Legal Description: PT PARKLT 10 SW/S LOUISA ST PL THORNBURY PT 1 PLAN 16R11036;
THE BLUE MOUNTAINS; SUBJECT TO AN EASEMENT AS IN GY204785
(being all of PIN 37132-0173 (LT))

Schedule “C” (AVO) – Instruments to Be Deleted from Title

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
GY144566	2017/09/29	Transfer	\$460,000	Hutton, Margaret Joan	2521311 Ontario Inc.
GY192228	2020/09/18	Charge	\$9,846,000	2521311 Ontario Inc.	Foremost Mortgage Holding Corporation
GY192229	2020/09/18	No Sec Interest	\$9,846,000	Foremost Mortgage Holding Corporation	
GY195710	2020/11/16	Postponement		Foremost Mortgage Holding Corporation	The Corporation of the Town of the Blue Mountains
GY195711	2020/11/16	Postponement		Foremost Mortgage Holding Corporation	The Corporation of the Town of the Blue Mountains
GY197077	2020/12/08	Charge	\$1,679,000	2521311 Ontario Inc.	Berkley Insurance Company
GY239995	2023/02/017	Charge	\$1,000,000	2521311 Ontario Inc.	Cruz, Jose
GY243925	2023/06/08	Postponement		Cruz, Jose	Foremost Mortgage Holding Corporation
GY245844	2023/07/25	Certificate		Ecostar Insulation	Ecostar Insulation
GY245979	2023/07/27	Certificate		Toromont Industries Ltd.	
GY251628	2023/12/06	Construction Lien	\$71,634	Cooper Equipment Rentals Limited	
GY252134	2023/12/18	Construction Lien	\$224,873	Weatherhall Enterprises Ltd.	
GY252140	2023/12/18	Certificate		Weatherhall Enterprises Ltd.	2521311 Ontario Inc. Foremost Mortgage Holding Corporation Berkley Insurance Company Cruz, Jose
GY252530	2023/12/28	APL Court Order		Ontario Superior Court of Justice	KSV Restructuring Inc.
GY253889	2024/02/12	APL Court Order		Ontario Superior Court of Justice	KSV Restructuring Inc.
GY254633	2024/03/04	Certificate		Cooper Equipment Rentals Limited	Ontario Superior Court of Justice
GY255908	2024/04/10	Construction Lien	\$285,369	KFA Architects Inc.	
GY256210	2024/04/18	Certificate		KFA Architects Inc.	2521311 Ontario Inc. Foremost Mortgage Holding Corporation Berkley Insurance Company Cruz, Jose

Schedule “D” (AVO) – Permitted Encumbrances

1. any registered reservations, restrictions, rights of way, easements or covenants that run with the lands;
2. any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
3. all Applicable Laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the lands;
4. any minor easements for the supply of utility service to the Lands or adjacent properties;
5. encroachments disclosed by any errors or omissions in existing surveys of the lands or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-laws or any other Applicable Law, by-laws or regulations which might be disclosed by a more up-to-date survey of the land and survey matters generally;
6. the exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
7. the reservations contained in the original grant from the Crown; and
8. liens for taxes if such taxes are not due and payable;
9. the following specific instruments:

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
16R11036	2018/05/01	Plan Reference			
GY153524	2018/05/01	APL Absolute Title		2521311 Ontario Inc.	
GY195656	2020/11/16	Notice		2521311 Ontario Inc.	The Corporation of the Town of the Blue Mountains
GY204785	2021/04/29	Transfer Easement	\$2	2521311 Ontario Inc.	Rogers Communications Inc.

FOREMOST MORTGAGE HOLDING CORPORATION -and-

2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY

Applicant

Respondent

Court File No. CV-23-00710990-00CL

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

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

DLA PIPER (CANADA) LLP
100 King Street West, 60th Floor
Toronto, ON M5X 1E2

Edmond Lamek (LSO #33338U)
Tel: 416.365.3444
edmond.lamek@dlapiper.com

Lawyers for the Receiver

SCHEDULE C (APS)

“Permitted Encumbrances”

1. any registered reservations, restrictions, rights of way, easements or covenants that run with the lands;
2. any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
3. all Applicable Laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the lands;
4. any minor easements for the supply of utility service to the lands or adjacent properties;
5. encroachments disclosed by any errors or omissions in existing surveys of the Lands or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-laws or any other Applicable Law, by-laws or regulations which might be disclosed by a more up-to-date survey of the land and survey matters generally;
6. the exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
7. the reservations contained in the original grant from the Crown;
8. liens for taxes if such taxes are not due and payable; and
9. the following specific instruments:

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
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GY195656	2020/11/16	Notice		2521311 Ontario Inc.	The Corporation of the Town of the Blue Mountains
GY204785	2021/04/29	Transfer Easement	\$2	2521311 Ontario Inc.	Rogers Communications Inc.

Schedule "D"

Vendor Name	Materials purchased by Debtor	Remaining to be delivered
1. MacDonald's Furniture and Appliances	Appliance Package for 23 Units	17 Packages
2. Normac Kitchens Ltd.	Appliance Package for 23 Units	19 Packages
3. Cosmaroma	Hardwood Flooring	All

APPENDIX D

Offers - 10 Louisa St

Agent Name	Buyer Name	Price	Deposit	2nd Deposit	Conditions	Word Version	Notes
Jerry Snel	Dave Rai- Northridge Homes Ltd.	\$6,000,000	\$600,000	N/A		No	
Greg Roberts	Richpark Home	\$2,550,000	\$100,000	\$150,000	45 days due diligence		VTB (Foremost) \$2,300,000 - Interest @ 5% per annum payable on partial discharge at \$100,000 per lot plus accrued interest. VTB postpones to construction financing. 4.6 & 4.7 not in table of contents
Brianne Snell	Hullmark Acquisition Ltd.	\$5,000,000	\$75,000	\$120,000	Finance	Yes	
Brandon Vanderschot	Walker Built Homes - Ryan Walker	\$2,000,000			120 days due diligence		LOI Irrevocable until March 28th 5:00pm
Patrick Egan	2137569 Ontario Inc., Ice River Springs - Alexandra Gott	\$4,500,000	\$450,000			No	Offer not yet received, details conveyed verbally Purchasing for his company, deck available if requested, very eager and very well known and respected in Thornbury/Collingwood
Corbin Seligman	Replex Developments Limited	\$4,000,000	\$400,000	N/A	75 day due diligence condition	No	Jordan Tepperman Group, likely room to improve, has been in contact with us throughout the process

APPENDIX E

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

**IN THE MATTER OF THE RECEIVERSHIP OF 2521311 ONTARIO INC. o.a.
TOWNS OF THORNBURY**

**AFFIDAVIT OF ROBERT KOFMAN
(sworn August 8, 2024)**

I, **ROBERT KOFMAN**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

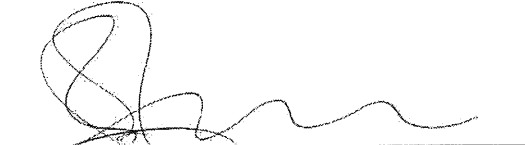
1. I am the President of KSV Restructuring Inc. ("**KSV**"), the Court-appointed Receiver (the "Receiver") of 2521311 ON Inc. o.a. Towns of Thornbury (the "Company") and as such I have knowledge of the matters deposed to herein.
2. Pursuant to an order issued by the Ontario Superior Court of Justice (Commercial List) on February 5, 2024 (the "**Receivership Order**"), KSV was appointed as Receiver of all of the assets, undertakings and properties of the Company.
3. This Affidavit is sworn in support of a motion seeking, among other things, approval of the Receiver's fees and disbursements for the period December 1, 2023 to July 31, 2024 (the "**Period**").
4. The Receiver's invoices for the Period disclose in detail: the nature of the services rendered; the time expended by each person and their hourly rates; the total charges for the services rendered; and the disbursements charged. Copies of the Receiver's invoices are provided in **Exhibit "A"** and the billing summary is attached hereto as **Exhibit "B"**.
5. The Receiver spent a total of 167.30 hours on this matter during the Period, resulting in fees totalling \$93,189.25, excluding disbursements and HST, as summarized in Exhibit "B".
6. As reflected on Exhibit "B", the Receiver's average hourly rate for the Period was \$557.02.

7. I verily believe that the time expended and the fees charged are reasonable in light of the services performed and the prevailing market rates for services of this nature in downtown Toronto.

SWORN before me at the City of)
Toronto, in the Province of Ontario)
this 8th day of August, 2024)



Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires February 23, 2027



ROBERT KOFMAN

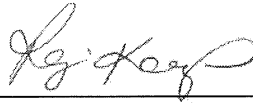
Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF ROBERT KOFMAN

Sworn before me

this 8th day of August, 2024



Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires February 23, 2027



ksv advisory inc.

220 Bay Street, Suite 1300
Toronto, Ontario, M5J 2W4
T +1 416 932 6262
F +1 416 932 6266

ksvadvisory.com

INVOICE

2521311 ON Inc. o/a Towns of Thornbury
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

May 17, 2024

Invoice No: 3672
HST #: 818808768RT0001

Re: 2521311 ON Inc. o/a Towns of Thornbury (the "Company")

For professional services rendered from December 1, 2023 to April 30, 2024 by KSV Restructuring Inc. ("KSV") in its capacities as: (i) interim receiver (the "Interim Receiver") pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") dated December 19, 2023; and (ii) as receiver (the "Receiver") pursuant to an Order issued by the Court on February 5, 2024, including:

- corresponding with Foremost Mortgage Holding Corporation ("Foremost"), the senior mortgagee in these proceedings, Paliare Roland Rosenberg Rothstein LLP ("Paliare"), legal counsel to Foremost, and DLA Piper LLP ("DLA"), legal counsel to the Interim Receiver and Receiver, in connection with all matters in these proceedings;
- drafting the Proposed Interim Receiver's Pre-Filing Report to the Court dated December 19, 2023 (the "Pre-Filing Report") filed in connection with Foremost's interim receivership application (the "Interim Receivership Application"), the purpose of which, *inter alia*, was to recommend Court approval of a sale process (the "Sale Process") for the Company's real property and related assets (the "Property");
- corresponding extensively with Paliare, DLA and Foremost regarding the Pre-Filing Report and the Sale Process;
- corresponding with Foremost regarding the development history and current status the Property;
- attending calls with DLA on December 12 and 13, 2023 to discuss the Interim Receivership Application;
- attending at Court in respect of the Interim Receivership Application on December 19, 2023 and reviewing Justice Cavanagh's endorsement of the same date;

- speaking with Foremost on December 20, 2023 to discuss status of the Property, on-site safety issues and determine next steps in these proceedings;
- speaking with Bill Plewes of Bill Plewes Building Code Consultant Inc. on December 21, 2023 to retain him to assist to oversee the Property;
- corresponding with Foremost and DLA relating to amounts owing to the Company's insurer;
- dealing with the Company's insurer periodically during these proceedings;
- issuing an Interim Receiver's Certificate dated December 22, 2023 to Foremost evidencing its post-filing advances to the Interim Receiver;
- opening and maintaining estate trust accounts;
- preparing and sending a letter to Royal Bank of Canada ("RBC") on December 28, 2023 regarding the Company's bank accounts at RBC and engaging in further email and telephone conversations with RBC regarding same;
- working with Mr. Plewes to arrange security at the Property;
- drafting the statement and notice of receiver, as required under Subsections 245 and 246 of the *Bankruptcy and Insolvency Act*, and arranging for same to be sent to the Company's creditors and filed with the Office of the Superintendent of Bankruptcy;
- attempting to compile a list of the Company's known creditors and engaging in extensive discussions with Company representatives regarding same;
- amending the statement and notice of receiver upon receiving additional creditor information from the Company's representatives and arranging for same to be sent to the Company's creditors and filed with the Office of the Superintendent of Bankruptcy;
- corresponding extensively with Foremost regarding a fee structure proposed by CBRE to act as listing agent, including a call on January 16, 2024;
- speaking with Foremost on January 18, 2024 regarding potential listing agents;
- retaining Slavens & Associates Real Estate Inc. ("Slavens"), as a listing agent to market the Property for sale;
- coordinating with Bill Plewes and the Company's representatives to arrange site visits by prospective purchasers;
- reviewing and addressing numerous lien claims and corresponding extensively with DLA regarding same;
- corresponding with Cosmoroma, MacDonald BrandSource Home Furnishings and Normac Kitchen Ltd. regarding deposits paid by the Company for appliances and construction materials for the Property and following up with each on numerous occasions;

- corresponding extensively with AON to finalize an insurance policy for the Property and working with Foremost to obtain information requested by AON in respect thereof;
- drafting the Interim Receiver's supplemental report to the Interim Receiver's Pre-Filing report dated February 2, 2024;
- preparing for the receivership proceedings, including reviewing the draft receivership order and associated materials;
- attending Court on February 5, 2024 for the hearing of the receivership application;
- drafting a notice concerning the receivership proceedings and sending same to the Company's utility providers;
- closing the Company's utility accounts and setting up new receivership accounts in respect of same;
- corresponding extensively with Slavens and Foremost regarding the marketing process for the sale of the Property, feedback from interested parties, and offers received during the sales process;
- working with Slavens to draft Sale Process materials;
- reviewing the offers received for the Property and discussing same with Foremost and Slavens;
- attending a call on March 27, 2024 with MDK Construction Ltd., an interested party, and Foremost;
- speaking on April 4, 16 and 22, 2024 with Foremost concerning offers and options for the Property;
- maintaining the Receiver's case website;
- convening internal meetings; and
- attending to all other meetings, correspondence, etc. pertaining to this matter.

Total fees and disbursements per attached time summary	\$ 63,921.38
HST	8,309.78
Total Due	\$ <u>72,231.16</u>

KSV Restructuring Inc.
2521311 Ontario Inc. o/a Towns of Thornbury

Time Summary

For the period of December 1, 2023 to April 30, 2024

Personnel	Rate (\$)	Hours	Amount (\$)
Bobby Kofman	800 - 850	41.65	34,727.50
Maha Shah	450	58.10	26,145.00
Other staff and administration		12.65	2,672.75
Total Fees			63,545.25
Disbursements			376.13
Total Fees and Disbursements			<u>63,921.38</u>

*Effective January 1, 2024, the hourly rate of Mr. Kofman increased by \$50.



ksv advisory inc.

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ksvadvisory.com

INVOICE

2521311 ON Inc. o/a Towns of Thornbury
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

August 7, 2024

Invoice No: 3806
HST #: 818808768RT0001

Re: 2521311 ON Inc. o/a Towns of Thornbury (the "Company")

For professional services rendered from May 1 to July 31, 2024 by KSV Restructuring Inc. ("**KSV**") in its capacity as receiver (the "**Receiver**") of the Company pursuant to a receivership order issued by the Ontario Superior Court of Justice (the "**Court**") on February 5, 2024, including:

- corresponding with Foremost Mortgage Holding Corporation ("**Foremost**"), the Company's senior mortgagee, Paliare Roland Rosenberg Rothstein LLP, legal counsel to Foremost, and DLA Piper LLP ("**DLA**"), legal counsel to the Receiver, regarding all matters in these proceedings;
- attending calls with Foremost regarding the sale process (the "**Sale Process**") for the Company's real property and related assets (the "**Real Property**"), including, but not limited to, calls on May 9, June 6 and 7, and July 26, 2024;
- attending a call with First Equity Financial Group Inc. on June 14, 2024 to discuss its interest in the Real Property and discussing same with Foremost;
- considering transaction structures with Foremost, including a potential credit bid, and the retention of Dunn Capital Corporation ("**DunnCap**"), as construction manager;
- dealing with Foremost and DunnCap regarding steps required to recommence construction on the Real Property, including calls on June 19 and 26, 2024;
- drafting an agreement with Foremost and Dunncap dated June 26, 2024 to facilitate construction on the Real Property;
- corresponding extensively with Foremost and Dunncap regarding insurance required for the Real Property once construction recommences;
- corresponding with Bill Plewes of Bill Plewes Building Code Consultant Inc. regarding security and maintenance issues;

- corresponding with Company's management to obtain information concerning pre-filing issues, including records related to various lien claims and supplier issues;
- reviewing and discussing with DLA lien claims registered against title to the Real Property and considering the treatment of same in a credit bid transaction;
- issuing a Receiver's Certificate dated June 26, 2024 to Foremost in respect of its post-filing advances to the Receiver;
- dealing with AON Insurance regarding insurance matters;
- drafting an interim report of the Receiver, as required under Subsection 246(2) of the *Bankruptcy and Insolvency Act*, and arranging for same to be filed with the Office of the Superintendent of Bankruptcy;
- corresponding with Slavens & Associates Real Estate Inc. regarding its marketing process for the Property and discussing a report regarding same for Court approval purposes;
- reviewing and addressing numerous lien claims and corresponding extensively with DLA regarding same;
- corresponding with Cosmoroma, MacDonald BrandSource Home Furnishings and Normac Kitchen Ltd. regarding deposits paid by the Company for appliances and construction materials, and following up with each on numerous occasions;
- drafting the Receiver's report to Court to approve a transaction with Foremost;
- corresponding with the Company's creditors and home buyers and providing, among other things, updates regarding the receivership proceedings and the Sale Process;
- maintaining the Receiver's case website;
- convening internal meetings; and
- attending to all other meetings, correspondence, etc. pertaining to this matter.

Total fees and disbursements per attached time summary	\$ 29,653.80
HST	<u>3,854.99</u>
Total Due	<u>\$ 33,508.79</u>

KSV Restructuring Inc.
2521311 ON Inc. o.a. Towns of Thornbury

Time Summary

For the period of May 1, 2024 to July 31, 2024

Personnel	Rate (\$)	Hours	Amount (\$)
Bobby Kofman	850	15.00	12,750.00
Maha Shah	450	35.60	16,020.00
Other staff and administration		4.30	874.00
Total Fees		54.90	29,644.00
Out-of-pocket disbursements (postage)			9.80
Total Fees and Disbursements			<u>29,653.80</u>

Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF ROBERT KOFMAN

Sworn before me

this 8th day of August, 2024



Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires February 23, 2027

Exhibit "B"

2521311 ON Inc. o.a. Towns of Thornbury

Time Summary

For the Period December 1, 2024 to July 31, 2024

Name	Hours	Hourly Rate	Total (\$)
Bobby Kofman	56.65	\$ 800 - 850	47,477.50
Maha Shah	93.70	\$ 450.00	42,165.00
Other Staff and administration	16.95	\$ 195 - 225	3,546.75
	<u>167.30</u>		<u>93,189.25</u>
Average hourly rate			557.02

APPENDIX F

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

BETWEEN:

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

and

2521311 ONTARIO INC. O.A. TOWNS OF THORNBURY

Respondent

**FEE AFFIDAVIT OF EDMOND LAMEK
(SWORN AUGUST 8, 2024)**

I, EDMOND LAMEK, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

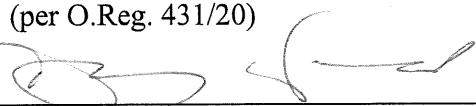
1. I am a partner in the law firm of DLA Piper (Canada) LLP (“**DLA**”), the solicitors to KSV Restructuring Inc., in its capacity as receiver of the property, assets and undertakings of 2521311 Ontario Inc. o.a. Towns of Thornbury (the “**Receiver**”) and, as such, I have knowledge of the matters hereinafter deposed to.
2. Attached hereto as **Exhibit “A”** are copies of the Statements of Account of DLA in respect of services rendered to the Receiver for the period from December 4, 2023 to July 31, 2024 (the “**Billing Period**”). During the Billing Period, the total fees billed by DLA were \$35,687.50, plus disbursements of \$178.30 and applicable taxes of \$4,654.73.

3. As set out in the following table, 40.3 hours were billed by DLA personnel during the Billing Period, resulting in an average hourly rate of \$885.55 (exclusive of applicable taxes):

Lawyers	Hours	2024 Rate/Hr.
Edmond Lamek	32.3	\$950
Howard Krupat	3.1	\$825
Brendan Wu	2.2	\$425
Stephen Morris	1.0	\$700
Jonathan Born	0.6	\$775
Law Clerks		
Susan Li	0.8	\$300
Lindsey Blair	0.3	\$350
TOTAL	40.3	Avg. Rate/Hr: \$885.55

4. The activities detailed in the Statements of Account attached as Exhibit "A" accurately reflect the services provided by DLA and the rates charged are the standard hourly rates of those individuals at DLA at the time they were incurred.

5. I swear this affidavit in support of a motion for, *inter alia*, approval of the fees and disbursements of DLA set out above and for no other or improper purpose.

Sworn before me at the)
City of Toronto, in the)
Province of Ontario, this)
8th day of August, 2024.)
(per O.Reg. 431/20))
)
_____)
A Commissioner for taking affidavits, etc.)

DANNY NUNES



EDMOND LAMEK

This is Exhibit.....^Areferred to in the
affidavit of...EDMOND...LAMEX.....
sworn before me, this.....^{8th}.....
day of.....AUGUST.....20 24


.....
A COMMISSIONER FOR TAKING AFFIDAVITS

DANNY NUNES



DLA Piper (Canada) LLP
 Suite 6000, 1 First Canadian Place
 PO Box 367, 100 King St W
 Toronto ON M5X 1E2
 www.dlapiper.com
 T 416.365.3500
 F 416.365.7886

KSV Restructuring Inc.
 220 Bay Street
 13th Floor, PO Box 20
 Toronto, ON M5J 2W4 Canada

February 20, 2024

Attention: Bobby Kofman

INVOICE NUMBER: 2261316
 FILE NUMBER: 103454-00009
 BUSINESS NUMBER: REG # 110 152 824
 FROM THE OFFICE OF: Edmond Lamek
 DIRECT LINE: 416.365.3444

For Professional Services rendered and/or disbursements advanced through January 31, 2024.

Total Fees:	\$	10,670.00
Total Disbursements:	\$	129.05
Total HST:	\$	1,397.56
Total Current Invoice Due:	CAD \$	12,196.61

Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.

Remittance Advice:

Invoice No: 2261316

Cheque Payments To:
 DLA Piper (Canada) LLP
 1133 Melville St, Suite 2700
 Vancouver, BC
 V6E 4E5 Canada

Please return remittance advice with cheque.

Credit Card Payments:

<https://payments.dlapiper.ca>

Tel: 604.643.2955
 Toll free: 1.833.299.9022

Please be sure to indicate invoice number on all payments

File No: 103454-00009

Amount: **CAD 12,196.61**

Canadian Dollar EFT Payments To:

DLA Piper (Canada) LLP
 Bank: 010
 Transit: 00010
 Account Number: 2901315

Canadian Dollar Wire Payments To:

DLA Piper (Canada) LLP
 Beneficiary Acc#: 000102901315
 Bank: CANADIAN IMPERIAL BANK OF COMMERCE
 Canadian clearing code: //CC001000010
 Swift Code: CIBCCATT
 Bank Address: 400 Burrard Street
 Vancouver, BC V6C 3A6

US Dollar Wire Payments To:

DLA Piper (Canada) LLP
 Beneficiary Acc#: 000100368016
 Bank: CANADIAN IMPERIAL BANK OF COMMERCE
 Swift Code: CIBCCATT
 Bank Address: 400 Burrard Street
 Vancouver, BC V6C 3A6
 Intermediary Bank: Wells Fargo Bank, N.A.
 New York, NY, US
 Swift Code: PNBPU3NNYC
 ABA#: 026005092



DLA Piper (Canada) LLP
Suite 6000, 1 First Canadian Place
PO Box 367, 100 King St W
Toronto ON M5X 1E2
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T 416.365.3500
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KSV Restructuring Inc.
220 Bay Street
13th Floor, PO Box 20
Toronto, ON M5J 2W4 Canada

Attention: Bobby Kofman

Our File No: 103454-00009

KSV Restructuring Inc.
Re: Janik Group Thornbury Townhouse Receivership

Date: February 20, 2024
Invoice Number: 2261316

PROFESSIONAL SERVICES

For Professional Services rendered and/or disbursements advanced through January 31, 2024.

<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
12/04/23	Edmond Lamek	Emails with KSV and Jeff Larry regarding next steps;	0.30	285.00
12/06/23	Edmond Lamek	Reviewing and providing comments on Foremost application;	0.40	380.00
12/10/23	Edmond Lamek	Reviewing and commenting on draft Proposed Receiver's Report Emails with B. Kofman;	0.80	760.00
12/12/23	Edmond Lamek	Emails with S. Morris and D. Rosenbluth regarding Foremost mortgage;	0.30	285.00
12/13/23	Edmond Lamek	2:45pm call with B. Kofman, J. Larry regarding consent form of receivership order;	0.30	285.00
12/15/23	Edmond Lamek	11:45 call with J. Larry and B. Bissell re scope of proposed receivership and triggers for full appointment; reviewing and substantially revising draft endorsement of Cavanagh J; reviewing and commenting on draft order; Emails regarding section 47(1) interim receivership limitations; various follow up emails;	2.20	2,090.00
12/19/23	Edmond Lamek	Attending 12pm Case Conference with Cavanagh J.; reviewing draft endorsement; related emails;	0.60	570.00
12/19/23	Edmond Lamek	Noon case conference with Cavanagh J. regarding springing Receivership Order; working with J. Larry and B. Bissell to revise	1.70	1,615.00



<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
		endorsement and order;		
12/21/23	Edmond Lamek	Revising Bill Plewes contract;	0.50	475.00
01/05/24	Edmond Lamek	Reviewing insurance policies and email discussion with B. Kofman;	0.50	475.00
01/09/24	Edmond Lamek	Emails re Insurance policies; 4:30pm call re insurance situation;	0.60	570.00
01/10/24	Susan Li	Retrieving and reviewing, property parcels and adjoining land search for Part of Park Lot 10, Thornbury; retrieving corporate profile report and PPSA search for 2521311 Ontario Inc.; preparing e-mail with S. Morris regarding search results;	0.30	90.00
01/10/24	Stephen R. Morris	Reviewing mortgage documentation, title subsearch and corporate searches regarding borrower/debtor and confirming information with counsel;	1.00	700.00
01/19/24	Edmond Lamek	2:30pm discussion with counsel to Tarion Warranty and KSV regarding status of 2521311 Interim Receivership;	0.50	475.00
01/25/24	Edmond Lamek	10am call with counsel to bonded lien claimant, follow up emails with KSV regarding possible leave consent and impact on receivership administration;	1.10	1,045.00
01/26/24	Edmond Lamek	Reviewing and commenting on Interim Receiver's draft supplement. related emails;	0.60	570.00
Total Hours and Fees:			11.70	\$10,670.00

PROFESSIONAL SERVICES SUMMARY

<u>Professional</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Edmond Lamek	950.00	10.40	9,880.00
Stephen R. Morris	700.00	1.00	700.00
Susan Li	300.00	0.30	90.00

Total Fees: **\$10,670.00**

DISBURSEMENT SUMMARY

Disbursements

Non-Taxable Disbursements



<u>Description</u>	<u>Amount</u>
Dye & Durham - Agent Fees	\$16.00
Non-taxable portion of the Teraview parcel register (Ontario only)	\$13.95
Non-taxable portion of the Teraview writs name search fee (Ontario only)	\$18.70
Non-Taxable Disbursements:	\$48.65

Taxable Disbursements

<u>Description</u>	
Dye & Durham - Agent Fees	\$41.70
Taxable portion of the Teraview parcel register (Ontario only)	\$27.90
Taxable portion of the Teraview writs name search fee (Ontario only)	\$10.80
Taxable Disbursements:	\$80.40

BILL SUMMARY

	Total Fees:	\$	10,670.00
	Total Disbursements:	\$	129.05
REG # 110 152 824	Total HST:	\$	1,397.56
	Total Current Invoice Due:	CAD \$	12,196.61

This is our account.

DLA Piper (Canada) LLP

Per:

Edmond Lamek

Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.



DLA Piper (Canada) LLP
Suite 6000, 1 First Canadian Place
PO Box 367, 100 King St W
Toronto ON M5X 1E2
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T 416.365.3500
F 416.365.7886

KSV Restructuring Inc.
220 Bay Street
13th Floor, PO Box 20
Toronto, ON M5J 2W4 Canada

April 22, 2024

Attention: Bobby Kofman

INVOICE NUMBER: 2277015
FILE NUMBER: 103454-00009
BUSINESS NUMBER: REG # 110 152 824
FROM THE OFFICE OF: Edmond Lamek
DIRECT LINE: 416.365.3444

For Professional Services rendered and/or disbursements advanced through March 31, 2024.

Total Fees:	\$	6,555.00
Total HST:	\$	852.15
Total Current Invoice Due:	CAD \$	7,407.15

Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.

Remittance Advice:

Invoice No: 2277015

Cheque Payments To:
DLA Piper (Canada) LLP
1133 Melville St, Suite 2700
Vancouver, BC
V6E 4E5 Canada

Please return remittance advice with cheque.

Credit Card Payments:

<https://payments.dlapiper.ca>

Tel: 604.643.2955
Toll free: 1.833.299.9022

Please be sure to indicate invoice number on all payments

File No: 103454-00009

Amount: **CAD 7,407.15**

Canadian Dollar EFT Payments To:
DLA Piper (Canada) LLP

Bank: 010
Transit: 00010
Account Number: 2901315

Canadian Dollar Wire Payments To:
DLA Piper (Canada) LLP

Beneficiary Acc#: 000102901315
Bank: CANADIAN IMPERIAL
BANK OF COMMERCE
Canadian clearing code: //CC001000010
Swift Code: CIBCCATT
Bank Address: 400 Burrard Street
Vancouver, BC V6C 3A6

US Dollar Wire Payments To:
DLA Piper (Canada) LLP

Beneficiary Acc#: 000100368016
Bank: CANADIAN IMPERIAL
BANK OF COMMERCE
Swift Code: CIBCCATT
Bank Address: 400 Burrard Street
Vancouver, BC V6C 3A6

Intermediary Bank: Wells Fargo Bank, N.A.
New York, NY, US

Swift Code: PNBPU33NNYC
ABA#: 026005092



DLA Piper (Canada) LLP
Suite 6000, 1 First Canadian Place
PO Box 367, 100 King St W
Toronto ON M5X 1E2
www.dlapiper.com
T 416.365.3500
F 416.365.7886

KSV Restructuring Inc.
220 Bay Street
13th Floor, PO Box 20
Toronto, ON M5J 2W4 Canada

Attention: Bobby Kofman

Our File No: 103454-00009

KSV Restructuring Inc.
Re: Janik Group Thornbury Townhouse Receivership

Date: April 22, 2024
Invoice Number: 2277015

PROFESSIONAL SERVICES

For Professional Services rendered and/or disbursements advanced through March 31, 2024.

<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
02/01/24	Edmond Lamek	Final review of Supplement to receiver's report;	0.30	285.00
02/05/24	Edmond Lamek	Morning email exchanges with B. Bissell and D. Rosenbluth regarding equity of redemption; attend hearing before Cavanagh J for Receivership Order; follow up emails with KSV;	0.80	760.00
02/08/24	Edmond Lamek	Drafting Template APS for Sale Process data room and related email discussions with KSV;	1.20	1,140.00
02/09/24	Edmond Lamek	Call with B. Kofman regarding bonded lien claimant; emails with Jason Huang-Kung;	0.40	380.00
02/20/24	Edmond Lamek	Email exchanges with KSV regarding appliance vendor and balance owing;	0.40	380.00
03/05/24	Edmond Lamek	Reviewing equipment rental Construction Lien Statement of Claim and emails with KSV; Emails with lawyer for bonded off construction lien claimant;	0.50	475.00
03/08/24	Edmond Lamek	Call with Construction Lien lawyer for Spray Foam supplier re next steps in his litigation and receiver's limited consent;	0.50	475.00
03/18/24	Edmond Lamek	Emails with Jason Huang-Kung; drafting Receiver consent letter; emails with KSV; follow up emails with KSV and Jeff Larry regarding bank statements and other	2.20	2,090.00



<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
03/19/24	Edmond Lamek	company documents; Revising letter to construction lien action counsel; follow up emails re bank records.	0.60	570.00
Total Hours and Fees:			6.90	\$6,555.00

PROFESSIONAL SERVICES SUMMARY

<u>Professional</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Edmond Lamek	950.00	6.90	6,555.00
Total Fees:			\$6,555.00

BILL SUMMARY

	Total Fees:	\$	6,555.00
REG # 110 152 824	Total HST:	\$	852.15
	Total Current Invoice Due:	CAD \$	7,407.15

This is our account.

DLA Piper (Canada) LLP

Per:

Edmond Lamek

Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.



DLA Piper (Canada) LLP
Suite 6000, 1 First Canadian Place
PO Box 367, 100 King St W
Toronto ON M5X 1E2
www.dlapiper.com
T 416.365.3500
F 416.365.7886

KSV Restructuring Inc.
220 Bay Street
13th Floor, PO Box 20
Toronto, ON M5J 2W4 Canada

July 15, 2024

Attention: Bobby Kofman

INVOICE NUMBER: 2299230
FILE NUMBER: 103454-00009
BUSINESS NUMBER: REG # 110 152 824
FROM THE OFFICE OF: Edmond Lamek
DIRECT LINE: 416.365.3444

For Professional Services rendered and/or disbursements advanced through June 30, 2024.

Total Fees:	\$	8,055.00
Total Disbursements:	\$	49.25
Total HST:	\$	1,052.04
Total Current Invoice Due:	CAD \$	9,156.29

Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.

Remittance Advice:

Invoice No: 2299230

Cheque Payments To:
DLA Piper (Canada) LLP
1133 Melville St, Suite 2700
Vancouver, BC
V6E 4E5 Canada

Please return remittance advice with cheque.

Credit Card Payments:

<https://payments.dlapiper.ca>

Tel: 604.643.2955
Toll free: 1.833.299.9022

Please be sure to indicate invoice number on all payments

File No: 103454-00009

Amount: CAD 9,156.29

Canadian Dollar EFT Payments To:
DLA Piper (Canada) LLP

Bank: 010
Transit: 00010
Account Number: 2901315

Canadian Dollar Wire Payments To:
DLA Piper (Canada) LLP

Beneficiary Acc#: 000102901315
Bank: CANADIAN IMPERIAL
BANK OF COMMERCE
Canadian clearing code: //CC001000010
Swift Code: CIBCCATT
Bank Address: 400 Burrard Street
Vancouver, BC V6C 3A6

US Dollar Wire Payments To:
DLA Piper (Canada) LLP

Beneficiary Acc#: 000100368016
Bank: CANADIAN IMPERIAL
BANK OF COMMERCE
Swift Code: CIBCCATT
Bank Address: 400 Burrard Street
Vancouver, BC V6C 3A6

Intermediary Bank: Wells Fargo Bank, N.A.
New York, NY, US

Swift Code: PNBPU3NNYC
ABA#: 026005092



DLA Piper (Canada) LLP
Suite 6000, 1 First Canadian Place
PO Box 367, 100 King St W
Toronto ON M5X 1E2
www.dlapiper.com
T 416.365.3500
F 416.365.7886

KSV Restructuring Inc.
220 Bay Street
13th Floor, PO Box 20
Toronto, ON M5J 2W4 Canada

Attention: Bobby Kofman

Our File No: 103454-00009

KSV Restructuring Inc.
Re: Janik Group Thornbury Townhouse Receivership

Date: July 15, 2024
Invoice Number: 2299230

PROFESSIONAL SERVICES

For Professional Services rendered and/or disbursements advanced through June 30, 2024.

<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
04/03/24	Edmond Lamek	Drafting letter to Cosmaroma regarding Receiver's building supplies interest; related emails with KSV;	1.00	950.00
05/01/24	Edmond Lamek	Reviewing Architect construction lien claim and emails with KSV and lawyer for Architect re Receivership stay;	0.60	570.00
06/07/24	Edmond Lamek	10:30am call with KSV and Jeff Larry regarding proposed Foremost Credit bid acquisition of Property and all related issues; Emails with Howard Krupat re construction line issues;	1.10	1,045.00
06/11/24	Howard D. Krupat	Reviewing parcel register, liens and certificates of action; exchanging email messages with S. Li regarding search results; drafting email to E. Lamek;	0.50	412.50
06/11/24	Susan Li	Retrieving and reviewing property parcel and registered Construction Liens and Certificates of Actions regarding 10 Louisa Street, Thornbury; preparing e-mails with H. Krupat regarding same;	0.50	150.00
06/14/24	Edmond Lamek	Emails with H. Krupat regarding lien priority and validity issue;	0.50	475.00
06/18/24	Edmond Lamek	Emails with lawyers for lien claimant;	0.30	285.00
06/19/24	Edmond Lamek	Email exchanges and 5pm call with B. Kofman and J. Larry regarding DunnCap desire to start demolition asap and related	0.70	665.00



<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
06/20/24	Edmond Lamek	logistic and liability issues; Drafting letter agreement with DunnCap and Foremost regarding demolition work conditions - related emails with KSV and Paliare Rolland; emails re construction lien issues and timing;	3.60	3,420.00
06/24/24	Howard D. Krupat	Exchanging email messages with E. Lamek on priority and trust rights of lien claimants;	0.10	82.50
Total Hours and Fees:			8.90	\$8,055.00

PROFESSIONAL SERVICES SUMMARY

<u>Professional</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Edmond Lamek	950.00	7.80	7,410.00
Howard D. Krupat	825.00	0.60	495.00
Susan Li	300.00	0.50	150.00
Total Fees:			\$8,055.00

DISBURSEMENT SUMMARY

Disbursements

Non-Taxable Disbursements

<u>Description</u>	<u>Amount</u>
Non-taxable portion of the Teraview parcel register (Ontario only)	\$11.65
Non-Taxable Disbursements:	\$11.65

Taxable Disbursements

<u>Description</u>	<u>Amount</u>
Taxable portion of the Teraview parcel register (Ontario only)	\$25.60
Taxable portion of the Teraview - Image Download Instrument (Ontario only)	\$12.00
Taxable Disbursements:	\$37.60

BILL SUMMARY



Matter: 103454-00009
Invoice: 2299230
Page : 3

REG # 110 152 824

Total Fees:	\$	8,055.00
Total Disbursements:	\$	49.25
Total HST:	\$	1,052.04
Total Current Invoice Due:	CAD \$	9,156.29

This is our account.

DLA Piper (Canada) LLP

Per:

Edmond Lamek

Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.



DLA Piper (Canada) LLP
 Suite 6000, 1 First Canadian Place
 PO Box 367, 100 King St W
 Toronto ON M5X 1E2
 www.dlapiper.com
 T 416.365.3500
 F 416.365.7886

KSV Restructuring Inc.
 220 Bay Street
 13th Floor, PO Box 20
 Toronto, ON M5J 2W4 Canada

August 06, 2024

Attention: Bobby Kofman

INVOICE NUMBER: 2305074
 FILE NUMBER: 103454-00009
 BUSINESS NUMBER: REG # 110 152 824
 FROM THE OFFICE OF: Edmond Lamek
 DIRECT LINE: 416.365.3444

For Professional Services rendered and/or disbursements advanced through July 31, 2024.

Total Fees:	\$	10,407.50
Total HST:	\$	1,352.98
Total Current Invoice Due:	CAD \$	11,760.48

Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.

Remittance Advice:

Invoice No: 2305074

Cheque Payments To:
 DLA Piper (Canada) LLP
 1133 Melville St, Suite 2700
 Vancouver, BC
 V6E 4E5 Canada

Please return remittance advice with cheque.

Credit Card Payments:

<https://payments.dlapiper.ca>

Tel: 604.643.2955
 Toll free: 1.833.299.9022

Please be sure to indicate invoice number on all payments

File No: 103454-00009

Amount: **CAD 11,760.48**

Canadian Dollar EFT Payments To:
 DLA Piper (Canada) LLP

Bank: 010
 Transit: 00010
 Account Number: 2901315

Canadian Dollar Wire Payments To:
 DLA Piper (Canada) LLP

Beneficiary Acc#: 000102901315
 Bank: CANADIAN IMPERIAL BANK OF COMMERCE
 Canadian clearing code: //CC001000010
 Swift Code: CIBCCATT
 Bank Address: 400 Burrard Street
 Vancouver, BC V6C 3A6

US Dollar Wire Payments To:
 DLA Piper (Canada) LLP

Beneficiary Acc#: 000100368016
 Bank: CANADIAN IMPERIAL BANK OF COMMERCE
 Swift Code: CIBCCATT
 Bank Address: 400 Burrard Street
 Vancouver, BC V6C 3A6
 Intermediary Bank: Wells Fargo Bank, N.A.
 New York, NY, US
 Swift Code: PNPBUS3NNYC
 ABA#: 026005092



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KSV Restructuring Inc.
220 Bay Street
13th Floor, PO Box 20
Toronto, ON M5J 2W4 Canada

Attention: Bobby Kofman

Our File No: 103454-00009

KSV Restructuring Inc.
Re: Janik Group Thornbury Townhouse Receivership

Date: August 06, 2024
Invoice Number: 2305074

PROFESSIONAL SERVICES

For Professional Services rendered and/or disbursements advanced through July 31, 2024.

<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
07/08/24	Edmond Lamek	Call with KFA Architect; reporting email to KSV.	0.80	760.00
07/10/24	Edmond Lamek	Reviewing materials from H Krupat; call with him regarding lien holdback priority claims; follow up emails with KSV and J Larry.	1.20	1,140.00
07/10/24	Howard D. Krupat	Reviewing lien claims and related documents; attending to discussion with E. Lamek regarding same;	0.80	660.00
07/15/24	Howard D. Krupat	Reviewing lien claims, invoices and title searches; attending to Teams call with B. Kofman, E. Lamek and J. Larry regarding same;	0.70	577.50
07/15/24	Edmond Lamek	Call regarding three construction liens on 10 Louisa Property. Follow up discussion with H Krupat. Follow up emails re construction liens and sale approval court time (Aug 15/16).	0.80	760.00
07/22/24	Edmond Lamek	Emails regarding construction liens, Foremost APS.	0.40	380.00
07/22/24	Howard D. Krupat	Attending to email exchanges with E. Lamek and B. Kofman regarding information requests for liens;	0.10	82.50
07/25/24	Howard D. Krupat	Reviewing lien claims; attending to telephone communications with counsel for Weatherall; attending to email communications with counsel for Cooper;	0.50	412.50



<u>Date</u>	<u>Professional</u>	<u>Description</u>	<u>Hours</u>	<u>Amount</u>
07/25/24	Edmond Lamek	Emails with Foremost, KSV, Krupat regarding Construction Lien information and backup.	0.70	665.00
07/26/24	Howard D. Krupat	Attending to communications with counsel for Weatherall regarding invoices substantiating lien claim and related information;	0.20	165.00
07/28/24	Edmond Lamek	Reviewing and revising form of APA received from Foremost; discuss with BK; circulate to Jeff Larry.	2.50	2,375.00
07/30/24	Jonathan Born	Review of title material; correspondence and notes;	0.60	465.00
07/30/24	Brendan Wu	Review notice of application; draft security letter; internal discussions.	0.90	382.50
07/31/24	Howard D. Krupat	Attending to email exchange with counsel for Weatherall regarding back-up documents for lien claim; attending to email exchange with E. Lamek regarding same;	0.20	165.00
07/31/24	Lindsey Blair	Internal discussions; conduct searches.	0.30	105.00
07/31/24	Brendan Wu	Internal discussions; draft priority letter; attend to search matters.	1.30	552.50
07/31/24	Edmond Lamek	Email discussion with Howard Krupat regarding treatment of construction liens on Thornbury project. Emails with Foremost re Construction Lien invoices;	0.80	760.00
Total Hours and Fees:			12.80	\$10,407.50

PROFESSIONAL SERVICES SUMMARY

<u>Professional</u>	<u>Rate</u>	<u>Hours</u>	<u>Amount</u>
Edmond Lamek	950.00	7.20	6,840.00
Howard D. Krupat	825.00	2.50	2,062.50
Jonathan Born	775.00	0.60	465.00
Brendan Wu	425.00	2.20	935.00
Lindsey Blair	350.00	0.30	105.00
Total Fees:			\$10,407.50

BILL SUMMARY



Matter: 103454-00009
Invoice: 2305074
Page : 3

REG # 110 152 824

Total Fees:	\$	10,407.50
Total HST:	\$	1,352.98
Total Current Invoice Due:	CAD \$	11,760.48

This is our account.

DLA Piper (Canada) LLP

Per:

Edmond Lamek

Please note that this account is payable on receipt. If not paid within 30 days from the invoice date, interest at the rate of prime plus 2% per annum will be charged from the invoice date.

FOREMOST MORTGAGE HOLDING CORPORATION and
Applicant

2521311 ONTARIO INC. O.A. TOWNS OF THORNBURY
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

FEE AFFIDAVIT OF EDMOND LAMEK SWORN
AUGUST 8, 2024

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond Lamek (LSO No. 33338U)
Tel.: (416) 365-4444
Email: edmond.lamek@dlapiper.com

Lawyers for the Receiver

FOREMOST MORTGAGE HOLDING CORPORATION
Applicant

and
2521311 ONTARIO INC. O.A. TOWNS OF THORNBURY
Respondent

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

PROCEEDINGS COMMENCED AT TORONTO

**FIRST REPORT OF THE RECEIVER
DATED AUGUST 8, 2024**

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond Lamek (LSO No. 33338U)
Tel.: (416) 365-4444
Email: edmond.lamek@dlapiper.com

Lawyers for the Receiver

TAB 3

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

THE HONOURABLE MADAM) THURSDAY, THE 15th
)
JUSTICE CONWAY) DAY OF AUGUST, 2024
)

BETWEEN

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

- and -

2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY

Respondent

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and properties of 2521311 Ontario Inc. o.a. Towns of Thornbury (the “**Debtor**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Foremost Mortgage Holding Corporation, as purchaser, dated August 8, 2024 (the “**Sale Agreement**”), and assigned to Louisa Street GP Inc. on behalf of Louisa Street Limited Partnership (the “**Purchaser**”) and vesting in the Purchaser the Purchased Assets (as defined in the Sale Agreement), was heard this day.

ON READING the Receiver's Report to the Court and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Danny Nunes sworn August ♦, 2024, filed,

SERVICE

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

SALE APPROVAL

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), all of the Purchased Assets described in the Sale Agreement, including, without limitation, all of the Debtor's right, title and interest in and to the real property listed on **Schedule "B"** hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, free and clear

of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**") including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of The Honourable Justice Cavanagh made on December 19, 2023 and February 5, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "C"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Real Property identified in **Schedule "B"** hereto in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims and Court Orders listed in **Schedule "C"** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims

and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of any of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **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.

8. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.

Schedule “A” (AVO) – Form of Receiver’s Certificate

Court File No. CV-23-00710990-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

- and -

2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY

Respondent

RECEIVER’S CERTIFICATE

WHEREAS pursuant to an Order of The Honourable Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on February 5, 2024, KSV Restructuring Inc. was appointed as receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and properties of 2521311 Ontario Inc o.a. Towns of Thornbury (the “**Debtor**”).

AND WHEREAS pursuant to an Order of the Court dated August 15, 2024, the Court approved the agreement of purchase and sale dated August 8, 2024 between the Receiver, as vendor, and Foremost Mortgage Holding Corporation, whose right, title and interest was assigned to Louisa Street GP Inc. on behalf of Louisa Street Limited Partnership (the “**Purchaser**”) (the “**Sale**

Agreement”), and provided for the vesting in the Purchaser of the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

AND WHEREAS unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

NOW THEREFORE THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver and manager of the Debtor, and not in its personal capacity or in any other capacity

Per: _____

Name: Bobby Kofman

Title: President

Schedule "B" (AVO) – Real Property

Legal Description: PT PARKLT 10 SW/S LOUISA ST PL THORNBURY PT 1 PLAN 16R11036;
THE BLUE MOUNTAINS; SUBJECT TO AN EASEMENT AS IN GY204785
(being all of PIN 37132-0173 (LT))

Schedule “C” (AVO) – Instruments to Be Deleted from Title

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
GY144566	2017/09/29	Transfer	\$460,000	Hutton, Margaret Joan	2521311 Ontario Inc.
GY192228	2020/09/18	Charge	\$9,846,000	2521311 Ontario Inc.	Foremost Mortgage Holding Corporation
GY192229	2020/09/18	No Sec Interest	\$9,846,000	Foremost Mortgage Holding Corporation	
GY195710	2020/11/16	Postponement		Foremost Mortgage Holding Corporation	The Corporation of the Town of the Blue Mountains
GY195711	2020/11/16	Postponement		Foremost Mortgage Holding Corporation	The Corporation of the Town of the Blue Mountains
GY197077	2020/12/08	Charge	\$1,679,000	2521311 Ontario Inc.	Berkley Insurance Company
GY239995	2023/02/017	Charge	\$1,000,000	2521311 Ontario Inc.	Cruz, Jose
GY243925	2023/06/08	Postponement		Cruz, Jose	Foremost Mortgage Holding Corporation
GY245844	2023/07/25	Certificate		Ecostar Insulation	Ecostar Insulation
GY245979	2023/07/27	Certificate		Toromont Industries Ltd.	
GY251628	2023/12/06	Construction Lien	\$71,634	Cooper Equipment Rentals Limited	
GY252134	2023/12/18	Construction Lien	\$224,873	Weatherhall Enterprises Ltd.	
GY252140	2023/12/18	Certificate		Weatherhall Enterprises Ltd.	2521311 Ontario Inc. Foremost Mortgage Holding Corporation Berkley Insurance Company Cruz, Jose
GY252530	2023/12/28	APL Court Order		Ontario Superior Court of Justice	KSV Restructuring Inc.
GY253889	2024/02/12	APL Court Order		Ontario Superior Court of Justice	KSV Restructuring Inc.
GY254633	2024/03/04	Certificate		Cooper Equipment Rentals Limited	Ontario Superior Court of Justice
GY255908	2024/04/10	Construction Lien	\$285,369	KFA Architects Inc.	
GY256210	2024/04/18	Certificate		KFA Architects Inc.	2521311 Ontario Inc. Foremost Mortgage Holding Corporation Berkley Insurance Company Cruz, Jose

Schedule “D” (AVO) – Permitted Encumbrances

1. any registered reservations, restrictions, rights of way, easements or covenants that run with the lands;
2. any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
3. all Applicable Laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the lands;
4. any minor easements for the supply of utility service to the Lands or adjacent properties;
5. encroachments disclosed by any errors or omissions in existing surveys of the lands or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-laws or any other Applicable Law, by-laws or regulations which might be disclosed by a more up-to-date survey of the land and survey matters generally;
6. the exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
7. the reservations contained in the original grant from the Crown; and
8. liens for taxes if such taxes are not due and payable;
9. the following specific instruments:

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
16R11036	2018/05/01	Plan Reference			
GY153524	2018/05/01	APL Absolute Title		2521311 Ontario Inc.	
GY195656	2020/11/16	Notice		2521311 Ontario Inc.	The Corporation of the Town of the Blue Mountains
GY204785	2021/04/29	Transfer Easement	\$2	2521311 Ontario Inc.	Rogers Communications Inc.

FOREMOST MORTGAGE HOLDING CORPORATION
Applicant

and **2521311 ONTARIO INC. O.A. TOWNS OF THORNBURY**
Respondent

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

PROCEEDINGS COMMENCED AT TORONTO

APPROVAL AND VESTING ORDER

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond Lamek (LSO No. 33338U)
Tel.: (416) 365-4444
Email: edmond.lamek@dlapiper.com

Lawyers for the Receiver

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

THE HONOURABLE _____) THURSDAY, THE 15th
MADAM)
) _____ DAY, THE _____ DAY
JUSTICE _____ CONWAY)
OF _____, 20_____ DAY OF
AUGUST, 2024

BETWEEN:-

~~PLAINTIFF BETWEEN~~

FOREMOST MORTGAGE HOLDING CORPORATION

Plaintiff Applicant

- and -

2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY

Respondent

~~DEFENDANT~~
Defendant

APPROVAL AND VESTING ORDER

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the assets, undertakings and properties of 2521311 Ontario Inc. o.a. Towns of Thornbury (the “**Debtor**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an

agreement of purchase and sale between the Receiver, as vendor, and Foremost Mortgage Holding Corporation, as purchaser, dated August 8, 2024 (the "Sale Agreement"), and assigned to Louisa Street GP Inc. on behalf of Louisa Street Limited Partnership (the "Purchaser") and vesting in the Purchaser the Purchased Assets (as defined in the Sale Agreement), was heard this day.

~~THIS MOTION, made by [RECEIVER'S NAME] in its capacity as the Court appointed receiver (the "Receiver") of the undertaking, property and assets of [DEBTOR] (the "Debtor") for an order approving the sale transaction (the "Transaction") contemplated by an agreement of purchase and sale (the "Sale Agreement") between the Receiver and [NAME OF PURCHASER] (the "Purchaser") dated [DATE] and appended to the Report of the Receiver dated [DATE] (the "Report"), and vesting in the Purchaser the Debtor's right, title and interest in and to the assets described in the Sale Agreement (the "Purchased Assets"), was heard this day at 330 University Avenue, Toronto, Ontario.~~

ON READING the Receiver's Report to the Court and appendices thereto, and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~ and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~ Danny Nunes sworn ~~[DATE]~~ August 14, 2024, filed[†].

SERVICE

[†]~~This model order assumes that the time for service does not need to be abridged. The motion seeking a vesting order should be served on all persons having an economic interest in the Purchased Assets, unless circumstances warrant a different approach. Counsel should consider attaching the affidavit of service to this Order.~~

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

SALE APPROVAL

2. ~~1.~~ **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved,² and the execution of the Sale Agreement by the Receiver³ is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser.

3. ~~2.~~ **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver's certificate to the Purchaser substantially in the form attached as **Schedule A** hereto (the "**Receiver's Certificate**"), all of the Purchased Assets described in the Sale Agreement, including, without limitation, all of the Debtor's right, title and interest in and to the Purchased Assets described in the Sale Agreement [and real property listed on Schedule "B" hereto]⁴ (the

² In some cases, notably where this Order may be relied upon for proceedings in the United States, a finding that the Transaction is commercially reasonable and in the best interests of the Debtor and its stakeholders may be necessary. Evidence should be filed to support such a finding, which finding may then be included in the Court's endorsement.

³ In some cases, the Debtor will be the vendor under the Sale Agreement, or otherwise actively involved in the Transaction. In those cases, care should be taken to ensure that this Order authorizes either or both of the Debtor and the Receiver to execute and deliver documents, and take other steps.

⁴ To allow this Order to be free standing (and not require reference to the Court record and/or the Sale Agreement), it may be preferable that the Purchased Assets be specifically described in a Schedule.

“Real Property”), shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the **“Claims”**⁵) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Orders of ~~the~~ The Honourable Justice [NAME] dated [DATE] Cavanagh made on December 19, 2023 and February 5, 2024; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the **“Encumbrances”**, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “D”**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the ~~[Registry Division of {LOCATION}] of a Transfer/Deed of Land in the form prescribed by the *Land Registration Reform Act* duly executed by the Receiver]~~ appropriate Land Titles Division of ~~{LOCATION}~~ of an Application for Vesting Order in the form prescribed by the *Land Titles*

⁵ The “Claims” being vested out may, in some cases, include ownership claims, where ownership is disputed and the dispute is brought to the attention of the Court. Such ownership claims would, in that case, still continue as against the net proceeds from the sale of the claimed asset. Similarly, other rights, titles or interests could also be vested out, if the Court is advised what rights are being affected, and the appropriate persons are served. It is the Subcommittee’s view that a non-specific vesting out of “rights, titles and interests” is vague and therefore undesirable.

Act and/or the *Land Registration Reform Act*⁶, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject ~~Real~~ Property identified in **Schedule "B"** hereto (the "Real Property") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims and Court Orders listed in **Schedule "C"** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds⁷ from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale⁸, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

~~6. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver is authorized and permitted to disclose and transfer to the Purchaser all human resources and payroll information in the Company's~~

⁶ Elect the language appropriate to the land registry system (Registry vs. Land Titles).

⁷ The Report should identify the disposition costs and any other costs which should be paid from the gross sale proceeds, to arrive at "net proceeds".

⁸ This provision crystallizes the date as of which the Claims will be determined. If a sale occurs early in the insolvency process, or potentially secured claimants may not have had the time or the ability to register or perfect proper claims prior to the sale, this provision may not be appropriate, and should be amended to remove this crystallization concept.

~~records pertaining to the Debtor's past and current employees, including personal information of those employees listed on Schedule "•" to the Sale Agreement. The Purchaser shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it in a manner which is in all material respects identical to the prior use of such information by the Debtor.~~

6. ~~7.~~ **THIS COURT ORDERS** that, notwithstanding:

~~(a)~~ (a) the pendency of these proceedings;

~~(b)~~ (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of the Debtor and any bankruptcy order issued pursuant to any such applications; and

~~(c)~~ (c) any assignment in bankruptcy made in respect of the Debtor;

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of the Debtor and shall not be void or voidable by creditors of any of the Debtor, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

~~8. THIS COURT ORDERS AND DECLARES that the Transaction is exempt from the application of the *Bulk Sales Act* (Ontario).~~

7. ~~9.~~ **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.

8. THIS COURT ORDERS that this Order is effective from today's date and is enforceable without the need for entry and filing.

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Revised: January 21, 2014

Schedule “A” (AVO) – Form of Receiver’s Certificate

Court File No.

CV-23-00710990-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

~~BETWEEN:~~

BETWEEN

~~PLAINTIFF~~

FOREMOST MORTGAGE HOLDING CORPORATION

PlaintiffApplicant

- and -

2521311 ONTARIO INC. o.a. TOWNS OF THORNBURY

Respondent

~~DEFENDANT~~

Defendant

RECEIVER’S CERTIFICATE

RECITALS

A. WHEREAS Pursuant to an Order of †The Honourable
~~[NAME OF JUDGE]~~Justice Cavanagh of the Ontario Superior Court of Justice (the “Court”)
dated ~~[DATE OF ORDER]~~, ~~[NAME OF RECEIVER]~~ was appointed as the receiver (the
“Receiver”) of the undertaking, property and assets of ~~[DEBTOR]~~Commercial List (the
“Court”) made on February 5, 2024, KSV Restructuring Inc. was appointed as receiver and

manager (in such capacity, the “Receiver”), without security, of the assets, undertakings and properties of 2521311 Ontario Inc o.a. Towns of Thornbury (the “Debtor”).

B. AND WHEREAS Pursuant to an Order of the Court dated ~~[DATE]~~August 15, 2024, the Court approved the agreement of purchase and sale made as of ~~[DATE OF AGREEMENT]~~ (the “Sale Agreement”)dated August 8, 2024 between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ (the “Purchaser”), as vendor, and Foremost Mortgage Holding Corporation, whose right, title and interest was assigned to Louisa Street GP Inc. on behalf of Louisa Street Limited Partnership (the “Purchaser”) (the “Sale Agreement”), and provided for the vesting in the Purchaser of the Debtor’s right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the Purchase Price for the Purchased Assets; (ii) that the conditions to Closing as set out in section 1 of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

C. AND WHEREAS Unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

NOW THEREFORE THE RECEIVER CERTIFIES the following:

1. The Purchaser has paid and the Receiver has received the Purchase Price for the Purchased Assets payable on the Closing Date pursuant to the Sale Agreement;

2. 2. The conditions to Closing as set out in section ~~•~~ of the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; ~~and~~

3. 3. The Transaction has been completed to the satisfaction of the Receiver; and

4. 4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

~~[NAME OF RECEIVER], KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed Receiver of the undertaking, property and assets of [DEBTOR] and manager of the Debtor, and not in its personal capacity or in any other capacity~~

Per: _____

Name: Bobby Kofman

Title: President

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Revised: January 21, 2014

Schedule "B—Purchased Assets" (AVO) – Real Property

Legal Description: PT PARKLT 10 SW/S LOUISA ST PL THORNBURY PT 1 PLAN
16R11036; THE BLUE MOUNTAINS; SUBJECT TO AN EASEMENT AS IN GY204785
(being all of PIN 37132-0173 (LT))

**Schedule "C—Claims to be" (AVO) – Instruments to Be Deleted and Expunged from
Title to Real Property**

<u>Reg. No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From</u>	<u>Parties To</u>
<u>GY144566</u>	<u>2017/09/29</u>	<u>Transfer</u>	<u>\$460,000</u>	<u>Hutton, Margaret Joan</u>	<u>2521311 Ontario Inc.</u>
<u>GY192228</u>	<u>2020/09/18</u>	<u>Charge</u>	<u>\$9,846,000</u>	<u>2521311 Ontario Inc.</u>	<u>Foremost Mortgage Holding Corporation</u>
<u>GY192229</u>	<u>2020/09/18</u>	<u>No Sec Interest</u>	<u>\$9,846,000</u>	<u>Foremost Mortgage Holding Corporation</u>	
<u>GY195710</u>	<u>2020/11/16</u>	<u>Postponement</u>		<u>Foremost Mortgage Holding Corporation</u>	<u>The Corporation of the Town of the Blue Mountains</u>
<u>GY195711</u>	<u>2020/11/16</u>	<u>Postponement</u>		<u>Foremost Mortgage Holding Corporation</u>	<u>The Corporation of the Town of the Blue Mountains</u>
<u>GY197077</u>	<u>2020/12/08</u>	<u>Charge</u>	<u>\$1,679,000</u>	<u>2521311 Ontario Inc.</u>	<u>Berkley Insurance Company</u>
<u>GY239995</u>	<u>2023/02/01</u>	<u>Charge</u>	<u>\$1,000,000</u>	<u>2521311 Ontario Inc.</u>	<u>Cruz, Jose</u>
<u>GY243925</u>	<u>2023/06/08</u>	<u>Postponement</u>		<u>Cruz, Jose</u>	<u>Foremost Mortgage Holding Corporation</u>
<u>GY245844</u>	<u>2023/07/25</u>	<u>Certificate</u>		<u>Ecostar Insulation</u>	<u>Ecostar Insulation</u>
<u>GY245979</u>	<u>2023/07/27</u>	<u>Certificate</u>		<u>Toromont Industries Ltd.</u>	
<u>GY251628</u>	<u>2023/12/06</u>	<u>Construction Lien</u>	<u>\$71,634</u>	<u>Cooper Equipment Rentals Limited</u>	
<u>GY252134</u>	<u>2023/12/18</u>	<u>Construction Lien</u>	<u>\$224,873</u>	<u>Weatherhall Enterprises Ltd.</u>	
<u>GY252140</u>	<u>2023/12/18</u>	<u>Certificate</u>		<u>Weatherhall Enterprises Ltd.</u>	<u>2521311 Ontario Inc.</u> <u>Foremost Mortgage Holding Corporation</u> <u>Berkley Insurance Company</u> <u>Cruz, Jose</u>
<u>GY252530</u>	<u>2023/12/28</u>	<u>APL Court Order</u>		<u>Ontario Superior Court of Justice</u>	<u>KSV Restructuring Inc.</u>
<u>GY253889</u>	<u>2024/02/12</u>	<u>APL Court Order</u>		<u>Ontario Superior Court of Justice</u>	<u>KSV Restructuring Inc.</u>
<u>GY254633</u>	<u>2024/03/04</u>	<u>Certificate</u>		<u>Cooper Equipment Rentals Limited</u>	<u>Ontario Superior Court of Justice</u>
<u>GY255908</u>	<u>2024/04/10</u>	<u>Construction Lien</u>	<u>\$285,369</u>	<u>KFA Architects Inc.</u>	
<u>GY256210</u>	<u>2024/04/18</u>	<u>Certificate</u>		<u>KFA Architects Inc.</u>	<u>2521311 Ontario Inc.</u> <u>Foremost Mortgage Holding Corporation</u> <u>Berkley Insurance Company</u> <u>Cruz, Jose</u>

**Schedule “D” (AVO) – Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property
(unaffected by the Vesting Order)**

1. any registered reservations, restrictions, rights of way, easements or covenants that run with the lands;
2. any registered agreements with a municipality or a supplier of utility service including, without limitation, electricity, water, sewage, gas, telephone or cable television or other telecommunication service;
3. all Applicable Laws, by-laws and regulations and all outstanding work orders, deficiency notices and notices of violation affecting the lands;
4. any minor easements for the supply of utility service to the Lands or adjacent properties;
5. encroachments disclosed by any errors or omissions in existing surveys of the lands or neighbouring properties and any title defect, encroachment or breach of a zoning or building by-laws or any other Applicable Law, by-laws or regulations which might be disclosed by a more up-to-date survey of the land and survey matters generally;
6. the exceptions and qualifications set forth in the *Land Titles Act* (Ontario);
7. the reservations contained in the original grant from the Crown; and
8. liens for taxes if such taxes are not due and payable;-
9. the following specific instruments:

<u>Reg. No.</u>	<u>Date</u>	<u>Instrument Type</u>	<u>Amount</u>	<u>Parties From</u>	<u>Parties To</u>
<u>16R11036</u>	<u>2018/05/01</u>	<u>Plan Reference</u>			
<u>GY153524</u>	<u>2018/05/01</u>	<u>APL Absolute Title</u>		<u>2521311 Ontario Inc.</u>	
<u>GY195656</u>	<u>2020/11/16</u>	<u>Notice</u>		<u>2521311 Ontario Inc.</u>	<u>The Corporation of the Town of the Blue Mountains</u>
<u>GY204785</u>	<u>2021/04/29</u>	<u>Transfer Easement</u>	<u>\$2</u>	<u>2521311 Ontario Inc.</u>	<u>Rogers Communications Inc.</u>

| *[Different first page setting changed from on in original to off in modified.]*
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| *[Different first page setting changed from on in original to off in modified.]*

TAB 4

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

THE HONOURABLE MADAM) THURSDAY, THE 15th DAY
)
JUSTICE CONWAY) OF AUGUST, 2024

B E T W E E N:

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

- and -

2521311 ONTARIO INC. O.A. TOWNS OF THORNBURY

Respondent

ANCILLARY RELIEF ORDER

THIS MOTION, made by KSV Restructuring Inc. its capacity as the Court-appointed receiver (the “**Receiver**”) of the undertaking, property and assets of 2521311 Ontario Inc. o.a. Towns of Thornbury (the “**Debtor**”), was heard this day via video conference at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver dated August 8, 2024 (the “**First Report**”) and the appendices thereto and on hearing the submissions of counsel for the Receiver, the Applicant and such other counsel listed on the counsel slip, no one else appearing for any other person on the service list although properly served as appears from the affidavit of Danny Nunes sworn August ♦, 2024, filed:

SERVICE

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

ESTABLISHMENT OF HOLDBACK FUND

2. **THIS COURT ORDERS** that the Receiver shall hold separately the amount of \$66,713.24 (the "**Lien Holdback Amount**") from the proceeds of the transaction contemplated by the agreement of purchase and sale dated August 8, 2024 between the Receiver and Louisa Street GP Inc., on behalf of Louisa Street Limited Partnership, as assignee from Foremost Mortgage Holding Corporation ("**Foremost**"), pending the resolution or determination of the *Construction Act* lien claims registered on title to the property municipally known as Lot 10 Louisa Street, Thornbury, ON (the "**Real Property**") filed by: (i) Cooper Equipment Rentals Limited, bearing instrument no. GY251628; (ii) Weatherall Enterprises Ltd., bearing instrument no. GY252134; and (iii) KFA Architects & Planners Inc., bearing instrument no. GY255908 (the "**Registered Lien Claims**"), or further Court Order.

3. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of the Registered Lien Claims vis a vis the registered mortgage security in favour of Foremost (the "**Foremost Charge**"), the Lien Holdback Amount shall stand in the place and stead of the Real Property, and that from and after the delivery of the Receiver's Certificate, the registered Lien Claims and Foremost Charge shall attach to the Lien Holdback Amount with the same priority as they had with respect to the Real Property immediately prior to the sale and subject to the priority provisions of the Order of the Honourable Justice Cavanagh dated February 5, 2024 and any priority charges granted thereunder, as if the Real Property had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

APPROVAL OF ACTIVITIES AND FEES

4. **THIS COURT ORDERS** that the First Report and the activities of the Receiver set out therein are hereby approved provided, however, that only the Receiver, in its personal capacity

and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

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

6. **THIS COURT ORDERS** that this Order is effective from today's date and is enforceable without the need for entry and filing.

FOREMOST MORTGAGE HOLDING CORPORATION
Applicant

and **2521311 ONTARIO INC. O.A. TOWNS OF THORNBURY**
Respondent

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

PROCEEDINGS COMMENCED AT TORONTO

ANCILLARY RELIEF ORDER

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

Edmond Lamek (LSO No. 33338U)
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Lawyers for the Receiver

FOREMOST MORTGAGE HOLDING CORPORATION
Applicant

and **2521311 ONTARIO INC. O.A. TOWNS OF THORNBURY**
Respondent

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

PROCEEDINGS COMMENCED AT TORONTO

MOTION RECORD
(returnable August 15, 2024)

DLA PIPER (CANADA) LLP
1 First Canadian Place, Suite 6000
100 King Street West
Toronto, ON M5X 1E2

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