

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2460467 ONTARIO INC.

Respondent

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

**MOTION RECORD OF THE RECEIVER AND MANAGER,
KSV RESTRUCTURING INC.
(Motion: Increase of Receiver's Borrowing Limit)**

December 5, 2024

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TAB 1

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2460467 ONTARIO INC.

Respondent

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

**NOTICE OF MOTION
(Increase of Receiver's Borrowing Limit)**

KSV Restructuring Inc., in its capacity as Receiver and Manager of all of the assets, property and undertakings of the Respondent (the "**Receiver**") will make a motion to the Honourable Justice Kershman on Wednesday, December 11, 2024 at 2:00 P.M., or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard by judicial videoconference detailed below:

Virtual Courtroom 485
<https://ca01web.zoom.us/j/61746137944>
Tel: 1-855 703 8985; ID: 617 4613 7944
Pass: none

THE MOTION IS FOR:

- (a) If necessary, an order abridging the time for service of this motion or, alternatively, dispensing with service;
- (b) An Order increasing the borrowing powers of the Receiver from \$500,000 to \$1,000,000; and
- (c) such further and other relief as to this Honourable Court may seem just.

THE GROUNDS FOR THE MOTION ARE:

- (a) The Receiver was appointed on the application of DUCA Financial Services Credit Union Ltd. (“DUCA”) pursuant to the Order of the Honourable Justice Kershman dated August 12, 2024 (the “**Appointment Order**”);
- (b) Prior to the date of the Receiver’s appointment, the Respondent was building a 62 unit stacked townhouse development project located at the property known municipally as 240 Yeomans Street, Belleville (the “**Project**”).
- (c) At the date of the Appointment Order, the Respondent had sold 61 units in the Project, construction of the Project had not yet been completed, and each phase was at varying stages of completion;
- (d) Paragraph 21 of the Appointment Order allows a maximum borrowing by the Receiver of \$500,000;

- (e) As described in the First Report, to date, the Receiver has borrowed \$172,000 from DUCA to fund maintenance, security and other receivership expenses. The Receiver is of the view that the remaining availability under the borrowing limit will be insufficient to fund the costs of protecting the Project from the elements over the winter months, and other anticipated receivership costs.
- (f) The Receiver requires greater borrowing powers for such things as winterization costs, security and maintenance, professional fees and costs to analyze the costs of completing the construction, and to commence the build-out of the balance of the Project if a decision to do so is made;
- (g) Rules 3.02 and 37 of the *Rules of Civil Procedure*;
- (h) Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion

- (a) The First Report of the Receiver dated December 5, 2024, and
- (b) Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

December 5, 2024

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Lawyers for the Applicant

TO: THE SERVICE LIST

DUCA FINANCIAL CREDIT SERVICES UNION LTD. v. 2460467 ONTARIO LIMITED.

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

Court File No. CV-24-00096502-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
OTTAWA

NOTICE OF MOTION

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Lawyers for the Receiver

TAB 2



**First Report to Court of
KSV Restructuring Inc.
as Receiver and Manager
of 2460467 Ontario Inc.**

December 5, 2024

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COURT FILE NUMBER: CV-24-00096502-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

DUCA FINANCIAL SERVICES CREDIT UNION LTD

APPLICANTS

- AND -

2460467 ONTARIO INC.

RESPONDENT

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

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

DECEMBER 5, 2024

1.0 Introduction

1. Pursuant to an order of the Ontario Superior Court of Justice (the "Court") made on August 12, 2024 (the "Receivership Order"), KSV Restructuring Inc. ("KSV") was appointed receiver and manager (in such capacity, the "Receiver") without security, of all the assets, undertakings and properties of 2460467 Ontario Inc. (the "Debtor") acquired for, or used in relation to a business carried on by the Debtor.
2. The principal asset of the Debtor is the real property having a municipal address of 240 Yeomans Street, Belleville (the "Real Property"). The Debtor is building a 62 stacked townhouse development project on the Real Property (the "Project"). As of the date of the Receivership Order, the Project was partially completed.
3. A copy of the Receivership Order is attached as Appendix "A".
4. The application to appoint KSV as Receiver was made by Duca Financial Services Credit Union Ltd. ("Duca"), a secured creditor of the Debtor.

5. A principal purpose of this receivership proceeding was to provide the stability and supervision required to preserve the value of the Project, with a view to considering whether the Project should be completed or sold on an “as is” basis.
6. This report (the “Report”) is filed by KSV in its capacity as Receiver.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide an update on the Receiver’s activities since the Receivership Order was granted; and
 - b) provide the Receiver’s rationale for recommending that this Court issue an order approving an increase in the Borrowing Limit (as defined below) from \$500,000 to \$1,000,000.

1.2 Currency

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

1.3 Restrictions

1. In preparing this Report, the Receiver has relied upon discussions with various stakeholders in these proceedings, including Duca and parties involved in construction activities at the Real Property, consultants who were retained by the Debtor in advance of the receivership and the receivership application materials (collectively, the “Information”).
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook. Accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party, other than the Court, wishing to place reliance on the Information is required to perform its own diligence.

2.0 Background

1. The Debtor was marketing the Project as “Yeo Towns”. The Project is comprised of four blocks of townhouses - each block was in various stages of completion as of the date of the Receivership Order. The first and second blocks are estimated to be over 50% completed and the third and fourth blocks are significantly less advanced. The Receiver understands that construction of the Project had been halted for several months prior to the commencement of these receivership proceedings.
2. The Receiver understands that 61 of the 62 townhouse units were sold prior to the receivership. Pursuant to a letter dated August 20, 2024 (the “Purchaser Letter”), the Receiver advised the purchasers of the townhomes (the “Purchasers”) of the receivership proceeding. A copy of the Purchaser Letter is provided as Appendix “B”.

3. As of the date of the Receivership Order, the Debtor had no cash in its bank accounts. To-date, the Receiver has borrowed \$172,000 from Duca under Receiver's Certificates (as defined in the Receivership Order) to fund maintenance, security and other receivership costs.
4. Duca has advised the Receiver that it is considering funding the completion of the Project; however, Duca has not made a final decision in that regard. In the meantime, immediate steps need to be taken on an urgent basis to "winterize" the Project.
5. The Borrowing Charge under the Receivership Order permits the Receiver to borrow up to \$500,000. An increase to the Borrowing Charge is required to fund winterization costs, plus other unpaid costs of the receivership. An increase to \$1,000,000 is being sought to pay various receivership costs, including the winterization costs, security and maintenance, professional costs and costs to commence the build-out of the balance of the Project, if a decision is made in that regard. An increase of the Borrowing Charge to \$1,000,000 will eliminate the need to seek the Court's approval of a further funding increase in the Borrowing Charge in the near term.
6. Additional background information regarding the Project and the reasons for the appointment of the Receiver is provided in the application materials of the Applicants. Copies of the Court materials filed to-date in these proceedings are available on the Receiver's case website: <https://www.ksvadvisory.com/experience/case/yeotowns>.

2.1 Secured Creditors

1. The following summarizes the creditors with registrations against the Real Property and their outstanding balances (if known) as of the date of the Receivership Order:
 - a) Duca is a secured lender pursuant to a first-ranking mortgage on the Real Property. The Debtor also granted Duca a general security agreement dated December 6, 2022.
 - b) Based on the Court materials filed by Duca in the context of the receivership application, as of June 12, 2024, the Debtor owed Duca approximately \$7.5 million, with interest and costs continuing to accrue. Duca is also owed approximately \$200,000 under a letter of credit facility;
 - c) Westmount Guarantee Services Inc. ("Westmount"), which provides insurance on the deposits paid by the Purchasers, registered a charge against the Real property in the amount of \$7 million in this regard. The Receiver understands that approximately \$3.8 million is presently owing to Westmount, representing deposits released from escrow. The Westmount mortgage ranks behind Duca; and
 - d) In addition to the two mortgages over the Real Property, eight suppliers have registered nine construction liens totalling approximately \$2 million against the Real Property.

2.2 Receiver's Activities

1. Since the date of the Receivership Order, the Receiver has, among other things, taken steps to preserve the Project by: (i) addressing deficiencies identified by the City of Belleville; (ii) maintaining site security by placing signage, additional fencing and cameras around the perimeter of the construction site; (iii) addressing maintenance issues as they arise; and (iv) conducting a request for proposal process to select a construction manager to winterize the Project. The Receiver also engaged an appraiser and cost consultant to assist it and Duca to determine whether the Project should be completed or sold.

3.0 Borrowing Limit

1. Pursuant to the Receivership Order, the Receiver is permitted to borrow up to \$500,000 (the "Borrowing Limit").
2. Since the commencement of these proceedings, the Receiver has borrowed \$172,000 to fund the exercise of its powers and duties. Attached as Appendix "C" is the Receiver's interim statement of receipts and disbursements (the "R&D") for the period from the commencement of the proceedings to December 2, 2024.
3. The Receiver is continuing to receive estimates from various suppliers, tradespeople and consultants to winterize the Project. Based on estimates received to date, the Receiver is of the view that the remaining availability under the Borrowing Limit (\$328,000) will not be sufficient to complete the winterization and to fund other receivership costs. Given the critical nature of the winterization work, the Receiver is urgently recommending that the Borrowing Limit be increased to \$1,000,000 in order to fund the known costs, and to permit construction to commence, if a decision is made in that regard. As noted, this will eliminate the need to seek a further order of the Court in the near term further increasing the Borrowing Charge.
4. The Receiver understands that Duca consents to the increase in the Borrowing Limit and intends to fund the Receiver pursuant to the terms of the Borrowing Charge.

4.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court increase the Receiver's Borrowing Charge on the basis detailed herein.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER AND MANAGER OF
2460467 ONTARIO INC.**

Appendix “A”



Court File No.: CV-24-00096502-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
MR. JUSTICE KERSHMAN)
)
)
)

MONDAY, THE 12th
DAY OF AUGUST, 2024

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2460467 ONTARIO INC.

Respondent

APPOINTMENT ORDER

THIS APPLICATION made by DUCA Financial Services Credit Union Ltd. (“**DUCA**”) for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV Restructuring Inc. as receiver and manager (in such capacities, the “**Receiver**”) without security, of all of the assets, undertakings and properties of 2460467 Ontario Inc. (“**246**” or the “**Debtor**”) acquired for, or used in relation to a business carried on by the Debtor, was heard this day by Zoom video conference.

ON READING the affidavit of Ivan Bogdanovich sworn July 15, 2024 and the Exhibits thereto, the affidavit of Kamel Patel sworn July 31, 2024 and the Exhibits thereto, the reply affidavit of Ivan Bogdanovich sworn August 6, 2024 and the Exhibits thereto and the supplementary affidavit of Kamal Patel sworn August 6, 2024 and the Exhibits thereto and on hearing the submissions of counsel for DUCA and counsel for the Debtor, no one appearing for any other person on the service list, although duly served as appears from the affidavits of service of Mariela Adriana Gasparini sworn July 29, 2024 and July 31, 2024 and the affidavit of service

of Sumit Bhatia sworn July 25, 2024, and on reading the consent of KSV Restructuring Inc. to act as the Receiver.

SERVICE

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

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the 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 and without limiting the generally of the foregoing, the lands and premises described in Schedule “A” hereto, and all proceeds thereof (the “**Property**”).

RECEIVER’S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
- (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;
- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary

course of business, cease to carry on all or any part of the business, or cease to perform any contracts of the Debtor;

- (d) to engage consultants, appraisers, agents, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (f) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (g) to settle, extend or compromise any indebtedness owing to the Debtor;
- (h) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (i) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (j) to market any or all of the Property, including advertising and soliciting offers in respect of the Property or any part or parts thereof and negotiating

such terms and conditions of sale as the Receiver in its discretion may deem appropriate;

- (k) 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.

- (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 make an assignment into bankruptcy on behalf of the Debtor and for KSV Restructuring Inc. to act as trustee in bankruptcy, provided that any legal opinion regarding the validity of the security is obtained from a law firm that is independent from the firm representing the secured creditors;

- (p) 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;
- (q) 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;
- (r) to exercise any shareholder, partnership, joint venture, or other rights which the Debtor may have;
- (s) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations; and
- (t) the Receiver shall not terminate any of agreements of purchase and sale presently in place without notice to the purchasers and absent further order of the Court.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (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.

5. **THIS COURT ORDERS** that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the “**Records**”) in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

7. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease,

such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least three (3) business days notice to such landlord and any such secured creditors.

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

10. **THIS COURT ORDERS** that all rights and remedies against the Debtor, 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

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

CONTINUATION OF SERVICES

12. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.

RECEIVER TO HOLD FUNDS

13. **THIS COURT ORDERS** that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post-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

14. **THIS COURT ORDERS** that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such

amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

LIMITATION ON THE RECEIVER'S LIABILITY

17. **THIS COURT ORDERS** that the Receiver shall incur no liability or obligation as a result of its appointment or the carrying out the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*. Nothing in this Order shall derogate from the protections afforded the Receiver by section 14.06 of the BIA or by any other applicable legislation.

RECEIVER'S ACCOUNTS

18. **THIS COURT ORDERS** that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

19. **THIS COURT ORDERS** that the Receiver and its legal counsel shall pass 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 Ontario Superior Court of Justice.

20. **THIS COURT ORDERS** that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

21. **THIS COURT ORDERS** that the Receiver be at liberty and it is hereby empowered to borrow by way of a revolving credit or otherwise, such monies from time to time as it may consider necessary or desirable, provided that the outstanding principal amount does not exceed \$500,000 (or such greater amount as this Court may by further Order authorize) at any time, at such rate or rates of interest as it deems advisable for such period or periods of time as it may arrange, for the purpose of funding the exercise of the powers and duties conferred upon the Receiver by this Order, including interim expenditures. The whole of the Property shall be and is hereby charged by way of a fixed and specific charge (the “**Receiver's Borrowings Charge**”) as security for the payment of the monies borrowed, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver’s Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. **THIS COURT ORDERS** that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.

23. **THIS COURT ORDERS** that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “B” hereto (the “**Receiver’s Certificates**”) for any amount borrowed by it pursuant to this Order.

24. **THIS COURT ORDERS** that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver’s Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

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

Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL 'www.ksvadvisory.com/experience/case/yeotowns'.

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

GENERAL

27. **THIS COURT ORDERS** that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder on five (5) business days notice.

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

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

30. **THIS COURT ORDERS** that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located,

for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

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

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

33. **THIS COURT ORDERS** that the supplementary responding affidavit of Kamal Patel dated August 6, 2024 shall be redacted to remove the reference to the purchase price in the affidavit and in Exhibit "B" thereto, and that the Receiver shall post the redacted version of the supplementary responding affidavit of Kamal Patel on its website.

34. **THIS COURT ORDERS** that this Order and all of its provisions shall take effect as of 12:01 a.m. on the date of this Order and shall be immediately enforceable without the need for further entry or filing.

35. **THIS COURT ORDERS** that this proceeding shall be case-managed by Justice Kershman.



The Honorable Justice S. Kershman

Issued On August 13th, 2024

SCHEDULE "A"

PIN 40454-0002 (LT)

PCL 14-2 SEC 92 (BELLEVILLE); LT 14 PL 92 THURLOW; LT 21 PL 92 THURLOW; PT LT 15 PL 92 THURLOW; PT LT 20 PL 92 THURLOW; PT UNION ST PL 92 THURLOW; PT RAILROAD ST PL 92 THURLOW; PT YEOMANS ST PL 92 THURLOW PT 1, 2 & 3 21R18413; S/T EASEMENT OVER PT 2 21R18413 IN FAVOUR OF PT 1,2,3 21R18018 EXCEPT PT 1,2,3 21R18413 AS IN HT33628; S/T EASEMENT OVER PT 1,2,3 21R22303 IN FAVOUR OF PT 1,2,3 21R18018 EXCEPT PT 1,2,3 21R18413 AS IN HT33628; T/W EASEMENT OVER PTS 1,2,3 21R22307 AS IN HT33628; BELLEVILLE; COUNTY OF HASTINGS; SUBJECT TO AN EASEMENT IN GROSS AS IN HT292181

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that KSV Restructuring Inc., the receiver (the "**Receiver**") of the assets, undertakings and properties of 2460467 Ontario Inc. (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 (the "**Court**") dated the ___ day of _____, 2024 (the "**Order**") made in an action having Court File Number CV-24-00096502-0000 has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

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

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

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

7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 2024.

KSV RESTRUCTURING INC., solely in its capacity as Receiver of the Property, and not in its personal capacity

Per: _____

Name:

Title:

Court File No.: CV-24-00096502-0000

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

DUCA FINANCIAL SERVICES CREDIT UNION LTD.

Applicant

- and -

2460467 ONTARIO INC.

Respondent

**ONTARIO
SUPERIOR COURT OF JUSTICE**

APPOINTMENT ORDER

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Lawyers for the Applicant

Appendix “B”



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August 20, 2024

To: Purchasers of Townhomes (“Purchasers”) of the 240 Yeomans Street Project known as “Yeo Towns” (the “Project”)

Re: Update No. 1 to Purchasers

Pursuant to an order (the “**Receivership Order**”) issued by the Ontario Superior Court of Justice on August 12, 2024, KSV Restructuring Inc. was appointed receiver and manager (the “**Receiver**”) of the property, assets and undertaking of 2460467 Ontario Inc. (the “**Company**”), including the Project.

Copies of the Receivership Order and other materials filed in the receivership proceeding can be found on the Receiver’s case website at <https://www.ksvadvisory.com/experience/case/yeotowns>.

Project Status

The purpose of this notice is to provide Purchasers with preliminary information regarding these receivership proceedings and the status of the Project.

The Project is comprised of four blocks of townhomes, with each block at a different stage of construction. The Receiver is presently considering the next steps in these proceedings, which may include completing construction of the Project. It will take some time for the Receiver to complete its due diligence, and accordingly, the Receiver is presently unable to provide a timeline for the completion of the Project.

Deposits

The Receiver understands that Purchasers have paid deposits pursuant to their purchaser agreements with the Company. All purchase agreements between the Company remain in full force and effect. We suggest you visit Tarion Warranty Corporation’s website (www.tarion.com) for information concerning your deposits.

* * *

The Receiver will post periodic updates on this website concerning the receivership proceedings.

If you have questions concerning these proceedings, please contact Ben Luder (437-889-9995 or bluder@ksvadvisory.com).

Yours truly,

KSV RESTRUCTURING INC.

SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF

2460467 ONTARIO INC.

AND NOT IN ITS PERSONAL CAPACITY

Appendix “C”

2460467 Ontario Inc. (Yeo Towns)

Statement of Receipts and Disbursements

For the Period Ending December 2, 2024

(\$; unaudited)

Description	Amount
Receipts	
Funding from Duca	172,000
Interest earned from funds on hand	757
	<u>172,757</u>
Disbursements	
Insurance	62,391
Consultants	36,968
Third-party contractor	15,811
HST paid on disbursements	7,317
PST paid on insurance	4,991
Operating expenses	3,875
Misc expenses	219
	<u>131,572</u>
Balance	<u><u>41,185</u></u>

TAB 3

ON READING the First Report of KSV Restructuring Inc. in its capacity as Receiver, dated December 5, 2024 (the “**First Report**”) and on hearing the submissions of counsel for the Receiver, counsel for the Applicant, and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service:

SERVICE

1. THIS COURT ORDERS that the time for service 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.

INCREASE OF RECEIVER’S BORROWING LIMIT

2. THIS COURT ORDERS that Paragraph 21 of the Receivership Order is amended as follows:

THIS COURT ORDERS that the Receiver be at liberty and it is hereby empowered to borrow from the Applicant by way of 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 \$1,000,000 (or such greater amount that is acceptable to the Applicant and 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, fees and charges thereon, in priority to all security interests, trusts (including, without limitation, deemed 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.

GENERAL

3. 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.

DUCA FINANCIAL CREDIT SERVICES UNION LTD. v. 2460467 ONTARIO LIMITED.

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

Court File No. CV-24-00096502-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
OTTAWA

ORDER

DICKINSON WRIGHT LLP

Barristers & Solicitors

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Lawyers for the Receiver

DUCA FINANCIAL CREDIT SERVICES UNION LTD. v. 2460467 ONTARIO LIMITED.

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

Court File No. CV-24-00096502-0000

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT
OTTAWA

**MOTION RECORD OF THE RECEIVER AND MANAGER,
KSV RESTRUCTURING INC.
(MOTION: INCREASE OF RECEIVER'S BORROWING LIMIT)**

DICKINSON WRIGHT LLP

Barristers & Solicitors
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