

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

BETWEEN:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.**

Respondents

MOTION RECORD
(returnable March 29, 2019)

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Court-Appointed Receiver**

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AND TO:	SASI MACH LIMITED 211 Woodland Acres Crescent Maple, ON L6A 1G1 <i>Respondent</i>
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**ONTARIO
SUPERIOR COURT OF JUSTICE
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Respondents

INDEX

Tab	Document
1	Notice of Motion
A	Draft Approval and Vesting Order
2	Fourth Report of the Receiver dated March 22, 2019
A	Second Amended and Restated Receivership Order dated January 17, 2019
B	Sale Process Order dated December 4, 2018
C	Letter from ReMax Realtron Realty Inc. dated March 19, 2019
D	Agreement of Purchase and Sale dated February 7, 2019
3	Comparison of Draft Order to Model Order

TAB 1

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

BETWEEN:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.**

Respondents

NOTICE OF MOTION
(Approval and Vesting Order for the Elm Grove Property)

KSV Kofman Inc. (“**KSV**”), in its capacity as court-appointed receiver and manager (the “**Receiver**”) of certain real property as described below, will make a motion to a judge presiding over the Commercial List on Friday, March 29, 2019, at 10:00 a.m., or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

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

THE MOTION IS FOR:

1. an order substantially in the form attached hereto as **Schedule “A”**, *inter alia*:

- (a) if necessary, abridging the time for service and filing of this Notice of Motion and the Motion Record of the Receiver, and dispensing with service on any person other than those served;
 - (b) approving the proposed transaction (the “**Transaction**”) with Sutharsanan Nageswaran and Sukanya Sutharsanan (collectively, the “**Purchasers**”) for the sale of the property located at 87 Elm Grove, Richmond Hill, Ontario (the “**Elm Grove Property**”), pursuant to an Agreement of Purchase and Sale between the Receiver and the Purchasers (the “**APS**”);
 - (c) vesting the Elm Grove Property in the Purchasers free and clear of all claims and encumbrances;
 - (d) approving the Occupancy Agreement for the Cottage Property (as those terms are defined below) and granting possession of the Cottage Property to the Receiver and a writ of possession in favour of the Receiver upon confirmation by the Receiver that it has provided to the occupants a notice to vacate the property; and
2. such further and other relief that the Receiver may request and this Honourable Court may consider just.

THE GROUNDS FOR THE MOTION ARE:

The Properties under Receivership

1. Pursuant to orders of the Court made on November 13, 2018, KSV was appointed as Receiver of the Elm Grove Property (the “**Receivership Order**”) and as interim receiver of the property at 46 Puccini Drive, Richmond Hill, Ontario (the “**Puccini Property**”).
2. On December 4, 2018, the interim receivership of the Puccini Property was converted to a receivership.
3. On January 17, 2019, the Receivership Order was amended for a second time to include the property at 6216 Fifth Line, Egbert, Ontario (the “**Cottage Property**”).
4. The aforesaid orders were granted on application made by Buduchnist Credit Union Limited (“**BCU**”), which holds mortgages on each of the three properties.

The Elm Grove Property

5. The Elm Grove Property is comprised of land and a new vacant residential home which is only partially constructed. 2321197 Ontario Inc. (“**197**”) is the registered owner of the Elm Grove Property. Carlo Demaria is listed as the sole director and officer of 197.
6. Pursuant to a Court order made on December 4, 2018 (the “**Sale Process Order**”), the Receiver was authorized to engage Re/Max Realtron Realty Inc. (“**ReMax**”) as the listing agent for the Elm Grove Property and to carry out the sale process (“**Sale Process**”) described in the Receiver’s First Report to Court dated November 28, 2018.

7. The Sale Process was conducted in accordance with the Sale Process Order. Since the listed of the Elm Grove Property for sale in December 2018, there have been 34 showings and four offers submitted for the property. The Purchasers' offer was the highest offer submitted in the 100-day listing period.

The APS

8. The APS is in the form of a standard Ontario Real Estate Association Agreement of Purchase and Sale, a summary of which is as follows:

- Purchaser: the Purchasers are residential home buyers who intend to complete the construction of the Elm Grove Property and occupy the residential home once complete;
- Purchase Price: \$1.75 million;
- Deposit: the Purchasers have paid a deposit of \$75,000 which is being held in ReMax's trust account pending closing of the Transaction;
- Representations and Warranties: consistent with the standard terms of a receivership transaction, i.e. on an "as is, where is" basis, with limited representations and warranties;
- Closing Date: within 20 business days following Court approval, should the Court grant the proposed Approval and Vesting Order;

- Material Conditions: the only material condition precedent is the Court's issuance of the proposed Approval and Vesting Order. All other conditions in favour of the Purchasers have been waived by them.

9. The Receiver recommends that the Court approve the APS and the Transaction for the following reasons:

- (a) the Receiver undertook commercially reasonable steps to market and sell the Elm Grove Property in accordance with the Sale Process Order, including retaining ReMax as the listing agent;
- (b) the purchase price under the Transaction is the highest of the four offers received since the Elm Grove Property was listed in December 2018 and, according to ReMax, is consistent with the market value of comparable homes in the Richmond Hill area once adjusted for the construction costs-to-complete and the uncertainty of a buyer taking on a partially completed home;
- (c) in the Receiver's view, the 100-day listing period and 34 showings reflect that the market has been thoroughly canvassed and that further time spent listing the Elm Grove Property is unlikely to enhance value;
- (d) given the unique attributes of the Elm Grove Property, being a partially constructed residential home for which the Receiver has incurred substantial costs to preserve, the proposed Transaction eliminates the risk of further costs being incurred if the Elm Grove Property were to continue to be exposed to the elements should the listing period continue for a potentially prolonged period;

- (e) the Transaction contemplates a closing date of up to 20 days following Court approval, should such approval be granted. Accordingly, the Transaction can be completed expeditiously, which will avoid property taxes, professional fees and other costs that would otherwise continue to accrue for the duration of the listing period;
- (f) ReMax is a reputable and qualified realtor with substantial experience selling homes in the Richmond Hill area. ReMax has recommended that the Transaction be completed forthwith; and
- (g) Mr. DeMaria's counsel has advised that he does not oppose the Transaction on the basis that the proceeds of sale, net of HST, will not be distributed without further order of the Court.

10. Subject to Court approval, the Receiver intends to complete the Transaction and retain the net proceeds therefrom pending further Court order.

The Cottage Property

11. The Receiver is presently finalizing the terms of an Occupancy Agreement with the occupants of the Cottage Property, which will be subject to a condition in the Receiver's favour that it will obtain an order of the Court: (a) approving the agreement; and (b) granting possession of the property to the Receiver and a writ of possession in favour of the Receiver upon confirmation by the Receiver that it has provided to the occupants a notice to vacate the property as described therein.

Other Grounds

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

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

1. The Fourth Report of KSV dated March 22, 2019.
2. Such further and other material as counsel may advise and this Honourable Court may permit.

March 22, 2019

CHAITONS LLP
5000 Yonge Street, 10th Floor
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Email: george@chaitons.com

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

TO: SERVICE LIST

TAB A

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

THE HONOURABLE) FRIDAY, THE 29TH
)
MR. JUSTICE PENNY) DAY OF MARCH, 2019

BETWEEN:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.**

Respondents

APPROVAL AND VESTING ORDER

This motion, made by KSV Kofman Inc., in its capacity as court-appointed receiver and manager (the “**Receiver**”) of certain real property including the real property located at 87 Elm Grove, Richmond Hill, Ontario and legal described in **Schedule A** hereto (the “**Elm Grove Property**”), for an order approving the proposed transaction (the “**Transaction**”) for the sale of the Elm Grove Property to Sutharsanan Nageswaran and Sukanya Sutharsanan (collectively, the “**Purchasers**”) pursuant to an Agreement of Purchase and Sale (the “**Sale Agreement**”) and appended to the Fourth Report of the Receiver dated March ●, 2019 (the “**Report**”), and vesting in the Purchasers the Elm Grove Property, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ●sworn March ●, 2019, 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 Elm Grove Property to the Purchasers.

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 B** hereto (the "**Receiver's Certificate**"), all of the right, title and interest of 2321197 Ontario Inc. ("**197**") in and to the Elm Grove Property shall vest absolutely in the Purchasers 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 (i) any encumbrances or charges created by the Order of Justice Wilton-Siegel dated November 13, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the Personal Property Security Act (Ontario); and (iii) those Claims listed on **Schedule C** hereto (all of which are collectively referred to as the "**Encumbrances**"), and for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Elm Grove Property are hereby expunged and discharged as against the Elm Grove Property.

3. THIS COURT ORDERS that upon the registration in the Land Registry Office for the Land Titles Division of York Region 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 A hereto in fee simple, and is hereby directed to delete and expunge from title to the real property all of the Claims 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 Elm Grove Property shall stand in the place and stead of the Elm Grove Property, 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 Elm

Grove Property with the same priority as they had with respect to the Elm Grove Property immediately prior to the sale, as if the Elm Grove 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.

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 198 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of 198;

the vesting of the Elm Grove Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of 198 and shall not be void or voidable by creditors of 198, 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 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.

Schedule A – Elm Grove Property

PIN: 03199-0011 (LT)

Property Description: PCL 7-1 SEC M1563; LT 7 PL M1563; Town of Richmond Hill

Address: 87 Elm Grove Drive
Richmond Hill, ON L4E 2W8

Schedule B – Form of Receiver’s Certificate

Court File No. CV-18-00608356-00CL

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

BETWEEN:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.**

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable Justice Penny of the Ontario Superior Court of Justice (the “**Court**”) dated December 4, 2016, KSV Kofman Inc. was appointed as receiver of the real property located at 87 Elm Grove Drive, Richmond Hill, Ontario (the “**Elm Grove Property**”).

B. Pursuant to an Order of the Court dated March 29, 2019, the Court approved the Agreement of Purchase and Sale dated February 1, 2019 (the “**Sale Agreement**”) between the Receiver and Sutharsanan Nageswaran and Sukanya Sutharsanan (collectively, the “**Purchasers**”) and provided for the vesting in the Purchaser of all of the right, title and interest of 2321197 Ontario Inc. (“**197**”) in and to the Elm Grove Property, which vesting is to be effective with respect to the Elm Grove Property upon the delivery by the Receiver to the Purchasers of a certificate confirming (i) the payment by the Purchaser of the purchase price for the Elm Grove Property; and (ii) the transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Purchasers have paid and the Receiver has received the purchase price for the Elm Grove Property payable on the closing date pursuant to the Sale Agreement; and
2. The Transaction has been completed to the satisfaction of the Receiver.

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

KSV Kofman Inc., in its capacity as Court-Appointed Receiver

Per: _____

Name:

Title:

Schedule C – Claims to be deleted and expunged from title to Real Property

Instrument #	Registration Date	Instrument
YR2427027	2016/02/05	Charge (Buduchnist Credit Union Limited)
YR2897648	2018/11/15	Application to Register Court Order

TAB 2



**Fourth Report of KSV Kofman Inc.
as Receiver and Manager of
87 Elm Grove Avenue, 46 Puccini Drive
and 6216 Fifth Line**

March 22, 2019

Contents		Page
1.0	Introduction.....	1
1.1	Purposes of this Report.....	2
1.2	Currency	2
2.0	Background	2
2.1	Elm Grove Property.....	2
2.2	Puccini Property	3
2.3	Cottage Property	4
3.0	Sale Process	5
3.1	Transaction	6
3.2	Recommendation	6
4.0	HST Payable on the Sale of the Elm Grove Property	7
5.0	Conclusion and Recommendation	7

Appendices

Appendix	Tab
Second Amended and Restated Receivership Order dated January 17, 2019....	A
Sale Process Order dated December 4, 2018.....	B
Letter from ReMax Realtron Realty Inc. dated March 19, 2019.....	C
Agreement of Purchase and Sale dated February 7, 2019.....	D



COURT FILE NO: CV-18-00608356-00CL

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- and -

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2321198 ONTARIO INC., SASI MACH LIMITED AND VICAR HOMES LTD.

Respondents

FOURTH REPORT OF KSV KOFMAN INC.
AS RECEIVER AND MANAGER

MARCH 22, 2019

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") as receiver and manager (the "Receiver") of certain real property as described below.
2. Pursuant to orders of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on November 13, 2018, KSV was appointed as Receiver of the property at 87 Elm Grove Avenue, Richmond Hill, Ontario (the "Elm Grove Property") (the "Receivership Order") and as interim receiver of the property at 46 Puccini Drive, Richmond Hill, Ontario (the "Puccini Property"). On December 4, 2018, the interim receivership of the Puccini Property was converted to a receivership. On January 17, 2019, the Receivership Order was amended for a second time to include the property at 6216 Fifth Line, Egbert, Ontario (the "Cottage Property") (the "Second Amended and Restated Receivership Order")¹. A copy of the Second Amended and Restated Receivership Order is attached as Appendix "A". The aforesaid orders were granted on application made by Buduchnist Credit Union Limited ("BCU"), which holds mortgages on the three properties.

¹ The Second Amended and Restated Receivership Order also provides for KSV's appointment as Receiver over a property at 211 Woodland Acres Crescent, Vaughan, Ontario. Enforcement of the Second Amended and Restated Receivership Order over this property is currently stayed.

3. The principal purpose of these proceedings is for the Receiver to maximize value by realizing on the properties subject to the Second Amended and Restated Receivership Order.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information and a status update in respect of the properties subject to these receivership proceedings;
 - b) summarize the steps taken by the Receiver to sell the Elm Grove Property;
 - c) summarize a proposed transaction (the “Transaction”) with Sutharsanan Nageswaran and Sukanya Sutharsanan (jointly, the “Purchaser”) for the Elm Grove Property pursuant to an Agreement of Purchase and Sale dated February 7, 2019 between the Receiver and the Purchaser (the “APS”);
 - d) provide the basis for the Receiver’s recommendation that the APS and the Transaction be approved by this Honourable Court; and
 - e) recommend that the Court issue an order, *inter alia*, approving the APS and the Transaction and vesting title to the Elm Grove Property in the Purchaser on closing of the Transaction.

1.2 Currency

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

2.0 Background

2.1 Elm Grove Property

1. The Elm Grove Property is comprised of land and a new vacant residential home which is only partially constructed. 2321197 Ontario Inc. (“197”) is the registered owner of the Elm Grove Property. Carlo Demaria is listed as the sole director and officer of 197.
2. BCU holds a charge/mortgage against the Elm Grove Property securing the principal amount of \$2.2 million. There are no other mortgages registered against the Elm Grove Property.
3. Immediately following its appointment, the Receiver took steps recommended by a contractor to “winterize” and safeguard the Elm Grove Property and prepare it for sale. As at the date of this Report, BCU has funded \$45,000 to the Receiver to take these steps and to fund the costs of these proceedings as it relates to the Elm Grove Property. The Receiver has issued Receiver’s Certificates evidencing these advances.

4. Prior to these proceedings, the Elm Grove Property was subject to an Agreement of Purchase and Sale dated May 19, 2017 between Vicar Homes Ltd.², as vendor, and Sylvia Conforti (“Conforti”), as purchaser, which was scheduled to close on June 1, 2018 and later extended to October 1, 2018. The vendor failed to complete construction of the home and the transaction with Conforti failed to close.
5. Pursuant to Paragraph 3(j) of the Receivership Order, the Receiver was expressly empowered and authorized, without further approval of the Court, to: (a) sell and convey the Elm Grove Property pursuant to the agreement with Conforti, subject to monetary adjustments and such amendments as the Receiver may deem appropriate; or (b) negotiate and enter into a new agreement for the sale of the Elm Grove Property, on terms acceptable to the Receiver, and sell and convey the Elm Grove Property to Conforti pursuant to such sale agreement.
6. Notwithstanding its efforts to enter into a transaction with Conforti at the outset of these proceedings, the Receiver and Conforti were unable to agree on a purchase price for the Elm Grove Property. Accordingly, the Receiver took steps to list the property for sale, subject to Court approval.
7. Pursuant to a Court order made on December 4, 2018 (the “Sale Process Order”), the Receiver was authorized to engage Re/Max Realtron Realty Inc. (“ReMax”) as the listing agent for the Elm Grove Property and to carry out the sale process (“Sale Process”) described in the Receiver’s First Report to Court dated November 28, 2018.

2.2 Puccini Property

1. The Puccini Property is a residential home in Richmond Hill, Ontario. 2321198 Ontario Inc. (“198”) is the registered owner of the Puccini Property. Mr. Demaria is listed as the sole director and officer of 198.
2. BCU holds a charge/mortgage against the Puccini Property securing the principal amount of \$2.5 million. There are no other mortgages registered against the Puccini Property.
3. There is an order registered against the Puccini Property issued by the Court dated May 6, 2015 in a proceeding commenced under Brampton Court File No. CV-15-2110-00 by Trade Capital Finance Corp. (“Trade Capital”) against various defendants, including Mr. Demaria and certain corporations (other than 198) with which Mr. Demaria is alleged to have been involved (the “Mareva Order”).
4. As at the date of this Report, BCU has advanced \$20,000 to the Receiver to fund the costs of these proceedings and sundry expenses for the general upkeep of the Puccini Property. The Receiver has issued Receiver’s Certificates evidencing these advances.
5. On February 27, 2019, the Court approved a transaction for the sale of the Puccini Property to one of its occupants, Mr. Saad (the “Puccini Transaction”). The Puccini Transaction contemplated a closing date of March 6, 2019, which has since been extended to March 29, 2019. As part of the extension, the Receiver required that Mr. Saad fund an additional non-refundable deposit of \$15,000 and a *per diem* of

² Carlo Demaria is listed as a Director and the President of Vicar Homes Ltd.

\$1,000 for the extension period. These amounts were paid to the Receiver on March 21, 2019. The Receiver will be filing a certificate with the Court upon the closing of the Puccini Transaction.

2.3 Cottage Property

1. The Cottage Property is a residential cottage in Egbert, Ontario. Carlo Demaria and Sandra Demaria are the registered owners of the Cottage Property.
2. BCU holds a charge/mortgage against the Cottage Property securing the principal amount of \$317,240. There are no other mortgages registered against the Cottage Property; however, the Mareva Order was registered against the Cottage Property on June 18, 2015.
3. As at November 1, 2018, the indebtedness owing to BCU secured by the Cottage Property was \$179,083, plus interest and costs which continue to accrue.
4. As at the date of this Report, BCU has advanced \$5,000 to the Receiver to fund the costs of these proceedings in connection with the Cottage Property. The Receiver has issued a Receiver's Certificate evidencing this advance.
5. On January 29, 2019, Mr. DeMaria filed a Notice of Appeal with respect to the Second Amended and Restated Receivership Order as it relates to the appointment of the Receiver over the Cottage Property.
6. There are presently two occupants (who are arm's length to Mr. DeMaria) renting the Cottage Property on a month-to-month basis. The Receiver understands that these occupants have been renting the Cottage Property for approximately eight years and are paying monthly rent of \$1,100. The Receiver has been advised that there is no formal occupancy agreement pursuant to which the occupants have occupied the Cottage Property.
7. The Receiver is presently finalizing the terms of an Occupancy Agreement between the occupants and the Receiver (the "Occupancy Agreement"). Pursuant to the Occupancy Agreement, *inter alia*, the occupants will pay monthly rent to the Receiver for the period commencing January 17, 2019 (i.e. the date of the Receiver's appointment). The occupants have been paying and will continue to pay telephone, utility and other charges and expenses billed directly to the Cottage Property other than property taxes, which Mr. Demaria has kept current.
8. Rent through March 31, 2019 has been paid by the occupants – Mr. DeMaria's counsel has advised that rent from the date of receivership to March 31, 2019 is in the process of being paid to the Receiver – this amount is expected to be on deposit in the Receiver's account on or around March 22, 2019. The Receiver has advised counsel to Mr. DeMaria that post-filing rent paid to the Receiver will be held pending the outcome of his appeal.
9. The Receiver recently arranged for an appraiser to attend at the Cottage Property in order to finalize an appraisal, which has since been provided to the Receiver.

3.0 Sale Process

1. The Sale Process was approved pursuant to the Sale Process Order, a copy of which is attached as Appendix “B”. A summary of the Sale Process is as follows:
 - a) in December, 2018, Re/Max was retained as the listing agent to market the Elm Grove Property on a basis consistent with how residential homes are sold in the Greater Toronto Area, including:
 - arranging for open houses and site visits;
 - listing the Elm Grove Property on the MLS system; and
 - approaching builders given the partially completed state of the property;
 - b) it was marketed on an “as is, where is” basis, meaning a buyer would need to complete construction of the residence;
 - c) prospective purchasers were advised that:
 - the Receiver has the right to reject any and all offers, including the highest dollar value offer(s); and
 - any transaction will be subject to Court approval.
2. ReMax undertook an analysis of the market based on recent and relevant transactions and listings. In addition, the Receiver retained a contractor to estimate the costs to complete the construction of the Elm Grove Property. Based on ReMax’s advice and the construction estimate obtained by the Receiver, the list price was determined to be \$1.949 million. Given the suggested list price was below the principal amount of BCU’s mortgage against the Elm Grove Property, BCU’s consent for the list price was sought and obtained.
3. Since being listed in December, 2018, there have been 34 showings and four offers submitted for the Elm Grove Property. The Purchaser’s offer was the highest offer submitted in the 100-day listing period.
4. The APS was accepted on February 7, 2019. The Purchaser was advised that the Receiver would not seek Court approval of the APS until the material conditions in favour of the Purchaser were waived, including financing, solicitor approval and inspection. On March 18, 2019, the Purchaser delivered its final waiver.
5. On March 20, 2019, ReMax provided a letter to the Receiver, a copy of which is attached as Appendix “C”. The letter indicates, *inter alia*, the factors that ReMax considered in recommending its list price and the basis on which ReMax recommends that the Receiver complete the Transaction.

3.1 Transaction

1. The APS is in the form of a standard Ontario Real Estate Association Agreement of Purchase and Sale, a summary of which is as follows:
 - a) **Purchaser:** the Purchaser is a residential home buyer who intends to complete the construction of the Elm Grove Property and occupy the residential home once complete.
 - b) **Purchased Assets:** the Elm Grove Property.
 - c) **Purchase Price:** \$1.75 million.
 - d) **Deposit:** the Purchaser has paid a deposit of \$75,000 which is being held in ReMax's trust account pending closing of the Transaction.
 - e) **Representations and Warranties:** consistent with the standard terms of a receivership transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.
 - f) **Closing Date:** within 20 business days following Court approval, should the Court grant the proposed Approval and Vesting Order.
 - g) **Material Conditions:** the only material condition precedent is the Court's issuance of the proposed Approval and Vesting Order. All other conditions in favour of the Purchaser have been waived by the Purchaser.
2. A copy of the APS, including all amendments and waivers, is attached as Appendix "D".

3.2 Recommendation

1. The Receiver recommends that the Court approve the APS and the Transaction for the following reasons:
 - a) the Receiver undertook commercially reasonable steps to market and sell the Elm Grove Property in accordance with the Sale Process Order, including retaining ReMax as the listing agent;
 - b) the purchase price under the Transaction is the highest of the four offers received since the Elm Grove Property was listed in December, 2018 and, according to ReMax, is consistent with the market value of comparable homes in the Richmond Hill area once adjusted for the construction costs-to-complete and the uncertainty of a buyer taking on a partially completed home;
 - c) in the Receiver's view, the 100-day listing period and 34 showings reflect that the market has been thoroughly canvassed and that further time spent listing the Elm Grove Property is unlikely to enhance value;

- d) given the unique attributes of the Elm Grove Property, being a partially constructed residential home for which the Receiver has incurred substantial costs to preserve, the proposed Transaction eliminates the risk of further costs being incurred if the Elm Grove Property were to continue to be exposed to the elements should the listing period continue for a potentially prolonged period;
 - e) the Transaction contemplates a closing date of up to 20 business days following Court approval, should such approval be granted. Accordingly, the Transaction can be completed expeditiously, which will avoid property taxes, professional fees and other costs that would otherwise continue to accrue for the duration of the listing period;
 - f) ReMax is a reputable and qualified realtor with substantial experience selling homes in the Richmond Hill area. ReMax has recommended that the Transaction be completed forthwith; and
 - g) Mr. DeMaria's counsel has advised that he does not oppose the Transaction on the basis that the proceeds of sale, net of HST, will not be distributed without further order of the Court.
2. Subject to Court approval, the Receiver intends to complete the Transaction and retain the net proceeds therefrom pending further Court order.

4.0 HST Payable on the Sale of the Elm Grove Property

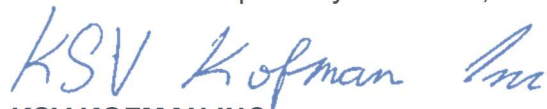
1. As construction of the Elm Grove Property was not completed nor was the property ever occupied, the Transaction is not HST exempt.
2. Subject to Court approval of the Transaction, the Receiver intends to remit to Canada Revenue Agency the HST component of the purchase price (approximately \$200,000) upon closing of the Transaction.

5.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.,
SOLELY IN ITS CAPACITY AS COURT-APPOINTED
RECEIVER AND MANAGER OF
87 ELM GROVE PROPERTY, 46 PUCCINI AVENUE AND
6216 FIFTH LINE AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

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

THE HONOURABLE MR.

)

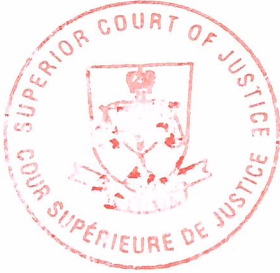
THURSDAY, THE 17th

JUSTICE PENNY

)

DAY OF JANUARY, 2019

)



BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.**

Respondents

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

**SECOND AMENDED AND RESTATED ORDER
(appointing Receiver)**

THIS APPLICATION made by the Applicant for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the “**CJA**”) appointing KSV Kofman Inc. (“**KSV**”) as receiver and manager (in such capacities, the “**Receiver**”) without security, of the Real Properties (defined below), was heard on January 16, 2019 at 330 University Avenue, Toronto, Ontario, with judgment having been reserved to this date for written reasons.

ON READING the Affidavit of Oksana Prociuk, sworn November 6, 2018, the Responding Affidavit of Oksana Prociuk, sworn November 20, 2018, the Supplementary

Affidavit of Oksana Prociuk, sworn November 30, 2018, the Affidavit of Carlo Demaria, sworn November 11, 2018, and the Affidavit of Darcy Thompson, sworn November 12, 2018, the Factum, dated November 30, 2018, and authorities of the Applicant, the Factum and Book of Authorities of the Respondents, 2321997 Ontario Inc., Carlo Demaria, 2321198 Ontario Inc. and Vicar Homes Ltd., dated January 14, 2019, Transcript of the examination under Rule 39.03 of Nestor Wolicki, taken December 17, 2018, and exhibit thereon, Transcripts of the examination under Rule 39.03 of Roma Bereza, taken on December 17, 2018 and January 10 and 11, 2019, and exhibits thereon, Transcript of the cross-examination of Carlo Demaria, taken on November 30, 2018, and answers to undertakings and exhibits thereon, Transcript of the cross-examination of Oksana Prociuk, taken on December 17, 2018, and answers to undertakings and exhibits thereon, the Applicant's Response to Request to Inspect Documents, dated December 11, 2018, and on hearing the submissions of counsel for the Applicant, Carlo Demaria, 2321197 Ontario Inc., 2321198 Ontario Inc., Vicar Homes Ltd., and Trade Capital Finance Corporation, no one appearing for Sandra Demaria although validly served as evidenced by the affidavits of service of Chris O'Rourke, sworn November 8, 2018, Rupert Mathias, sworn December 4, 2018 and Amanda Campbell, sworn December 3, 2018, filed, and on being advised by counsel that KSV consents 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.

APPOINTMENT

2. **THIS COURT ORDERS** that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the real properties described in Schedule "A" hereto (the "**Real Properties**" and each a "**Real Property**"), including all rents arising therefrom and proceeds thereof (collectively, the "**Property**").

RECEIVER'S POWERS

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

- (a) to take possession of and exercise control over the Property and any and all proceeds, receipts, rents 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 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;
- (d) to receive and collect all monies, rent and accounts now owed or hereafter owing to the Respondents in respect of or relating to the Real Properties and to exercise all remedies of the Respondents in collecting such monies, including, without limitation, to enforce any security held by the Respondents;
- (e) to execute, assign, issue and endorse documents of whatever nature in respect of the Property, whether in the Receiver's name or in the name and on behalf of the Respondents, for any purpose pursuant to this Order;
- (f) 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 Real Properties or the Receiver, and to settle

or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;

- (g) to market any or all of the Real Properties, including advertising and soliciting offers in respect of the Real Properties or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (h) to sell, convey, transfer, lease or assign the Property or any part or parts thereof with the approval of the Court and in 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;
- (i) 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;
- (j) to, without any further Court approval, on the condition that it is determined to be desirable by the Receiver, in its discretion, (i) sell and convey the real property municipally known as 87 Elm Grove, Richmond Hill, Ontario (the “**Elm Property**”) pursuant to the Agreement of Purchase and Sale, accepted May 19, 2017, between Vicar Homes Ltd. and Sylvia Conforti, as amended, subject to monetary adjustments and such amendments as the Receiver may deem appropriate, or (b) negotiate and enter into a new agreement for the sale of the Elm Property, on terms acceptable to the Receiver, and sell and convey the Elm Property to Sylvia Conforti pursuant to such sale agreement;
- (k) 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;

- (l) to register a copy of this Order and any other Orders in respect of the Property against title to the Real Properties;
- (m) to enter into agreements with any trustee in bankruptcy appointed in respect of the Respondents, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Respondents; and
- (n) 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 Respondents, and without interference from any other Person.

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. **THIS COURT ORDERS** that (i) the Respondents, (ii) all of their current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on their instructions or behalf, and (iii) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being “**Persons**” and each being a “**Person**”) shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all access codes and keys to the Real Properties 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, manuals, warranties, securities, contracts, orders, and any other papers, records and information of any kind relating to the Real Properties (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, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or provided to the

Receiver due to the privilege attaching to solicitor-client communication or due to statutory provisions prohibiting such disclosure.

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE PROPERTY

8. **THIS COURT ORDERS** that no Proceeding against or in respect of 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 Property are hereby stayed and suspended pending further Order of this Court. This provision is without prejudice to Trade Capital Finance Corporation commencing and continuing an application for the appointment of a receiver in respect of, among other things, the Real Properties.

NO EXERCISE OF RIGHTS OR REMEDIES

9. **THIS COURT ORDERS** that all rights and remedies against 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 Respondents to carry on any business which the Respondents are not lawfully entitled to carry on, (ii) exempt the Receiver or the Respondents 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.

RECEIVER TO HOLD FUNDS

10. **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 Real Properties and the collection of any rents or 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.

LIMITATION ON ENVIRONMENTAL LIABILITIES

11. **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

12. **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

13. **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.

14. **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.

15. **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

16. **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 \$200,000 (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 Real Property identified in each Receiver's Certificate (defined below), including all rents arising therefrom and proceeds thereof, 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.

17. **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.

18. **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.

19. **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.

ONTARIO NEW HOME WARRANTIES PLAN ACT

20. **THIS COURT DECLARES** that the Court is making no determination as whether or not the Receiver is a “vendor” as defined in, and for the purposes of, the *Ontario New Home Warranties Plan Act*.

STAY OF ENFORCEMENT OVER WOODLAND PROPERTY

21. **THIS COURT ORDERS** that enforcement of this Order in respect of the Real Property municipally known as 211 Woodland Acres Crescent, Vaughan, Ontario (the “**Woodland Property**”), is stayed for 60 days from the date of this Order, or the disposition of the motion to be brought by Carlo Demaria seeking to set aside the Mareva injunction imposed pursuant to the Order of the Honourable Justice Ricchetti, dated May 6, 2015, issued in proceedings titled *Trade Capital Finance Corp. v. Peter Cook et al.*, bearing Brampton Court File No. CV-15-2110-00, whichever comes first. The stay ordered herein is subject to the following terms:

- (a) Carlo Demaria shall provide the Receiver, monthly, with evidence that the following payments are current on the Woodland Property:
 - (i) heat;
 - (ii) hydro
 - (iii) property taxes; and
 - (iv) property insurance;
- (b) upon the expiry of the 60 day stay period, or the disposition of the motion to set aside the Mareva injunction (or sooner if necessary), the parties shall schedule a 9:30 a.m. appointment to report on the status of the matter and the proposed next steps which are to be taken.

SERVICE AND NOTICE

22. **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.

23. **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 Respondents’ creditors or other interested parties at their respective addresses as last shown on the records of the Respondents 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

24. **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.

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

26. **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.

27. **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.

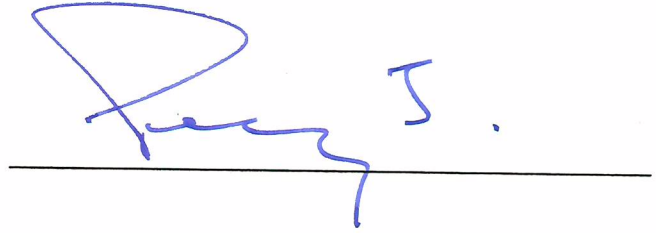
28. **THIS COURT ORDERS** that, with respect to the Elm Property and the real property municipally known as 46 Puccini Drive, Richmond Hill, Ontario (the "**Puccini Property**"), the Applicant shall have its costs of this application, up to and including entry and service of this Order, provided for 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 sale of the Elm Property and the Puccini Property with such priority and at such time as this Court may determine.

29. **THIS COURT ORDERS** that, with respect to the Woodland Property and the real property municipally known as 6216 Fifth Line, Egbert, Ontario, costs of this application are reserved pending submissions.

30. **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.

31. **THIS COURT ORDERS** that this Order takes precedence over the Order of the Honourable Justice Wilton Siegel, dated November 13, 2018 (the "**IR Order**"), appointing KSV as interim receiver (the "**Interim Receiver**") of the real property municipally known as 46 Puccini Drive, Richmond Hill, Ontario, and the Interim Receiver shall take no further steps to

carry out its powers and duties set forth in the IR Order, save and except for bringing a motion before this Honourable Court for discharge.



ENTERED AT / INSCRIT A TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

JAN 30 2019

PER / PAR:



SCHEDULE "A"

REAL PROPERTIES

1. **PIN: 03199-0011 (LT)**
Property Description: PCL 7-1 SEC M1563; LT 7 PL M1563; Town of Richmond Hill
Address: 87 Elm Grove Avenue
Richmond Hill, ON L4E 2W8
2. **PIN: 03206-3618 (LT)**
Property Description: PT LOT 26, PLAN M807, PT1, 65R34410,; Town of Richmond Hill
Address: 46 Puccini Drive
Richmond Hill, ON L4E 2Y6
3. **PIN: 03342-0025 (LT)**
Property Description: PCL 23-1 SEC M1732; LT 23 PL M1732; S/T LT135993; Vaughan
Address: 211 Woodland Acres Crescent
Vaughan, ON L6A 1G1
4. **PIN: 58120-0162 (LT)**
Property Description: PT E 1/2 LT 10 CON 4 ESSA TWP PT 4 RD1027; ESSA
Address: 6216 Fifth Line RR#1
Egbert ON L0L 1N0

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. **THIS IS TO CERTIFY** that KSV Kofman Inc., of the real properties described in Schedule "A" hereto (the "**Real Properties**" and each a "**Real Property**"), including all rents arising therefrom and all proceeds thereof, appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 4th day of December, 2018 (the "**Order**") made in an action having Court file number CV-18-00608356-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$ _____, being part of the total principal sum of \$ _____ which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Real Property bearing PIN: _____, including all rents arising therefrom and proceeds thereof, 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 Real 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 Kofman Inc., solely in its capacity
as Receiver of the Real Properties, and not in its
personal or corporate capacity

Per: _____

Name:

Title:

**SCHEDULE "A" TO RECEIVER'S CERTIFICATE
REAL PROPERTIES**

1. **PIN: 03199-0011 (LT)**

Property Description: PCL 7-1 SEC M1563; LT 7 PL M1563; Town of Richmond Hill

Address: 87 Elm Grove Avenue
 Richmond Hill, ON L4E 2W8

2. **PIN: 03206-3618 (LT)**

Property Description: PT LOT 26, PLAN M807, PT1, 65R34410,; Town of Richmond Hill

Address: 46 Puccini Drive
 Richmond Hill, ON L4E 2Y6

3. **PIN: 03342-0025 (LT)**

Property Description: PCL 23-1 SEC M1732; LT 23 PL M1732; S/T LT135993; Vaughan

Address: 211 Woodland Acres Crescent
 Vaughan, ON L6A 1G1

4. **PIN: 58120-0162 (LT)**

Property Description: PT E 1/2 LT 10 CON 4 ESSA TWP PT 4 RD1027; ESSA

Address: 6216 Fifth Line RR#1
 Egbert ON L0L 1N0

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

2321197 ONTARIO INC. et al.

Respondents

ONTARIO

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

PROCEEDING COMMENCED AT TORONTO

**SECOND AMENDED AND RESTATED ORDER
(appointing Receiver)**

DENTONS CANADA LLP
77 King Street West, Suite 400
Toronto-Dominion Centre
Toronto, ON M5K 0A1

Barbara Grossman (LSO # 20947K)

Tel: (416) 863-4417

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barbara.grossman@dentons.com

Kenneth Kraft (LSO # 31919P)

Tel: (416) 863-4374

kenneth.kraft@dentons.com

Lawyers for Buduchnist Credit Union Limited

Appendix “B”

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

MAP

THE HONOURABLE)
MR. JUSTICE PENNY)

TUESDAY, THE 4TH
DAY OF DECEMBER, 2018

BETWEEN:



BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.**

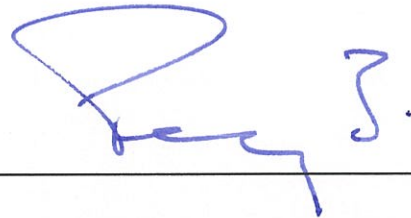
Respondents

ORDER

This motion, made by KSV Kofman Inc. (“KSV”), in its capacities as court-appointed receiver and manager (the “Receiver”) of the real property located at 87 Elm Grove Avenue, Richmond Hill, Ontario (the “Elm Grove Property”) and as court-appointed interim receiver (the “Interim Receiver”) of the real property located at 46 Puccini Drive, Richmond Hill, Ontario (the “Puccini Property”), for an order approving the Sale Process and the Listing Agreement (as those terms are described below) in respect of the Elm Grove Property, and for certain other relief as set out in its Notice of Motion, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the First Report of the Receiver and Interim Receiver dated November 28, 2018 (the “**First Report**”), and on hearing submissions by counsel for the Receiver and Interim Receiver, for the Applicant, for the Respondents, and for such other parties as appeared at the hearing of the motion,

1. THIS COURT ORDERS that the Sale Process described in the First Report is hereby approved.
2. THIS COURT ORDERS that the Listing Agreement with Re/Max Realtron Realty Inc. dated November 28, 2018 described in the First Report is hereby approved.
3. THIS COURT ORDERS that the activities of the Receiver and Interim Receiver to date, as described in the First Report, are hereby approved.
4. THIS COURT ORDERS that the Proposal Summary filed as Confidential Appendix “1” to the First Report shall be sealed until further order of this Court.



ENTERED AT / INSCRIT À TORONTO
ON / BOOK NO:
LE / DANS LE REGISTRE NO:

DEC 04 2018

PER / PAR:



BUDUCHNIST CREDIT UNION LIMITED

- and -

2321197 ONTARIO INC., CARLO DEMARIA, SANDRA
DEMARIA, 2321198 ONTARIO INC., SASI MACH LIMITED and
VICAR HOMES LTD.

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

ORDER

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

George Benchetrit
Tel: (416) 218-1141
Fax: (416) 222-8402
Email: george@chaitons.com

**Lawyers for KSV Kofman Inc., in its capacities as
Receiver of the Elm Grove Property and as Interim
Receiver of the Puccini Property**

Appendix “C”



Dear David,

In determining the estimated lot value for 87 Elm Grove, we looked at several factors and scenarios.

From the land value only point of view, a lot of this size in the current market based on some recent activity is believed to be approximately \$1,500,000.

If the construction were complete on the house, the resale value would be estimated at somewhere around the \$2,350,000-2,700,000 range. The range is large as it would depend on the quality and level of finishes that would be used to complete the house.

The estimated cost to complete the house from its current state may be anywhere from approximately 400,000-700,000 or more depending on the finishes chosen and the quality.

In addition to the standard factors that we use to evaluate the property, the uncertainty of taking on a project half complete, will cause a buyer to pay less for the property by an amount determined by the buyer.

Based on the response that we have received in feedback and formal offers, we believe that the current sale price is a fair value in today's market.

To this date we have been on the market for 100 days, had roughly 34 showings booked by other agents and have received offers from 4 different groups, 2 which brought back second offers. We have had offers come in at \$1,300,000 and \$1,325,000, \$1,450,000, \$1,500,000. Some had gone back and forth with sign backs until we were able to come to the agreed accepted offer.

I understand that you may append this letter to the Receiver's Report to Court.

Please let me know if you have any further questions.

Jordan Glaser
Cell - 416-560-4468
Office - 416-222-2600
jglaser@remax.net
www.WeAreJP.com
Re/Max Realtron Realty Inc.

Appendix “D”



Agreement of Purchase and Sale

Form 100

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 7 day of February 2019

BUYER, Sutharsanan Nageswaran and Sukanya Sutharsanan, agrees to purchase from
(Full legal names of all Buyers)

SELLER, KSV Kofman Inc. In its capacity as Court-appointed Receiver of 87 Elm Grove Avenue And not in its personal capacity, the following
(Full legal names of all Seller)

REAL PROPERTY:

Address 87 Elm Grove Avenue, Richmond Hill, ON L4E 2W8

fronting on the South side of Elm Grove Ave.

In the Town of Richmond Hill

and having a frontage of 81.32 ft more or less by a depth of 200.01 ft more or less

and legally described as Pcl 7-1 Sec M1563; Lt 7 Pl M1563 Town Of Richmond Hill

(legal description of land including easements; not described also where)

the "property" 02/21/19 2:46 PM EST dotloop verified

PURCHASE PRICE:

~~one million five hundred thousand~~ Six Hundred and Seventy Five
Eight Hundred Thousand
Seven hundred and fifty thousand

Dollars (CDN\$) 1,500,000 ~~1,750,000~~ 1,675,000
1,750,000 ~~1,700,000~~

DEPOSIT: Buyer submits Upon Acceptance

~~seventy five thousand~~ Seventy Five Thousand

Dollars (CDN\$) 75,000
75,000

by negotiable cheque payable to Re/Max Realtron Realty Inc. "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purpose of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A, & B attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer Seller Buyer until 9:00 a.m. on the 23rd day of February 2019 after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 27 day of February 2019 as per schedule A. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S): AS SS

INITIALS OF SELLER(S): [Signature]

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3. **NOTICES:** The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices. Any notice relating hereto or provided for hereto shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgment below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.: _____ (For delivery of Documents to Seller) FAX No.: _____ (For delivery of Documents to Buyer)
Email Address: _____ (For delivery of Documents to Seller) Email Address: _____ (For delivery of Documents to Buyer)

4. **CHATELS INCLUDED:**
See Schedule "A"

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. **FIXTURES EXCLUDED:**
None

6. **RENTAL ITEMS (Including Lease, Lease to Own):** The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:
None

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. **HST:** If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be included in _____ the Purchase Price. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the sale of the property is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

8. TITLE SEARCH: Buyer shall be allowed until 6:00 p.m. on the _____ day of _____, 20____ [Requisition Date] to examine the title to the property at Buyer's own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy Buyer that there are no outstanding

work orders or deficiency notices affecting the property, and that its present use (Single Family Residential) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. FUTURE USE: Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. TITLE: Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediata acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. CLOSING ARRANGEMENTS: Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyer(s) to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

12. DOCUMENTS AND DISCHARGE: Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust and Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee selling out the balance required to obtain the discharge, and, where a real time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. INSPECTION: Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller. The Buyer acknowledges having the opportunity to include a requirement for a property inspection report in this Agreement and agrees that except as may be specifically provided for in this Agreement, the Buyer will not be obtaining a property inspection or property inspection report regarding the property.

14. INSURANCE: All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or also take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

[Handwritten initials]

INITIALS OF SELLER(S):

[Handwritten initials]
12/23/17
2:46 PM EST
dotloop verified

- 15. **PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at Seller's expense to obtain any necessary consent by completion.
- 16. **DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
- 17. **RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada; (b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale, Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. **ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. **PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 20. **TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 21. **TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 22. **FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. **UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. **LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice.
- 25. **CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. **AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. **TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

AB 98

INITIALS OF SELLER(S):

20	
07/21/19	
7:32 PM EST	

dotloop verified

28. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

Witness signature lines with a central signature of D. Sieradzki and a date stamp of Feb 19 2019.

DATE Feb 19 2019

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

Witness signature lines with a central signature of David Sieradzki and a date stamp of Feb 19 2019.

DATE

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

Spouse signature line with a date stamp of Feb 19 2019.

DATE

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at a.m./p.m. this day of 20

Signature of David Sieradzki and a date stamp of Feb 19 2019.

INFORMATION ON BROKERAGE(S)

Form for listing and co-op/buyer brokerages, including Jordan Glaser and RE/MAX REALTRON REALTY INC.

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

Signature and address lines for the Seller's Lawyer.

Signature and address lines for the Buyer's Lawyer.

FOR OFFICE USE ONLY

COMMISSION TRUST AGREEMENT

To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale. In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to, and governed by the MLS® Rules pertaining to Commission Trust.

DATED by the date and time of the acceptance of the foregoing Agreement of Purchase and Sale. Acknowledged by: [Signature]

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Schedule A Agreement of Purchase and Sale

Form 100

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, Sutharsanan Nageswaran and Shikanya Sutharsanan

SELLER, KSV Kofman Inc. In its capacity as Court-appointed Receiver of 87 Elm Grove Avenue And not in its personal capacity

for the purchase and sale of **87 Elm Grove Avenue, Richmond Hill, ON L4E 2W8**

dated the _____ day of _____, 20____

Buyer agrees to pay the balance as follows:

The Buyer agrees to pay the balance of the purchase price, subject to adjustments, to the Seller on completion of this transaction, with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.

The Buyer acknowledges that there is no express or implied warranty by the Seller on any chattels included in this Agreement of Purchase and Sale and that the property and all chattels/fixtures included in the sale shall be in "As-Is" condition.

This Offer is conditional upon the inspection of the subject property by a home inspector at the Buyer's own expense, and the obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 6:00 p.m. on the 5th Business Day following the acceptance of this agreement, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to cooperate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

The Seller agrees to provide, if available, a survey of the property, completed by an Ontario Land Surveyor, showing the current location of all buildings, structures, additions, fences, improvements, easements, rights-of-way and encroachments affecting the property. The Seller also agrees to supply any building plans, mechanical drawings, and any other plans, and all warranties and user manuals, if available, applicable to any equipment or chattels included in the purchase price.

The Buyer and Seller agree that the closing date (date of completion) shall be the 10th Business day following the Seller receiving approval of the sale by the Ontario Superior Court Justice. The Seller agrees to notify the Buyer at its earliest convenience once Court approval is received.

The Title Search date as per paragraph 8 in this agreement shall be 5 business days after receiving court approval of the sale.

This Offer is conditional until 6:00 pm on the 3rd business day following the acceptance of this agreement for the approval of the terms hereon by the Buyer's solicitor, failing which this Offer shall become null and void and the deposit shall be returned to the Buyer in full without interest or deduction. This condition is included for the benefit of the Buyer and may be waived at his sole option.

This Offer is conditional until 6:00 pm on the 10th Business day following the acceptance of this agreement, for the Buyer to receive all existing plans/permits from the Town of Richmond Hill, and to be satisfied with their status, failing which this Offer shall become null and void and the deposit shall be returned to the Buyer in full without interest or deduction. This condition is included for the benefit of the Buyer and may be waived at his sole option.

The Buyer and Seller acknowledge that in the event the Court is unable or unwilling to proceed with the transaction and provide title free and clear of all liens, mortgages, and encumbrances on or before the date that is thirty (30) days following acceptance by the Seller, the Buyer shall have the unilateral right to terminate the agreement and receive their deposit back in full without deduction or shall have the option of extending said time for a further period of sixty (60) days.

This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new Mortgage satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 6:00 p.m. on the 10th Business Day following the acceptance of this agreement, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

AS *SS*

INITIALS OF SELLER(S):

KS
dotloop verified

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Schedule B



This Schedule is attached to and forms part of the Agreement between:

BUYER, Sutharsanan Nageswara and Sukanya Sutharsanan, and

SELLER, KSV Kofman Inc. in its capacity as Court-appointed Receiver of 87 Elm Grove Avenue And not in its personal capacity

for the property known as 87 Elm Grove Avenue, Richmond Hill, ON L4E 2W8

dated the 7 day of February, 2019

The parties to this Agreement hereby acknowledge and agree that the Deposit Holder shall place the deposit in the Deposit Holder's interest bearing real estate trust account, which earns interest at a rate of Prime less 2.3% per annum. Further, the parties acknowledge and agree that the Deposit Holder shall pay any interest it earns and receives on the deposit less a \$95.00 plus HST administrative fee to the Buyer upon completion of the transaction and upon the submission by the Buyer to the Deposit Holder of their Social Insurance Number in accordance with Canada Revenue Agency requirements for the preparation of T5 slips.

In the event this transaction is mutually released and becomes null and void, Re/Max Realtron Realty Inc., Brokerage will issue a trust account cheque for return of the deposit, to the party designated by the fully and properly executed mutual release, not before ten (10) business days (for certified cheques or Bank drafts) and not before twenty one (21) Business Days (as defined below) (for uncertified cheques) from the date the funds were deposited into our trust account as stated on our deposit receipts. A business day includes all weekdays except Saturday, Sunday or statutory holidays ("Business Days"). This policy is in place on the advice of the banking system, to protect your trust deposit from fraud.

1. In the event of any conflict or inconsistency between any provision of this Schedule "B" and any provision of the Agreement of Purchase and Sale including Schedule "A", not contained in Schedule "B", the provision of Schedule "B" shall govern and prevail.
2. The Buyer acknowledges that (i) the Seller, in executing this Agreement, is entering into this Agreement of Purchase and Sale solely in its capacity as Court appointed receiver of 87 Elm Grove Avenue., and not in its personal or any other capacity. The Receiver shall have no personal or corporate liability of any kind whether in contract, tort or otherwise, and (ii) the Seller's authority to act in respect of the property is governed by the Order of the Honourable Justice Wilton Siegel of the Ontario Superior Court of Justice (the "Court") dated November 29, 2018.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

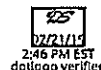
INITIALS OF SELLER(S):



3. The Property is being sold and shall be accepted by the Buyer on an "as is, where is" and "without recourse" basis with no representations, warranties or condition, express or implied, statutory or otherwise, of any nature and kind whatsoever as to title, encumbrances, description, present or future use, fitness for use, environmental condition including the existence of hazardous substances, merchantability, quantity, defect (latent or patent), condition, location of structures, zoning or lawful use of the property, rights over adjoining properties and any easements, rights-of-way, rights of re-entry, restrictions and/or covenants which run with the land, ingress and egress to the property, the condition or state of repair of any chattels, encroachments on the property by adjoining properties or encroachments by the property on adjoining properties, if any, any outstanding work orders, orders to comply, deficiency notices, municipal or other governmental agreements or requirements (including site plan agreements, development agreements, subdivision agreements, building or fire codes, building and zoning by-laws and regulations, development fees, imposts, lot levies and sewer charges) or any other matter or thing whatsoever, either stated or implied. The Buyer acknowledges having reviewed the state of title to the Property and agrees to accept title subject to all of the foregoing.

4. The Seller's obligations contained in this Agreement shall be conditional upon the Seller receiving an order of the Court in a form satisfactory to the Seller, acting reasonably, or such other court as has jurisdiction in the matter, approving the sale of the Property to be vested in the Buyer, free and clear of all mortgages and/or security interests registered against the Property as contemplated by this Agreement (the "Court Approval").

5. The Seller covenants and agrees to use reasonable commercial efforts to attempt to satisfy the condition in paragraph 4 above. If the sale of the Property is not approved by the Court, this Agreement shall be terminated without any penalty or liability whatsoever to the Seller or the Buyer, other than the return by the Seller to the Buyer of the Deposit, but without cost or other compensation, and each of the Seller and the Buyer shall be released from all other obligations hereunder except for the obligations of the Buyer that are specifically stated herein to survive Closing or other termination of this Agreement.



6. In the event that the sale of the Property is enjoined or not approved by the Court, where any part of the Property is removed from the control of the Seller by any means or process, or legal proceedings are threatened against the Seller to restrain the sale of the Property, or where the Property is redeemed in whole or in part by any party entitled thereto at law on or prior to Closing, the Seller, at its option, may terminate this Agreement without any penalty or liability whatsoever to the Seller or the Buyer, other than the return by the Seller to the Buyer of the Deposit, without deduction, and without cost or other compensation, and each of the Seller and the Buyer shall be released from all other obligations hereunder, except for the obligations of the Buyer that are specifically stated herein to survive Closing or other termination of this Agreement.

7. The description of the Property contained in this Agreement is for the purposes of identification only and no representation, warranty or condition has or will be given by the Seller concerning the existence or accuracy of such description.

8. The Buyer shall accept title to the Property, subject to, and whether complied with or not, any and all registered restrictions, agreements or covenants which run with the land, registered easements for the supply of utilities and services to the Property or through the Property to adjoining/adjacent properties or other easements, registered leases, rights-of-way, rights of re-entry by-laws, standard subdivision or site plan agreements (including any levies or charges payable thereunder), with the Municipality and/or Public Utility, and any encroachments.

9. The Seller shall not be required to deliver a discharge, release or reassignment of the Mortgage, or any charge/mortgage of land, assignment, lien or other encumbrance registered against the title to the Property which would be extinguished by an order of the Court referred to in paragraph 2 above.

10. The Seller does not guarantee title to the chattels and does not warrant the condition or state of repair of the chattels. The Buyer must satisfy itself in this regard, and accept the fixtures and chattels on an "as-is, where-is" basis. The Seller shall not provide a bill of sale for any chattels or fixtures, and shall make no further adjustments or abatement in the purchase price with respect thereto. The Seller will not remove and shall not be responsible for the removal of any chattels found on the Property prior to or on the date of closing.



11. The Buyer covenants and agrees not to register Notices of this Agreement, Assignment thereof, Caution, Certificate of Pending Litigation, or any other instrument or reference to this Agreement of his /her interest in the Property. If any such registration occurs, the Seller may, at its option, terminate this Agreement and all deposit monies shall be forfeited as liquidated damages and not as a penalty. The Buyer hereby irrevocably consents to a Court order removing any such registrations and agrees to bear all costs in obtaining such order.



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WEBForms® Mar/2018

Amendment to Agreement of Purchase and Sale

Form 120

for use in the Province of Ontario

BETWEEN:

BUYER: Sutharsanan Nageswaran and Sukanya Sutharsanan

AND

SELLER: KSV Kofman Inc. in its capacity as Court Appointed Receiver of 87 Elm Grove Ave., and not in its personal capacity

RE: Agreement of Purchase and Sale between the Seller and Buyer, dated the 7 day of February, 2019

concerning the property known as 87 Elm Grove Avenue, Richmond Hill, ON L4E 2W8

_____ as more particularly described in the aforementioned Agreement.

The Buyer and Seller herein agree to the following amendment(s) to the aforementioned Agreement:

Delete:

This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new Mortgage satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 6:00 pm on the 10th Business Day following the acceptance of this agreement, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

This Offer is conditional until 6:00 pm on the 10th Business Day following the acceptance of this agreement for the Buyers to receive all existing plans/permits from the Town of Richmond Hill, and to be satisfied with their status, failing which this Offer shall become null and void and the deposit shall be returned to the Buyer in full without interest or deduction. This condition is included for the benefit of the Buyer and may be waived at his sole option.

Closing Date: 10th Business Day following the Seller receiving approval of the sale by the Ontario Superior Court Justice.


Insert:


Closing Date: 20th Business Day following the Seller receiving approval of the sale by the Ontario Superior Court Justice.

The Buyer and Seller agree, that the Buyers may move the closing date sooner by up to 10 Business Days, with written notice provided to the Seller 5 Business Days prior to the new closing date.

This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new Mortgage satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 6:00 pm on the 20th of March 2019, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

INITIALS OF BUYER(S): 

INITIALS OF SELLER(S): 


02/11/19
7:10 PM EDT
dotloop verified

IRREVOCABILITY: This Offer to Amend the Agreement shall be irrevocable by Buyer (Seller/Buyer) until 6:00 (a.m./p.m.) on the 12 day of March, 2019 after which time, if not accepted, this Offer to Amend the Agreement shall be null and void.

For the purposes of this Amendment to Agreement, "Buyer" includes purchaser and "Seller" includes vendor. Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective solicitors who are hereby expressly appointed in this regard.

All other Terms and Conditions in the aforementioned Agreement to remain the same.

SIGNED, SEALED AND DELIVERED in the presence of:

[Witness] _____

[Witness] _____

IN WITNESS whereof I have hereunto set my hand and seal:

S. Sathcellan (Buyer/Seller) _____ (Seal) _____ (Date)

[Signature] (Buyer/Seller) _____ (Seal) _____ (Date)

I, the Undersigned, agree to the above Offer to Amend the Agreement.

SIGNED, SEALED AND DELIVERED in the presence of:

[Witness] _____

[Witness] _____

IN WITNESS whereof I have hereunto set my hand and seal:

David Sieradzki (Buyer/Seller) _____ (Seal) _____ (Date)
dotloop verified 03/11/19 7:10 PM EDT GJVI-UBJW-P7WA-S4QK

The undersigned spouse of the Seller hereby consents to the amendment(s) hereinbefore set out.

[Witness] _____

[Spouse] _____ (Seal) _____ (Date)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at _____ this _____ day of _____, 20____ (a.m./p.m.)

[Sign] *David Sieradzki* (Seal) _____ (Date)
dotloop verified 03/11/19 7:10 PM EDT DBUR-KK14-2TSE-LWBQ

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Amendment to Agreement and I authorize the Brokerage to forward a copy to my lawyer.

David Sieradzki (Seller) _____ (Date)
dotloop verified 03/11/19 7:10 PM EDT PWUM-WNVB-KNSW-UFUD

Address for Service _____ (Tel. No.) _____

Seller's Lawyer _____

Address _____

Email _____

(Tel. No.) _____ (Fax No.) _____

I acknowledge receipt of my signed copy of this accepted Amendment to Agreement and I authorize the Brokerage to forward a copy to my lawyer.

S. Sathcellan (Buyer) _____ (Date)
[Signature] (Buyer) _____ (Date)

Address for Service _____ (Tel. No.) _____

Buyer's Lawyer _____

Address _____

Email _____

(Tel. No.) _____ (Fax No.) _____

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Waiver Agreement of Purchase and Sale

Form 123

for use in the Province of Ontario

BUYER: Sutharsanan Nageswaran and Sukanya Sutharsanan

SELLER: KSV Kofman Inc. In its capacity as Court appointed Receiver of 87 Elm Grove Ave and not in its personal capacity

REAL PROPERTY: 87 Elm Grove Avenue, Richmond Hill

In accordance with the terms and conditions of the Agreement of Purchase and Sale dated the 7 day of February

2019, regarding the above property, I/We hereby waive the condition(s) which read(s) as follows:

This Offer is conditional until 6:00 pm on the 3rd business day following the acceptance of this agreement for the approval of the terms herein by Buyers Solicitor, filing which this Offer shall become null and void and the deposit shall be returned to the Buyer in full without interest or deduction. This condition is included for the benefit of the Buyer and may be waived at his sole option.

All other terms and conditions in the aforementioned Agreement of Purchase and Sale to remain unchanged.

For the purposes of this Waiver, "Buyer" includes purchaser and "Seller" includes vendor.

WAIVED at Vaughan, Ontario, at 10:00 this 1 day of March 2019
 (a.m.) (p.m.)

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

(Witness)
(Witness)

<u>S. Sutharsanan</u>	<input checked="" type="checkbox"/>	<u>Mar 1/19</u>
(Buyer/Seller)	(Seal)	(Date)
<u>[Signature]</u>	<input checked="" type="checkbox"/>	<u>Mar 1/19</u>
(Buyer/Seller)	(Seal)	(Date)

Receipt acknowledged 10:15 this 1 day of March 2019 by:
 (a.m.) (p.m.)

Print Name: Jider Signature: [Signature]

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Confirmation of Co-operation and Representation

Form 320
for use in the Province of Ontario

BUYER: Sutharsanan Nageswaran and Sukanya Sutharsanan

SELLER: KSV Kofman Inc. In its capacity as Court-Appointed Receiver of 87 Elm Grove Avenue and not in its personal capacity

For the transaction on the property known as: 87 Elm Grove Avenue, Richmond Hill, ON L4E 2W8

DEFINITIONS AND INTERPRETATIONS: For the purposes of this Confirmation of Co-operation and Representation: "Seller" includes a vendor, a landlord, lessor, or a prospective, seller, vendor, landlord or lessor and "Buyer" includes a purchaser, a tenant, lessee or a prospective, buyer, purchaser, tenant or lessee and "sale" includes a lease, and "Agreement of Purchase and Sale" includes an Agreement to Lease. Commission shall be deemed to include other remuneration.

The following information is confirmed by the undersigned salesperson/broker representative(s) of the Brokerage(s). If a Co-operating Brokerage is involved in the transaction, the brokerages agree to co-operate, in consideration of, and on the terms and conditions as set out below.

DECLARATION OF INSURANCE: The undersigned salesperson/broker representative(s) of the Brokerage(s) hereby declare that he/she is insured as required by the Real Estate and Business Brokers Act, 2002, (REBBA).

1. LISTING BROKERAGE

- a) The Listing Brokerage represents the interests of the Seller in this transaction. It is further understood and agreed that:
 - 1) The Listing Brokerage is not representing or providing Customer Service to the Buyer. (If the Buyer is working with a Co-operating Brokerage, Section 3 is to be completed by Co-operating Brokerage)
 - 2) The Listing Brokerage is providing Customer Service to the Buyer.
- b) **MULTIPLE REPRESENTATION:** The Listing Brokerage has entered into a Buyer Representation Agreement with the Buyer and represents the interests of the Seller and the Buyer, with their consent, for this transaction. The Listing Brokerage must be impartial and equally protect the interests of the Seller and the Buyer in this transaction. The Listing Brokerage has a duty of full disclosure to both the Seller and the Buyer, including a requirement to disclose all factual information about the property known to the Listing Brokerage. However, the Listing Brokerage shall not disclose:
 - That the Seller may or will accept less than the listed price, unless otherwise instructed in writing by the Seller;
 - That the Buyer may or will pay more than the offered price, unless otherwise instructed in writing by the Buyer;
 - The motivation of or personal information about the Seller or Buyer, unless otherwise instructed in writing by the party to which the information applies, or unless failure to disclose would constitute fraudulent, unlawful or unethical practice;
 - The price the Buyer should offer or the price the Seller should accept;
 - And; the Listing Brokerage shall not disclose to the Buyer the terms of any other offer.
 However, it is understood that factual market information about comparable properties and information known to the Listing Brokerage concerning potential uses for the property will be disclosed to both Seller and Buyer to assist them to come to their own conclusions.

Additional comments and/or disclosures by Listing Brokerage: [e.g. The Listing Brokerage represents more than one Buyer offering on this property.]

2. PROPERTY SOLD BY BUYER BROKERAGE - PROPERTY NOT LISTED

- The Brokerage does/does not represent the Buyer and the property is not listed with any real estate brokerage. The Brokerage will be paid
 - by the Seller in accordance with a Seller Customer Service Agreement
 or:
 - by the Buyer directly

Additional comments and/or disclosures by Buyer Brokerage: [e.g. The Buyer Brokerage represents more than one Buyer offering on this property.]

INITIALS OF BUYER(S)/SELLER(S)/BROKERAGE REPRESENTATIVE(S) (Where applicable)

→ 
BUYER


CO-OPERATING/BUYER BROKERAGE


SELLER


LISTING BROKERAGE

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3. Co-operating Brokerage completes Section 3 and Listing Brokerage completes Section 1.

CO-OPERATING BROKERAGE- REPRESENTATION:

- a) The Co-operating Brokerage represents the interests of the Buyer in this transaction.
- b) The Co-operating Brokerage is providing Customer Service to the Buyer in this transaction.
- c) The Co-operating Brokerage is not representing the Buyer and has not entered into an agreement to provide customer service(s) to the Buyer.

CO-OPERATING BROKERAGE- COMMISSION:

- a) The Listing Brokerage will pay the Co-operating Brokerage the commission as indicated in the MLS® Information for the property _____ to be paid from the amount paid by the Seller to the Listing Brokerage.
(Commission As Indicated in MLS® Information)
- b) The Co-operating Brokerage will be paid as follows:

Additional comments and/or disclosures by Co-operating Brokerage: (e.g., The Co-operating Brokerage represents more than one Buyer offering on this property.)

Commission will be payable as described above, plus applicable taxes.

COMMISSION TRUST AGREEMENT: If the above Co-operating Brokerage is receiving payment of commission from the Listing Brokerage, then the agreement between Listing Brokerage and Co-operating Brokerage further includes a Commission Trust Agreement, the consideration for which is the Co-operating Brokerage procuring an offer for a trade of the property, acceptable to the Seller. This Commission Trust Agreement shall be subject to and governed by the MLS® rules and regulations pertaining to commission trusts of the Listing Brokerage's local real estate board, if the local board's MLS® rules and regulations so provide. Otherwise, the provisions of the OREA recommended MLS® rules and regulations shall apply to this Commission Trust Agreement. For the purpose of this Commission Trust Agreement, the Commission Trust Amount shall be the amount noted in Section 3 above. The Listing Brokerage hereby declares that all monies received in connection with the trade shall constitute a Commission Trust and shall be held, in trust, for the Co-operating Brokerage under the terms of the applicable MLS® rules and regulations.

SIGNED BY THE BROKER/SALESPERSON REPRESENTATIVE(S) OF THE BROKERAGE(S) (Where applicable)

(Name of Co-operating/Buyer Brokerage) Tel: _____ Fax: _____ (Authorized to bind the Co-operating/Buyer Brokerage) (Date) (Print Name of Salesperson/Broker/Broker of Record)	(Name of Listing Brokerage) Tel: 416-222-2600 Jordan Glaser (Authorized to bind the Listing Brokerage) (Date) Jordan Glaser (Print Name of Salesperson/Broker/Broker of Record)
--	--

CONSENT FOR MULTIPLE REPRESENTATION (To be completed only if the Brokerage represents more than one client for the transaction)

The Buyer/Seller consent with their initials to their Brokerage representing more than one client for this transaction.

ACKNOWLEDGMENT

I have received, read, and understand the above information.

J. S. S. [Signature] Feb 19 19 (Signature of Buyer) (Date) [Signature] Feb 19 19 (Signature of Buyer) (Date)	David Sieradzki (Signature of Seller) (Date) _____ (Signature of Seller) (Date)
---	--

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Waiver Agreement of Purchase and Sale

Form 123
for use in the Province of Ontario

BUYER: Sutharsanan Nageswaran and Sukanya Sutharsanan

SELLER: KSV Kofman Inc. In its capacity as Court appointed Receiver of 87 Elm Grove Ave and not in its personal capacity

REAL PROPERTY: 87 Elm Grove Avenue, Richmond Hill

In accordance with the terms and conditions of the Agreement of Purchase and Sale dated the 7 day of February

2019, regarding the above property, I/We hereby waive the condition(s) which read(s) as follows:

This Offer is conditional upon the inspection of the subject property by a home inspector at the Buyer's own expense, and the obtaining of a report satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 6:00 p.m. on the 5th Business day following the acceptance of this agreement, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. The Seller agrees to co-operate in providing access to the property for the purpose of this inspection. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

All other terms and conditions in the aforementioned Agreement of Purchase and Sale to remain unchanged.

For the purposes of this Waiver, "Buyer" includes purchaser and "Seller" includes vendor.

WAIVED at Uxbridge, Ontario, at 10:00 this 5th day of March 2019
(a.m./p.m.)

SIGNED, SEALED AND DELIVERED in the presence of:

IN WITNESS whereof I have hereunto set my hand and seal:

[Witness]
[Witness]

S. Sutharsanan (Buyer/Seller) [Seal] Mar 5 / 19 (Date)
[Signature] (Buyer/Seller) [Seal] Mar 3 / 19 (Date)

Receipt acknowledged 10:15 this 5 day of March 2019 by:
(a.m./p.m.)

Print Name: J. Gelas Signature: [Signature]

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Waiver Agreement of Purchase and Sale



Form 123

for use in the Province of Ontario

BUYER: Sutharsanan Nageswaran and Sukanya Sutharsanan

SELLER: KSV Kofman Inc. in its capacity as Court Appointed Receiver of 87 Elm Grove Ave., and not in its personal capacity.

REAL PROPERTY: 87 Elm Grove Avenue, Richmond Hill, Ontario L4E 2W8

In accordance with the terms and conditions of the Agreement of Purchase and Sale dated the 7 day of February

2019, regarding the above property, I/We hereby waive the condition(s) which read(s) as follows:

This Offer is conditional upon the Buyer arranging, at the Buyer's own expense, a new Mortgage satisfactory to the Buyer in the Buyer's sole and absolute discretion. Unless the Buyer gives notice in writing delivered to the Seller personally or in accordance with any other provisions for the delivery of notice in this Agreement of Purchase and Sale or any Schedule thereto not later than 6:00 pm on the 20th of March 2019, that this condition is fulfilled, this Offer shall be null and void and the deposit shall be returned to the Buyer in full without deduction. This condition is included for the benefit of the Buyer and may be waived at the Buyer's sole option by notice in writing to the Seller as aforesaid within the time period stated herein.

All other terms and conditions in the aforementioned Agreement of Purchase and Sale to remain unchanged.

For the purposes of this Waiver, "Buyer" includes purchaser and "Seller" includes vendor.

WAIVED at _____, Ontario, at _____ this _____ day of _____ 20____
(a.m./p.m.)

SIGNED, SEALED AND DELIVERED in the presence of:

(Witness)

(Witness)

IN WITNESS whereof I have hereunto set my hand and seal:

Sutharsanan Nageswaran dotloop verified 03/15/19 4:05 PM EST GWAK-QREP-COJ-4TSS

(Buyer/Seller) (Seal) (Date)

Sukanya Sutharsanan dotloop verified 03/15/19 3:44 PM EST WAXF-B5FY-KNJW-RV3G

(Buyer/Seller) (Seal) (Date)

Receipt acknowledged _____ this 18 day of March 2019 by:

(a.m./p.m.)

Print Name: Jordan Glaser

Signature: Jordan Glaser

dotloop verified 03/18/19 10:21 AM EDT NZBH-HMOK-PIVE-WHLT

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TAB 3

Court File No. _____ CV-18-00608356-00CL

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

THE HONOURABLE _____) _____ DAY, THE ____ DAY
JUSTICE _____) OF _____, 20__

~~BETWEEN:~~

PLAINTIFF

Plaintiff

THE HONOURABLE) FRIDAY, THE 29TH
MR. JUSTICE PENNY) DAY OF MARCH, 2019

BETWEEN:

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

DEFENDANT

Defendant

**2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.**

Respondents

APPROVAL AND VESTING ORDER

~~THIS MOTION~~This motion, made by ~~[RECEIVER'S NAME]~~KSV Kofman Inc., in its capacity as ~~the Court~~court-appointed receiver ~~and manager~~ (the "~~Receiver~~") ~~of the undertaking, property and assets of [DEBTOR] (the "Debtor")~~ of certain real property including the real property located at 87 Elm Grove, Richmond Hill, Ontario and legal described in Schedule A hereto (the "Elm Grove Property"), for an order approving the ~~sale~~proposed 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~~"Transaction") for the sale of the Elm Grove Property to Sutharsanan Nageswaran and Sukanya Sutharsanan (collectively, the "~~Purchasers~~") pursuant to an Agreement of Purchase and Sale (the "~~Sale Agreement~~") and appended to the Fourth Report of the Receiver dated ~~[DATE]~~March 9, 2019 (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") Purchasers the Elm Grove Property, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Report and on hearing the submissions of counsel for the Receiver, ~~[NAMES OF OTHER PARTIES APPEARING]~~, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[NAME]~~ sworn [DATE]March 9, 2019, filed¹:

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

¹ ~~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.~~

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.~~

necessary or desirable for the completion of the Transaction and for the conveyance of the ~~Purchased Assets~~Elm Grove Property to the ~~Purchaser~~Purchasers.

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 AB** hereto (the "Receiver's Certificate"), all of the ~~Debtor's~~ right, title and interest of 2321197 Ontario Inc. ("197") in and to the ~~Purchased Assets described in the Sale Agreement [and listed on Schedule B hereto]~~⁴Elm Grove Property shall vest absolutely in the ~~Purchaser~~Purchasers 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 Order of ~~the Honourable~~ Justice [NAME]Wilton-Siegel dated [DATE]November 13, 2018; (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~~"Encumbrances"), and for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the ~~Purchased Assets~~Elm Grove Property are hereby expunged and discharged as against the ~~Purchased Assets~~Elm Grove Property.

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]~~[Land Titles Division of {LOCATION}York Region of an Application for Vesting Order in the form prescribed by the

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.~~

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.~~

Land Titles 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 BA hereto (~~the "Real Property"~~) in fee simple, and is hereby directed to delete and expunge from title to the ~~Real Property~~real property all of the Claims 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~~Elm Grove Property shall stand in the place and stead of the ~~Purchased Assets~~Elm Grove Property, 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~~Elm Grove Property with the same priority as they had with respect to the ~~Purchased Assets~~Elm Grove Property immediately prior to the sale⁸, as if the ~~Purchased Assets~~Elm Grove 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.

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)(e) 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 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:

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.~~

- (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~~198 and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of ~~the Debtor~~198;

the vesting of the ~~Purchased Assets~~Elm Grove Property in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of ~~the Debtor~~198 and shall not be void or voidable by creditors of ~~the Debtor~~198, 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.

Schedule A – Elm Grove Property

PIN: 03199-0011 (LT)

Property Description: PCL 7-1 SEC M1563; LT 7 PL M1563; Town of Richmond Hill

Address: 87 Elm Grove Drive
Richmond Hill, ON L4E 2W8

Schedule B – Form of Receiver’s Certificate

Court File No. ~~_____~~ CV-18-00608356-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

~~BETWEEN:~~

PLAINTIFF

~~Plaintiff~~

BUDUCHNIST CREDIT UNION LIMITED

Applicant

- and -

DEFENDANT

~~Defendant~~

2321197 ONTARIO INC., CARLO DEMARIA, SANDRA DEMARIA,
2321198 ONTARIO INC., SASI MACH LIMITED and VICAR HOMES LTD.

Respondents

RECEIVER’S CERTIFICATE

RECITALS

A. Pursuant to an Order of the Honourable ~~[NAME OF JUDGE]~~ Justice Penny of the Ontario Superior Court of Justice (the “Court”) dated ~~[DATE OF ORDER], [NAME OF RECEIVER]~~ December 4, 2016, KSV Kofman Inc. was appointed as ~~the~~ receiver (the “Receiver”) of the ~~undertaking, property and assets of [DEBTOR] (the “Debtor”~~ real property located at 87 Elm Grove Drive, Richmond Hill, Ontario (the “Elm Grove Property”)).

B. Pursuant to an Order of the Court dated ~~[DATE]~~, March 29, 2019, the Court approved the ~~agreement of purchase and sale made as of [DATE OF AGREEMENT]~~ (the "Agreement of Purchase and Sale dated February 1, 2019 (the "Sale Agreement")") between the Receiver ~~[Debtor]~~ and ~~[NAME OF PURCHASER]~~ (the "Purchaser" and Sutharsanan Nageswaran and Sukanya Sutharsanan (collectively, the "Purchasers")) and provided for the vesting in the Purchaser of all of the Debtor's right, title and interest of 2321197 Ontario Inc. ("197") in and to the ~~Purchased Assets~~ Elm Grove Property, which vesting is to be effective with respect to the ~~Purchased Assets~~ Elm Grove Property upon the delivery by the Receiver to the ~~Purchaser~~ Purchasers of a certificate confirming (i) the payment by the Purchaser of the ~~Purchase Price~~ purchase price for the ~~Purchased Assets~~ Elm Grove Property; and (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~~ the transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. ~~1.~~ — The ~~Purchaser has~~ Purchasers have paid and the Receiver has received the ~~Purchase Price~~ purchase price for the ~~Purchased Assets~~ Elm Grove Property payable on the ~~Closing Date~~ closing date pursuant to the Sale Agreement; and

~~2.~~ — ~~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~~

2. ~~3.~~ — The Transaction has been completed to the satisfaction of the Receiver.

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

~~{NAME OF RECEIVER}~~ KSV Kofman Inc.,
in its capacity as Court-Appointed Receiver ~~of~~
~~the undertaking, property and assets of~~
~~{DEBTOR}~~, and not in its personal capacity

Per: _____

Name:

Title:

~~Schedule B – Purchased Assets~~

Schedule C – Claims to be deleted and expunged from title to Real Property

**Schedule D—Permitted Encumbrances, Easements and Restrictive Covenants
related to the Real Property**

(unaffected by the Vesting Order)

<u>Instrument #</u>	<u>Registration Date</u>	<u>Instrument</u>
<u>YR2427027</u>	<u>2016/02/05</u>	<u>Charge (Buduchnist Credit Union Limited)</u>
<u>YR2897648</u>	<u>2018/11/15</u>	<u>Application to Register Court Order</u>

Document comparison by Workshare Compare on Friday, March 22, 2019 8:29:33 AM

Input:	
Document 1 ID	file://O:\Model Orders\Model_Approval_and_Vesting_Order_(2014).DOC
Description	Model_Approval_and_Vesting_Order_(2014)
Document 2 ID	PowerDocs://DOCS/4425495/1
Description	DOCS-#4425495-v1-Approval_and_Vesting_Order_(Elm_Grove_Property)
Rendering set	Standard

Legend:	
Insertion	
Deletion	
Moved from	
<u>Moved to</u>	
Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	143
Deletions	125
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	268

BUDUCHNIST CREDIT UNION LIMITED

- and -

2321197 ONTARIO INC., CARLO DEMARIA, SANDRA
DEMARIA, 2321198 ONTARIO INC., SASI MACH LIMITED and
VICAR HOMES LTD.

Applicant

Respondents

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

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD
(Returnable March 29, 2019)**

CHAITONS LLP

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

George Benchetrit

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Fax: (416) 222-8402

Email: george@chaitons.com

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