

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

B E T W E E N:

MARSHALLZEHR GROUP INC.

Applicant

- and -

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

Respondents

**RESPONDING MOTION RECORD
OF UNSECURED CREDITOR,
GURMINDER KANDOLA
(Returnable October 1, 2024)**

Date: September 24, 2024

Gurminder Kandola
7297 Terragar Blvd.
Mississauga, Ontario
L5N 7L8

Tel: 1-416-704-4516
Email: gkandola@euroleaf.com

Self-Represented
Unsecured Creditor

TO: RECONSTRUCT LLP
R. Brendan Bissell
Email: bbissell@reconllp.com
Jasmine Landau
Email: jlandau@reconllp.com

Independent Counsel for KSV Restructuring Inc.

AND TO: CHAITONS LLP
Brendon Bissell
Email: bbissell@reconllp.com
Caitlin Fell
Email: cfell@reconllp.com

Independent legal counsel for KSV Restructuring Inc.

AND TO: RORY McGOVERN PC
Rory McGovern
Email: rory@rorymcgovernpc.com

Lawyers for the Respondents

AND TO: STEBBING BUTCHER PC
Alan Butcher
Email: alan@stebbingbutcher.com

Litigation Counsel for the Respondents

AND TO: TORYS LLP
Adam Slavens
Email: aslavens@torys.com

Lawyers for Tarion Warranty Corporation

AND TO: Ontario Ministry of Finance – Insolvency Unit
Leslie Crawford
Email: insolvency.unit@ontario.ca

AND TO: KSV Restructuring Inc.
Mitch Vinisky
Email: mvinsky@ksvadvisory.com
Nisan Thurairatnam
Email: NThurairatnam@ksvadvisory.com

Court-Appointed Receiver

INDEX OF RESPONDING MOTION RECORD

Document

Affidavit of Gurminder Kandola, sworn on September 24, 2024

- Exhibit A - Agreement of Purchase and Sale dated September 13, 2021
- Exhibit B - Receipt of Deposit dated September 13, 2021
- Exhibit C - Letter by KSV dated September 23, 2024
- Exhibit D – Letter to KSV by Gurminder Kandola dated September 24, 2024

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

MARSHALLZEHR GROUP INC.

Applicant

- and -

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

Respondents

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

AFFIDAVIT OF GURMINDER KANDOLA

I, Gurminder Kandola, of Mississauga, in the Province of Ontario, MAKE
OATH AND SAY:

1. I am self-represented as an unsecured creditor in this matter.
2. I am a Buyer of property located within Grand York Estates (hereinafter “the property”).
3. It is my understanding that Grand York Estates is owned by the Respondents in this proceeding. This matter was commenced by the financial lender, the Applicant.

4. To my knowledge, Grand York Estates consists of 54 lots that were advertised by the Respondents (hereinafter “the Seller”) as residential lots. It is my understanding that all of the 54 lots were sold to buyers whose purchases are subject to Agreements of Purchase and Sale. I was told this information directly from the Seller and verily believe it is true.
5. I signed an Agreement of Purchase and Sale on September 13, 2021 which applies to the property (hereinafter “APS”). **Shown to me and attached as Exhibit A, is a true copy of the Agreement of Purchase and Sale dated September 13, 2021.**
6. By cheque dated September 13, 2021, I provided the Seller of the property the deposit of \$222,000.00 as required by the APS (hereinafter “the deposit”). **Shown to me and attached as Exhibit B, is a true copy of the receipt for the \$222,000.00.**
7. I was notified by KSV Restructuring Inc. (hereinafter “KSV”) by letter dated September 23, 2024 (hereinafter “the letter”) that it intended to seek court approval on October 1, 2024 for a proposed sale (hereinafter “proposed sale”) of the property to “an affiliate” of the Applicant. The letter was sent to my email by KSV. **Shown to me and attached as Exhibit C, is a true copy of the letter by KSV dated September 23, 2024.**
8. This was the first time, by letter dated September 23, 2024, I have received information from KSV about the proposed sale. I have not heard from their lawyers to date. I was not provided with the motion record returnable

October 1, 2024. I verily believe that many buyers have not even received the letter dated September 23, 2024 from KSV. I know this from talking to several buyers who told me that they have not received the letter. Some of the buyers did not even understand that their properties would not be built. Many buyers are not aware of this proceeding.

9. Also, no information was provided in the letter about the identity of the affiliate and whether there is an arms length relationship between the affiliate and the Applicant seeking this Honourable Court's approval of the proposed sale. The letter did not advise the buyers of its actual identity.
10. I found the motion record returnable October 1, 2024 on KSV's website. I note that the motion record states that the affiliate is an Ontario company called Sunray Estates GP Inc. (hereinafter "Sunray").
11. I performed a corporate search on the Ontario Business Registry on September 24, 2024 and learned that Sunray Estates was incorporated recently on July 25, 2024, just prior to its purported Agreement of Purchase and Sale dated August 6, 2024 with the Applicant. The head office listed with the registry for Sunray is Waterloo, the same location of the head office for the Applicant. I am concerned that Sunray is an entity created by the Applicant who would then benefit from the terminated relationship with the Respondent to all of the buyers detriment.
12. I did not see the actual Agreement of Purchase and Sale dated August 6, 2024 in the motion record returnable October 1, 2024.

13. In the letter, KSV incorrectly states that the buyers have a remedy from the Tarion Warranty Program with respect to their lost deposits if the proposed sale is approved by this Honourable Court.
14. I verily believe that the Tarion Warranty Program limits recovery of lost deposits to 10% of the purchase price, up to a maximum of \$100,000.00. I obtained this information directly from Tarion's website, under "Coverage Before You Close" at [https://www.tarion.com/coverage-before-you-close#:~:text=If%20the%20price%20of%20the%20home%20is%20\\$600,000%20or%20less](https://www.tarion.com/coverage-before-you-close#:~:text=If%20the%20price%20of%20the%20home%20is%20$600,000%20or%20less). I verily believe this information is true.
15. Based on the Tarion Warranty Program, I am only eligible for the recovery of the maximum amount payable. I will have a short fall of \$122,000.00 if the proposed sale by KSV is approved by this Honourable Court. I verily believe that the Tarion Warranty Program is not a sufficient recourse for buyers as they cannot even recover 50% of their deposits paid.
16. I have spoken with several other buyers who have Agreements of Purchase and Sale. They have told me that their deposits are similar and they too will lose more than 50% of their deposits paid. One buyer told me that they sold their family home to afford the deposit and would face significant financial loss and future security for their family if the proposed sale of the property is granted by this Honourable Court. Based on my conversations with other buyers, I verily believe that many buyers will face similar financial instability and great loss if the proposed sale is granted by this Honourable Court.

17. Personally, I do not have my own residence. I paid a substantial deposit with the belief that I was securing a future home for myself and family. The loss of \$122,000.00, assuming I am paid the \$100,000.00 from Tarion, is significant for myself and family. It took a long time saving this money. Such a loss is a significant hardship that I believe many buyers will experience.
18. I further understand that the Respondent (Seller) has made an offer to KSV to provide more than \$20 million to the Applicant while attempting to continue to develop the property and honour the Agreements of Purchase and Sale that apply to the property. I was told this information from the Respondent (Seller). I verily believe it would be in the best interest of the Applicant to obtain increased financial reimbursement from the Seller's offer versus the lower amount payable in the proposed sale.
19. I verily believe that the proposed sale by KSV significantly compromises the interests of the buyers, including myself. I outlined my concerns to KSV in my letter dated September 24, 2024 to KSV. **Shown to me and attached as Exhibit D, is a true copy of my letter to KSV dated September 24, 2024.**
20. I make this Affidavit for no improper purpose.

AFFIRMED remotely by video }
conference by Gurminder Kandola }
stated as being located in }
Mississauga, before me at the City of }
Woodstock, in the Province of Ontario, }
on September 24, 2024, in accordance }
with O. Reg 431/20, Administering }
Oath or Declaration Remotely. }

Rebecca Pepper

Rebecca Pepper LSO #52136F
A Commissioner for Taking Affidavits



Gurminder Kandola

MARSHALLZEHR GROUP INC. -and-
Applicant

2557386 ONTARIO INC et al
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at Toronto

**AFFIDAVIT OF
GURMINDER KANDOLA**

Gurminder Kandola
7297 Terragar Blvd.
Mississauga, Ontario
L5N 7L8
Telephone: 1-416-704-4516
Email: gkandola@euroleaf.com

MARSHALLZEHR GROUP INC. -and-
Applicant

2557386 ONTARIO INC et al
Respondents

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)**

Proceeding commenced at
TORONTO

**RESPONDING MOTION RECORD
OF UNSECURED CREDITOR
GURMINDER KANDOLA**

Gurminder Kandola
7297 Terragar Blvd.
Mississauga, Ontario
L5N 7L8
Telephone: 1-416-704-4516
Email: gkandola@euroleaf.com

Agreement of Purchase and Sale

Form 100

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 13 day of September 2021

BUYER: Gurminder Kandola
(Full legal names of all Buyers), agrees to purchase from

SELLER: 2363823 Ontario Inc. o/a Mariman Homes
(Full legal names of all Sellers), the following

REAL PROPERTY:

Address Lot 42 Street C Town of Seneca

fronting on the west side of Street C

in the Town of Seneca

and having a frontage of 30 Meters more or less by a depth of 100 Meters more or less

and legally described as

PT Warner Nelles Tract designated as Pt 1, 18R-7058, save and accept PT 1, 18R-7281, T/W easement, Lot 42

(Legal description of land including easements not described elsewhere)

(the "property")

PURCHASE PRICE:

Dollars (CDN\$) 1,480,000.00

One Million Four Hundred Eighty Thousand

Dollars

DEPOSIT: Buyer submits upon acceptance

(Herewith/Upon Acceptance/as otherwise described in this Agreement)

Two Hundred Twenty-Two Thousand

Dollars (CDN\$) 222,000.00

by negotiable cheque payable to Mariman Homes "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 purposes 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 attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 10 on the 14 day of September 2021, 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 12 day of June 2026. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

gh

INITIALS OF SELLER(S):

JS

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 herein 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 Acknowledgement 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:

.....

.....

.....

.....

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:

.....

.....

.....

.....

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:
tankless hot water tank

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 29 day of May, 2026, (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 (vacant land) 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 telecommunication services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telecommunication 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 intermediate 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 lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Ontario. Unless otherwise agreed to by the lawyers, such exchange of Requisite Deliveries shall occur by the delivery of the Requisite Deliveries of each party to the office of the lawyer for the other party 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 setting 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 else 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):



INITIALS OF SELLER(S):




 The trademarks REALTOR®, REALTORS®, MLS®, Multiple Listing Services® and associated logos are owned or controlled by The Canadian Real Estate Association (CREA) and identify the real estate professionals who are members of CREA and the quality of services they provide. Used under license.

© 2021, Ontario Real Estate Association ("OREA"). All rights reserved. This form was developed by OREA for the use and reproduction by its members and licensees only. Any other use or reproduction is prohibited except with prior written consent of OREA. Do not alter when printing or reproducing the standard pre-set portion. OREA bears no liability for your use of this form.

- 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):

INITIALS OF SELLER(S):

 The trademarks REALTOR®, REALTORS®, MLS®, Multiple Listing Services® and associated logos are owned or controlled by The Canadian Real Estate Association (CREA) and identify the real estate professionals who are members of CREA and the quality of services they provide. Used under license.

© 2021, Ontario Real Estate Association ("OREA"). All rights reserved. This form was developed by OREA for the use and reproduction by its members and licensees only. Any other use or reproduction is prohibited except with prior written consent of OREA. Do not alter when printing or reproducing the standard pre-set portion. OREA bears no liability for your use of this form.

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:

(Witness)

(Witness)

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

(Buyer)

(Buyer)

(Seal)

(Seal)

(Date)

(Date)

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:

(Witness)

(Witness)

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

(Seller) Mariman Homes

(Seller) Per:

(Seal)

(Seal)

(Date)

(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.

(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 2 this 13th day of SEPTEMBER, 2021.

(a.m./p.m.)

(Signature of Seller or Buyer)

Gurminder Kandola

INFORMATION ON BROKERAGE(S)

Listing Brokerage

(Tel. No.)

(Salesperson/Broker/Broker of Record Name)

Co-op/Buyer Brokerage

(Tel. No.)

(Salesperson/Broker/Broker of Record Name)

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.

(Seller)

Mariman Homes

(Date)

SEPT 13/21

(Seller)

Per:

Address for Service

(Tel. No.)

Seller's Lawyer

Gabe Araiche

Address

1104 Fennell Avenue East, Hamilton

Email

905 385 3229

905 385 6182

(Tel. No.)

(Fax. No.)

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.

(Buyer)

Gurminder Kandola

(Date)

(Buyer)

Address for Service

(Tel. No.)

Buyer's Lawyer

Address

Email

(Tel. No.)

(Fax. No.)

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 as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.

Acknowledged by:

(Authorized to bind the Listing Brokerage)

(Authorized to bind the Co-operating Brokerage)

R The trademarks REALTOR®, REALTORS®, MLS®, Multiple Listing Services® and associated logos are owned or controlled by The Canadian Real Estate Association (CREA) and identify the real estate professionals who are members of CREA and the quality of services they provide. Used under license.
© 2021, Ontario Real Estate Association ("OREA"). All rights reserved. This form was developed by OREA for the use and reproduction by its members and licensees only. Any other use or reproduction is prohibited except with prior written consent of OREA. Do not alter when printing or reproducing the standard pre-set portion. OREA bears no liability for your use of this form.

Schedule A

Agreement of Purchase and Sale

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

BUYER: Gurminder Kandola, and

SELLER: 2363823 Ontario Inc. o/a Mariman Homes **Per:**

for the purchase and sale of Lot 42 Street C Town of Seneca

..... dated the 13 day of September, 2021

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 Land Value Transfer System.

The Seller to build the Buyer a 2823 square foot ranch style home with a triple car garage known as the "Webber". A copy of this rendering is attached and will form Appendix "A".

The Seller to include the following:

- 1) The basement to have 9 foot ceilings
- 2) The main floor to have 10 foot ceilings
- 3) The home to have a rear covered porch extending from the Dinette. The porch to have a roof and concrete pad, and to be approximately 16' by 20'.
- 4) The garage to be widened by 8 feet.

A list of "Standard Features" included in this home is attached and will form Appendix "B".

A sketch of the survey showing all of the lots in "York Estates" is included. This survey will form Appendix "C" of this agreement.

HST is included in the purchase price with the Buyer assigning the HST rebate back to the Seller on closing.

The home to be enrolled with the Tarion New Home Warranty Program under builder #43313.

Angela Bettiol discloses to the Buyer that she is a Director of Mariman Homes and is REBBA registered but will not be receiving any commissions on this deal.

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

INITIALS OF BUYER(S):

AK

INITIALS OF SELLER(S):



The trademarks REALTOR®, REALTORS®, MLS®, Multiple Listing Services® and associated logos are owned or controlled by The Canadian Real Estate Association (CREA) and identify the real estate professionals who are members of CREA and the quality of services they provide. Used under license.
© 2021, Ontario Real Estate Association ("OREA"). All rights reserved. This form was developed by OREA for the use and reproduction by its members and licensees only. Any other use or reproduction is prohibited except with prior written consent of OREA. Do not alter when printing or reproducing the standard pre-set portion. OREA bears no liability for your use of this form.

2363823 ONTARIO INC.
o/a Mariman Homes

RECEIPT

Received From: GURMINDER KANDOLA

Re: Lot 42, York Estates, Town of Seneca

This is a receipt for \$222,000 which we received from you on September 13, 2021, which represents a deposit for the above-noted home.

Regards,

MARIMAN HOMES



Angela Bettiol
Director

www.tdcanadatrust.com www.tdcanadatrust.com www.tdcanadatrust.com www.tdcanadatrust.com

NAME GURMINDER KANDOLA 001
ADDRESS 7297 TERRAGAN BLVD
CITY, PROVINCE, POSTAL CODE MISSISSAUGA L4L6-704-4516 DATE 2021-09-13
Y Y Y Y M M D D

PAY TO THE ORDER OF MARIMAN HOMES \$ 222,000
TWO HUNDRED TWENTY TWO THOUSAND 100 DOLLARS

TD CANADA TRUST
3120 ARGENTIA RD.
MISSISSAUGA, ONTARIO L5N 0B1

MEMO LOT 42 YORK - DEPOSIT

Security features included. Details on back.

MP

⑈001⑈ ⑆159420004⑆ 159406636750⑈

Local 905-318-2737 Fax 905-575-8724 E-mail: Mikeb@accesshomes.on.ca

GRAND YORK ESTATES

LOT SPECIFICATIONS *Effective August 2021*

Model	Size	Base Price	Description
The Jade	2,525 Sq. Ft.	\$1,400,000	Ranch – 3 Bedroom
The Sapphire	2,600 Sq. Ft.	\$1,450,000	Ranch – 3 Bedroom
The Ruby	2,685 Sq. Ft.	\$1,475,000	Two Storey – 4 Bedroom
The Diamond	2,900 Sq. Ft.	\$1,500,000	Bungalow – 3 Bedroom
The Webber	2,823 Sq. Ft.	\$1,500,000	Bungalow – 4 Bedroom
The Opal	3,615 Sq. Ft.	\$1,650,000	Bungalow – 3 Bedroom
The Crystal	3,928 Sq. Ft.	\$1,750,000	Two Storey – 4 Bedroom



Ben Luder
ksv advisory inc.
220 Bay Street, Suite 1300
Toronto, Ontario, M5J 2W4
T +1 437 889 9995
F +1 416 932 6266

ksvadvisory.com
bluder@ksvadvisory.com

September 23, 2024

To: Home buyers (“Home Buyers”) with 2557386 Ontario Inc. and 2363823 Ontario Inc. o/a Mariman Homes (together, the “Company”)

Re: Update #2 to Home Buyers of Grand York Estates

The purpose of this notice is to provide Home Buyers with an update regarding the Company’s project located in Haldimand, Ontario (the “**Grand York Estates**”) and the status of their pre-construction purchase agreements (the “**Purchase Agreements**”).

As previously advised, pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) dated January 17, 2024 (the “**Receivership Order**”), KSV Restructuring Inc. (“**KSV**”) was appointed receiver (the “**Receiver**”), of all of the assets, undertakings and properties of the Company acquired for, or used in relation to a business carried on by the Company.

The application to appoint the Receiver was made by MarshallZehr Group Inc. (“**MarshallZehr**”), the first mortgagee registered on title to the Grand York Estates property. A copy of the Receivership Order and other materials filed in the receivership proceedings can be found on the Receiver’s case website at <https://www.ksvadvisory.com/experience/case/grand-York-estates>.

Sale Process Update

Pursuant to an Order dated March 27, 2024, the Court approved a sale process for the Grand York Estates, including the retention of Colliers Macaulay Nicolls Inc. as listing agent.

For the reasons that will be set out in the Receiver’s third report to Court, the Receiver will be seeking Court approval on October 1, 2024 of an agreement of purchase and sale between the Receiver and an affiliate of MarshallZehr (the “**Purchaser**”) for the Grand York Estates and certain related assets (the “**Transaction**”).

Termination of Purchase Agreements

The Purchaser has advised the Receiver that it will not be assuming the Purchase Agreements. Accordingly, the Receiver is seeking on October 1, 2024 that the Court declare the Purchase Agreements terminated immediately following closing of the Transaction or that the Court direct the Receiver to repudiate the Purchase Agreements following closing of the Transaction.

Home Buyer Deposits and Tarion Warranty Corporation (“Tarion”)

Tarion provides, among other things, Home Buyers with deposit protection in the event that Purchase Agreements are terminated and the Home Buyer deposits are not recoverable through the receivership process. Home Buyers will be able to make claims against Tarion for the return of their deposits once the Purchase Agreements are declared terminated or repudiation notices are issued.

Information about Tarion and its deposit protection coverage is available on Tarion's website page: <https://www.tarion.com/homeowners/regular-claims-process>. If you have further questions regarding the process to seek a return of your deposit from Tarion, you can contact Tarion at 1-877-9-TARION (1-877-982-7466) or customerservice@tarion.com.

Yours truly,

A handwritten signature in blue ink that reads "KSV Restructuring Inc.".

KSV RESTRUCTURING INC.

**SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER OF
2557386 ONTARIO INC. AND 2363823 ONTARIO INC. O/A MARIMAN HOMES
AND NOT IN ITS PERSONAL CAPACITY**

Ben Luder
Manager of KSV
KSV Restructuring Inc
220 Bay Street, Suite 1300
Toronto, Ontario
L5J 2W4

September 24, 2024

To Mr. Luder,

Re: Letter to Buyers dated September 23, 2024
MarshallZehr Group Inc. ats 2557386 Ontario Inc et al
Court File No. CV-23-00699432-00CL

As previously advised to KSV Restructuring Inc (“KSV”), I have an Agreement of Purchase and Sale (“APS”) for property (“Grand York Estates”) that is part of the receivership proceeding administered by KSV as appointed by MarshallZehr Group Inc. (“MarshallZehr”).

I confirm receipt of your letter dated September 23, 2024 where you first advise that KSV is now seeking court approval of the proposed sale of Grand York Estates to “an affiliate” of MarshallZehr. You further advise that “the affiliate” will not assume the Agreements of Purchase and Sale that apply to Grand York Estates. You rationalize incorrectly that the Buyers (a contractual party to the APS) are protected by the Tarion Warranty Corporation (“Tarion”).

Tarion – No Equitable Protection for Buyers (loss of substantial money)

It appears that KSV has no knowledge of the amount of the deposits paid by the Buyers who have APS. This is a key component to appreciating how Tarion does not protect the deposit money paid by the Buyers, including myself.

Tarion’s coverage for the loss of deposit paid by Buyers whose APS are repudiated is 10 percent of the purchase price, up to the maximum of \$100,000.00.

With respect to Grand York Estates, there are 54 lots, as correctly noted in your First Report dated March 20, 2024. Each of these lots had an APS with a Buyer that had provided a deposit. You further correctly noted that over \$10 million was provided by these Buyers, paid as deposits due under their APS. Certainly, the deposits paid by each Buyer were substantial.

Specifically, I signed my APS on September 13, 2021. As required, I paid my deposit of \$222,000.00. The purchase price was \$1,480,000.00. I am enclosing a copy of my APS and receipt for the deposit paid.

Based on the purchase price and maximum payable by Tarion, I will have a shortfall of more than a 50% loss from my deposit paid. This equates to a loss of \$122,000.00. This is far from an equitable remedy that you allege is available through Tarion. Accordingly, it is incorrect that Tarion offers a remedy to Buyers that is sufficient to protect their interests if the proposed sale is granted court approval.

Please note that the Buyers are organizing to respond to your letter. Many have advised that they have not received a copy of your letter. They were not aware of the proposed sale. They were not aware that their APS would not be protected by KSV in this receivership proceeding. They were basically given one week to respond as your letter is dated one week prior to the court date you arranged for the court approval of the sale. This is not sufficient time and proper notice to the Buyers. For instance, they may seek intervenor status to be included in the receivership proceeding, including being able to make submissions directly to the court. The letter you provided is being informally circulated between Buyers. However, not all Buyers are included in the communications as their identity is not known to other Buyers. There has been insufficient notice on Buyers of this proceeding by KSV. Due diligence by KSV would have included contacting all Buyers and providing them sufficient notice of their rights and potential actions to be included in this proceeding.

Many Buyers have the same loss as I have outlined above due to their purchase price. If you combine the deposits paid (\$10 million as noted in your First Report), it is likely that each Buyer will all lose about 50% of their deposits.

In talking with some of the Buyers, their loss if the proposed sale is approved (a substantial portion not covered by Tarion) will have profound impacts on their families and futures. Some had sold their homes to pay for their deposits. Their ability for home ownership would be severely compromised. Many will not recover financially from this loss, including myself.

Based on the foregoing, it is respectfully requested that you do not misrepresent to the court that Tarion will provide a remedy to Buyers in support of your proposal to have the sale approved that would not protect the APS of the Buyers and deposits paid.

Please note that the Buyers, who have been contacted by other Buyers and not yourself, are organizing to submit their APS and receipts of deposits paid as evidence to KSV of the losses they will incur if this proposed sale is approved.

Further, it is respectfully requested that you advise the court in good faith that Tarion only provides a 10% coverage for deposits to the maximum of \$100,000.00. As you know, KSV has the duty to Buyers (subject to APS) to act fairly and in accordance with the law, including not engaging in bad faith conduct, i.e. misrepresentation to the court.

Conflict of Interest – MarshallZehrs & “the affiliate”

The proposed sale by “the affiliate” appears to not involve an arms length relationship. Resultingly, the proposed transaction may not be conducted fairly and without undue influence and prejudice.

Certainly, the exact corporate identity of “the affiliate” should be properly informed of, to the Buyers, including myself, and the court. This ensures that “the affiliate” is not a shell for MarshallZehrs to benefit from commencing the receivership to purchase the land, repudiating the APS simultaneously, in order to acquire the land for a greater profit in the future. Any proposed sale to an entity that is not arms length should be cautiously assessed to avoid any prejudicial preference and/or treatment, which could cause great unfairness and loss to the Buyers.

Accordingly, it is respectfully requested that the full particulars, including the exact identity of “the affiliate,” be shared with the Buyers and the Court. Again, this would ensure that KSV is acting fairly and in accordance with the law. Further, it would demonstrate that KSV is not favouring MarshallZehrs directly in his proposals to the court.

Alternative Proposal – Not Disclosed to Court by KSV

Your letter fails to mention that KSV is receiving proposals from 2557 (the corporations who currently own Grand York Estates) to pay more than \$20 million toward their debt with MarshallZehrs.

It is my understanding that 2557 is seeking alternate financing to pay MarshallZehrs and continue with its intended development of Grand York Estates. 2557 has indicated that it will uphold the APS, which would protect the substantial deposits paid by the Buyers, including myself.

If the above is an accurate description of the proposal by 2557 to KSV, certainly this remedy for MarshallZehrs is superior to the proposed sale to “the affiliate”. This proposal by 2557 would obtain a higher financial outcome, more than a few million difference, for MarshallZehrs. Certainly, KSV has a duty to obtain the best financial outcome for creditors. Also, the proposal protects Buyers from losing a substantial amount of their life savings.

This proposal by 2557 should be brought to the court’s attention in its decision concerning the proposed sale to “the affiliate”.

Conclusion

Buyers, including myself, have an invested interest in this receivership proceeding. I request that you please advise the court of the concerns outlined above. Specifically, as follows:

- Tarion only reimburses 10% of the purchase price up to a maximum of \$100,000
- Most of the Buyers (APS) have paid more than \$200,000.00 per lot for their deposit paid
- Most of the Buyers (APS) will lose more than 50% of their deposit funds, equating to a loss of more than \$100,000.00 each
- Tarion is not an effective remedy in this case for the Buyers due to losses to be incurred by each individual Buyer
- The exact identity of “the affiliate” and all details of any relationship with MarshallZehrs
- The due diligence KSV has performed in ensuring that “the affiliate” and MarshallZehrs have an arms length relationship to protect against prejudicial treatment
- The due diligence KSV has performed in considering alternative proposals, including the proposal by 2557, which would be superior for MarshallZehrs and the Buyers
- The proper notice provided by KSV to all Buyers involved
- The due diligence KSV has performed in obtaining and reviewing all APS applying to Grand York Estates

Lastly, I request that all future letters be provided to me and all buyers involved.

Sincerely,
Gurminder Kandola

gkandola@euroleaf.com
416-704-4516

attached: APS dated September 13, 2021 & Receipt of Deposit