

Court File No. CV-23-00698576-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	WEDNESDAY, THE 19 <sup>TH</sup>
	)	
JUSTICE STEELE	)	DAY OF JULY, 2023

BETWEEN

**KINGSETT MORTGAGE CORPORATION AND DORR CAPITAL CORPORATION**

Applicants

- and -

**STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS) INC.,  
STATEVIEW HOMES (ON THE MARK) INC., TLSFD TAURASI HOLDINGS CORP. AND  
STATEVIEW HOMES (HIGH CROWN ESTATES) INC.**

Respondents

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

**ORDER  
(OTM SALE PROCESS APPROVAL)**

**THIS MOTION**, made by KSV Restructuring Inc. in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”) without security, of the property, assets and undertakings of each of the above noted Respondents, including their real property, for an order, *inter alia*, approving a sale process in respect of all of the Property of Stateview Homes (On the Mark) Inc. (“**On the Mark**”) located at or related to or used in connection with or arising from or out of the On the Mark Real Property (as defined in the Stalking Horse Purchase Agreement (defined below)) (collectively, the “**OTM Property**”), in the form attached hereto as **Schedule “A”** (the “**OTM Sale Process**”) and certain related relief, was heard this day by judicial videoconference via Zoom in Toronto, Ontario.

**ON READING** the Second Report of the Receiver dated July 12, 2023 and the Appendices thereto (the “**Second Report**”) and on hearing the submissions of counsel for the Receiver and

the other parties listed on the counsel slip, no one appearing for any other party although duly served as appears from the affidavits of service of Alec Hoy sworn July 13, 2023,

### **SERVICE AND DEFINITIONS**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that capitalized terms used in this Order and not otherwise defined herein shall have the meanings ascribed to them in the Second Report.

### **SALE PROCESS**

3. **THIS COURT ORDERS** that the OTM Sale Process is hereby approved and the Receiver is hereby authorized and directed to implement the OTM Sale Process pursuant to the terms thereof and is hereby authorized and directed to perform its respective obligations and to do all things reasonably necessary to perform its obligations thereunder, subject to prior approval of the Court being obtained before completion of any transaction under the OTM Sale Process.
4. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the OTM Sale Process, except to the extent of losses, claims, damages or liabilities that arise or result from the gross negligence or wilful misconduct of the Receiver in performing its obligations under the OTM Sale Process, as determined by this Court in a final order that is not subject to appeal or other review.
5. **THIS COURT ORDERS** that, in conducting the OTM Sale Process, the Receiver shall have all of the benefits and protections granted to it under the *Bankruptcy and Insolvency Act*. R.S.C. 1985, c. B-3, as amended, the Receivership Order and any other Order of this Court in the within proceeding.

### **STALKING HORSE PURCHASE AGREEMENT**

6. **THIS COURT ORDERS** that the Receiver is hereby authorized and empowered, *nunc pro tunc*, to enter into the asset purchase agreement dated June 30, 2023 (the "**Stalking Horse Purchase Agreement**") between the Receiver and 2077060 Ontario Inc. (the "**Stalking Horse**

**Purchaser**") in the form attached as Appendix "B" to the Second Report with such minor amendments as may be acceptable to each of the parties thereto; provided that nothing herein approves the sale and the vesting of any OTM Property to the Stalking Horse Purchaser pursuant to the Stalking Horse Purchase Agreement and that the approval of any sale and vesting of any such OTM Property shall be considered by this Court on a subsequent motion made to this Court if the transaction set out in the Stalking Horse Purchase Agreement is the Successful Bid pursuant to the OTM Sale Process.

#### **EXPENSE REIMBURSEMENT**

7. **THIS COURT ORDERS** that the Expense Reimbursement (as set out in the Stalking Horse Purchase Agreement) is hereby approved and the Receiver is hereby authorized and directed to pay the Expense Reimbursement to the Stalking Horse Purchaser in the manner and circumstances described in the Stalking Horse Purchase Agreement.

#### **PIPEDA**

8. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and any similar legislation in any other applicable jurisdictions, the Receiver and its advisors are hereby authorized and permitted to disclose and transfer to prospective OTM Sale Process participants that are party to a non-disclosure agreement with the Receiver (each, a "**Sale Process Participant**") and their respective advisors personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a transaction pursuant to the OTM Sale Process (a "**Transaction**"). Each Sale Process Participant to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and, if it does not complete a Transaction, shall return all such information to the Receiver, or, in the alternative, destroy all such information and provide confirmation of its destruction if requested by the Receiver. The bidder with a Successful Bid shall maintain and protect the privacy of such information and, upon closing of the Transaction(s) contemplated in the Successful Bid(s), shall be entitled to use the personal information provided to it that is related to the On the Mark business and/or property acquired pursuant to the OTM Sale Process in a manner that is in all material respects identical to the prior use of such information by On the Mark, and shall return all other personal information to the

Receiver, or ensure that all other personal information is destroyed and provide confirmation of its destruction if requested by the Receiver.

#### **GENERAL**

9. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

10. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal and regulatory or administrative bodies, having jurisdiction in Canada or in any other foreign jurisdiction, to give effect to this Order and to assist the Receiver and its respective agents in carrying out the terms of this Order. All courts, tribunals and 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 respective agents in carrying out the terms of this Order.

11. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. (Eastern Time) on the date of this Order without the need for entry or filing.

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**SCHEDULE "A"**  
**OTM SALE PROCESS**

# On the Mark Sale Process

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1. On May 2, 2023, the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an order (the “**Receivership Order**”), among other things, appointing KSV Restructuring Inc. as the receiver and manager (in such capacity, the “**Receiver**”) over the property, assets and undertakings of, *inter alia*, Stateview Homes (On the Mark) Inc. (“**On the Mark**”).
2. On July 19, 2023, the Court granted an order (the “**OTM Sale Process Order**”) that, among other things: (a) authorized the Receiver to implement a sale process in accordance with the terms hereof (“**Sale Process**”); and (b) authorized and empowered the Receiver to enter into the Asset Purchase Agreement between the Receiver and 2077060 Ontario Inc. (“**Stalking Horse Purchaser**”) dated June 30, 2023 (the “**Stalking Horse Purchase Agreement**”). Capitalized terms that are not otherwise defined herein have the meanings ascribed to them in the OTM Sale Process Order or the Stalking Horse Purchase Agreement. A copy of the OTM Sale Process Order can be found at <https://www.ksvadvisory.com/experience/case/stateview-homes>.
3. This Sale Process sets out the manner in which: (a) binding bids for executable transaction alternatives that are superior to the sale transaction contemplated by the Stalking Horse Purchase Agreement involving the property and assets of On the Mark will be solicited from interested parties; (b) any such bids received will be addressed; (c) any Successful Bid (as defined below) will be selected; and (d) Court approval of any Successful Bid will be sought.
4. This Sale Process shall be conducted by the Receiver and the Receiver shall be entitled to receive all information in relation to the Sale Process.
5. Parties who wish to have their bids considered must participate in this Sale Process as conducted by the Receiver.
6. This Sale Process will be conducted such that the Receiver will:
  - a) disseminate marketing materials and a process letter to potentially interested parties identified by the Receiver;
  - b) solicit interest from parties with a view to such interested parties entering into non-disclosure agreements (parties shall only obtain access to the data room and be permitted to participate in this Sale Process if they execute a non-disclosure agreement and agree to the additional measures that are required by the Receiver to protect competitively sensitive information, in form and substance satisfactory to the Receiver);
  - c) provide applicable parties with access to a data room containing diligence information; and
  - d) request that such parties (other than the Stalking Horse Purchaser) submit a binding offer meeting at least the requirements set forth in Section 8 below, as determined by the Receiver (a “**Qualified Bid**”), by the Qualified Bid Deadline (as defined below).

7. This Sale Process shall be conducted subject to the terms hereof and the following key milestones:
- a) the Receiver to commence solicitation process – as soon as practicable following the granting of the OTM Sale Process Order;
  - b) the deadline to submit a Qualified Bid – 5:00 p.m. Eastern Time on the date that is twenty-one (21) calendar days following the granting of the OTM Sale Process Order (the “**Qualified Bid Deadline**”);
  - c) the Receiver to select a Successful Bid – by no later than 10:00 a.m. Eastern Time on the date that is three (3) business days following the Qualified Bid Deadline;
  - d) Approval and Vesting Order (as defined below) hearing – by no later ten (10) calendar days following the selection (or deemed selection) of the Successful Bid if the Successful Bid is the Stalking Horse Bid (as defined below) or by no later fourteen (14) calendar days following the selection of the Successful Bid if the Successful Bid is not the Stalking Horse Bid, in each case subject to Court availability; and
  - e) the closing of the Successful Bid as soon thereafter as possible and, in any event, no later than August 31, 2023 or such later date agreed to among the Receiver, KingSett Mortgage Corporation (“**KingSett**”) and the Stalking Horse Purchaser (the “**Outside Date**”).
8. In order to constitute a Qualified Bid, a bid must comply with the following:
- a) it provides consideration that, in the opinion of the Receiver, is superior to the consideration provided for in the Stalking Horse Purchase Agreement, including providing for (i) cash consideration payable on closing in excess of \$14,375,000, plus the amount of \$400,000; and (ii) an assumption of the accrued and unpaid Trade Liabilities and granting a second-lien mortgage in favour of the Assumed Trade Creditors against the On the Mark Real Property securing at least 75% of the assumed Trade Liabilities or other consideration that would result in more favourable treatment of the Trade Liabilities than the assumption of the Trade Liabilities as provided in the Stalking Horse Agreement (the “**Consideration Value**”), and provides a detailed sources schedule that identifies, with specificity, the composition of the Consideration Value and any assumptions that could reduce the net consideration payable including details of any material liabilities that are being assumed or being excluded;
  - b) it provides for treatment of the Optional Purchase Agreements that, in the opinion of the Receiver, is no less favourable than the treatment of the Optional Purchase Agreements under the Stalking Horse Purchase Agreement;
  - c) it provides for the closing of the transaction by not later than the Outside Date;
  - d) it contains:
    - i. the legal name and identity (including jurisdiction of existence) and contact information of the bidder, full disclosure of its direct and indirect principals, and the name(s) of its controlling equityholder(s);
    - ii. a purchase agreement duly executed and binding on the bidder;
    - iii. a redline of the purchase agreement to the Stalking Horse Purchase Agreement;
    - iv. evidence of authorization and approval from the bidder’s board of directors (or comparable governing body) and, if necessary to complete the transaction, the bidder’s equityholder(s);
    - v. disclosure of any connections or agreements with On the Mark or any of its

affiliates, any known, potential, prospective bidder, or any officer, manager, director, member or known equity security holder of On the Mark or any of their affiliates; and

- vi. such other information reasonably requested by the Receiver;
- e) it includes a letter stating that the bid is submitted in good faith, is binding and is irrevocable until closing of the Successful Bid; provided, that if such bid is not selected as the Successful Bid or as the next-highest or otherwise best Qualified Bid as compared to the Successful Bid (such bid, the “**Back-Up Bid**”) it shall only remain irrevocable until selection of the Successful Bid;
- f) it provides that the bid will serve as a Back-Up Bid if it is not selected as the Successful Bid and if selected as the Back-Up Bid it will remain irrevocable until the earlier of: (i) closing of the Successful Bid or (ii) closing of the Back-Up Bid;
- g) it provides written evidence of a bidder’s ability to fully fund and consummate the transaction (including financing required, if any, prior to the closing of the transaction to finance the proceedings) and satisfy its obligations under the transaction documents, including binding equity/debt commitment letters and/or guarantees covering the full value of all cash consideration and the additional items (in scope and amount) covered by the guarantees provided by affiliates of the bidder in connection with the Successful Bid;
- h) it does not include any request for or entitlement to any break fee, expense reimbursement or similar type of payment;
- i) it is not conditional upon:
  - i. approval from the bidder’s board of directors (or comparable governing body) or equityholder(s);
  - ii. the outcome of any due diligence by the bidder; or
  - iii. the bidder obtaining financing;
- j) it includes an acknowledgment and representation that the bidder: (i) has had an opportunity to conduct any and all required due diligence prior to making its bid, and has relied solely upon its own independent review, investigation and inspection in making its bid; (ii) is not relying upon any written or oral statements, representations, promises, warranties, conditions, or guaranties whatsoever, whether express or implied (by operation of law or otherwise), made by any person or party, including the Receiver and its employees, officers, directors, agents, advisors and other representatives, regarding the proposed transaction, this Sale Process, or any information (or the completeness of any information) provided in connection therewith, except as expressly stated in the proposed transaction documents; (iii) is making its bid on an “as is, where is” basis and without surviving representations or warranties of any kind, nature, or description by the Receiver or any of its employees, officers, directors, agents, advisors and other representatives, except to the extent set forth in the proposed transaction documents; (iv) is bound by this Sale Process and the OTM Sale Process Order; and (v) is subject to the exclusive jurisdiction of the Court with respect to any disputes or other controversies arising under or in connection with this Sale Process or its bid;
- k) it specifies any regulatory or other third-party approvals the party anticipates would be required to complete the proposed transaction (including the anticipated timing necessary to obtain such approvals);
- l) it is accompanied by a cash deposit (the “**Deposit**”) by wire transfer of immediately available funds equal to 10% of the Consideration Value, which Deposit shall be retained by the Receiver in a non-interest bearing trust account in accordance with the terms hereof;



- m) it includes a statement that the bidder will bear its own costs and expenses (including legal and advisor fees) in connection with the proposed transaction, and by submitting its bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis; and
  - n) it is received by the Receiver by the Qualified Bid Deadline at the email addresses specified on Schedule "A" hereto.
9. The Qualified Bid Deadline may be extended by the Receiver, with the prior consent of the KingSett and the Stalking Horse Purchaser, or by further order of the Court.
  10. The Receiver may, in consultation with Kingsett, waive compliance with any one or more of the requirements specified in Section 8 above and deem a non-compliant bid to be a Qualified Bid, provided that the Receiver shall not waive compliance with the requirements specified in Subsections 8(a), (b), (c), (d), (e), (g), (k), (l) or (n) without the prior written consent of KingSett and the Stalking Horse Purchaser, each acting reasonably.
  11. Notwithstanding the requirements specified in Section 8 above, the transaction contemplated by the Stalking Horse Purchase Agreement (the "**Stalking Horse Bid**"), is deemed to be a Qualified Bid.
  12. If one or more Qualified Bids (other than the Stalking Horse Bid) have been received by the Receiver on or before the Qualified Bid Deadline, the Receiver will, in consultation with KingSett: (a) review each Qualified Bid, considering the factors set out in Section 8 of this Sale Process including, among other things: (i) the amount of consideration being offered and, if applicable, the proposed form, composition and allocation of same; (ii) the value of any assumption of liabilities or waiver of liabilities not otherwise accounted for in (i) above; (iii) the likelihood of the Qualified Bidder's ability to close the proposed transaction by no later than the Outside Date (including the consideration of factors such as: the transaction structure and execution risk; conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals); (iv) the likelihood of the Court's approval of the Qualified Bid; (v) the net benefit to the creditors of On the Mark; and (vi) any other factors the Receiver, in consultation with KingSett, may reasonably deem relevant; and (b) identify the highest or otherwise best bid received (the "**Successful Bid**" and the bidder making such bid, the "**Successful Bidder**"). If considered appropriate by the Receiver, the Receiver may, but shall not be obligated to select another Qualified Bid as the Back-Up Bid.
  13. If by the Qualified Bid Deadline, no Qualified Bid (other than the Stalking Horse Bid) has been received by the Receiver, then the Stalking Horse Bid shall be deemed the Successful Bid and shall be consummated in accordance with and subject to the terms of the Stalking Horse Purchase Agreement.
  14. Following selection of the Successful Bid, the Receiver, with the assistance of its advisors, shall seek to finalize any remaining necessary definitive agreement(s) with respect to the Successful Bid in accordance with the milestones set out in Section 7. Once the necessary definitive agreement(s) with respect to a Successful Bid have been finalized, as determined by the Receiver, the Receiver shall apply to the Court for an order or orders approving such Successful Bid and/or the mechanics to authorize the Receiver to complete the transactions contemplated thereby, as applicable, and authorizing the Receiver to: (a) enter into any and all necessary agreements and related documentation

with respect to the Successful Bid; (b) undertake such other actions as may be necessary to give effect to such Successful Bid; and (c) implement the transaction(s) contemplated by such Successful Bid (each, an “**Approval and Vesting Order**”). If the Successful Bid is not consummated in accordance with its terms, the Receiver shall be authorized, but not required, to elect that the Back-Up Bid (if any) is the Successful Bid.

15. If a Successful Bid is selected and an Approval and Vesting Order authorizing the consummation of the transaction contemplated thereunder is granted by the Court, any Deposit paid in connection with such Successful Bid will be non-refundable and shall, upon closing of the transaction contemplated by such Successful Bid, be applied to the cash consideration to be paid in connection with such Successful Bid or be dealt with as otherwise set out in the definitive agreement(s) entered into in connection with such Successful Bid. Any Deposit delivered with a bid that is not selected as a Successful Bid will be returned, without interest thereon, to the applicable bidder as soon as reasonably practicable (but not later than ten (10) business days) after the date upon which the Successful Bid is approved pursuant to the Approval and Vesting Order or such earlier date as may be determined by the Receiver; provided, the Deposit in respect of the Back-Up Bid shall not be returned to the applicable bidder until the closing of the Successful Bid.
16. The Receiver shall be permitted, in its discretion, to provide general updates and information in respect of this Sale Process to any creditor (each a “**Creditor**”) on a confidential basis, upon: (a) the irrevocable confirmation in writing from such Creditor that it will not submit any bid in this Sale Process; and (b) such Creditor executing confidentiality agreements with the Receiver, in form and substance satisfactory to the Receiver.
17. Any amendments to this Sale Process may only be made by the Receiver, or by further order of the Court, provided that the Receiver shall not amend the requirements specified in 8(a), (b), (c), (d), (e), (g), (k), (l) or (n) without the prior written consent of KingSett and the Stalking Horse Purchaser, each acting reasonably.

**SCHEDULE "A": E-MAIL ADDRESSES FOR DELIVERY OF BIDS**

To the Receiver:

[ngoldstein@ksvadvisory.com](mailto:ngoldstein@ksvadvisory.com); [mtallat@ksvadvisory.com](mailto:mtallat@ksvadvisory.com)

With a copy to the counsel for the Receiver:

[rjacobs@cassels.com](mailto:rjacobs@cassels.com); [jbello@bellissimo.com](mailto:jbello@bellissimo.com); [jfreeman@cassels.com](mailto:jfreeman@cassels.com); [ahoy@cassels.com](mailto:ahoy@cassels.com)

**IN THE MATTER OF THE RECEIVERSHIP OF STATEVIEW HOMES (MINU TOWNS) INC., STATEVIEW HOMES (NAO TOWNS) INC., STATEVIEW HOMES (ON THE MARK) INC., TLSFD TAURASI HOLDINGS CORP. AND STATEVIEW HOMES (HIGH CROWN ESTATES) INC.**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

**ORDER  
(OTM SALE PROCESS APPROVAL)**

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