



**Supplement to the Pre-Filing Report of
KSV Restructuring Inc. as Interim
Receiver of 2521311 Ontario Inc.**

February 2, 2024

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

FOREMOST MORTGAGE HOLDING CORPORATION

Applicant

- and -

2521311 ONTARIO INC. O.A. TOWNS OF THORN BURY

Respondents

REPORT OF KSV RESTRUCTURING INC.
AS INTERIM RECEIVER

FEBRUARY 2, 2024

1.0 Introduction

1. This report (the “**Supplemental Report**”) supplements the Interim Receiver’s Pre-Filing report dated December 12, 2023 (“**Pre-Filing Report**”). A copy of the Pre-Filing Report (without appendices) is provided in **Appendix “A”**.
2. Defined terms in this Supplemental Report have the meaning provided to them in the Pre-Filing Report, unless otherwise defined herein. This Supplemental Report is subject to the restrictions and qualifications in the Pre-Filing Report.

2.0 Purpose

1. The purposes of this Supplemental Report are to:
 - a) provide an update regarding the interim receivership proceedings;
 - b) approve the Sale Process, as described in Section 3 below; and
 - c) advise of the retention of Slavens & Associates Real Estate Inc. (“**Slavens**”), as a listing agent to market the Real Property for sale.

3.0 Update

1. Prior to an application on December 15, 2023 to appoint KSV as Receiver of the Property, the Company and the Lender agreed to a form of a receivership order (“the **“Receivership Order”**”) which would issue, subject to court approval, if on or after January 31, 2024, the Company failed to provide the Lender and the Interim Receiver with an unconditional commitment (the **“Commitment Condition”**) to fully repay the Lender as well as all amounts subject to the Interim Receiver’s Charge and the Interim Receiver’s Borrowing Charge within 30 days of the commitment letter. These terms were set out in the endorsement issued by Mr. Justice Cavanagh on December 19, 2023. A copy of the endorsement is provided in **Appendix “B”**.
2. Justice Cavanagh scheduled a further attendance before him on February 5, 2024 for the purpose of considering the issuance of the Receivership Order if the Commitment Condition had not been satisfied.
3. As of the date of this Supplemental Report, the Commitment Condition has not been satisfied. Accordingly, the Lender is now seeking the issuance of the Receivership Order so that the Sale Process can commence forthwith.
4. With the Lender’s consent, KSV, as Receiver, intends to retain Slavens as Listing Agent to market the Property for sale. A copy of the unexecuted listing agreement is provided in **Appendix “C”**. The Receiver, if appointed, will advise the Court of any material changes to the listing agreement at the attendance to consider this matter.
5. The Sale Process was provided in the Pre-Filing Report. The Sale Process below is substantially identical¹ to the one in the Pre-Filing Report, but the timeline has been updated to contemplate a launch date of February 6, 2024.

Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Due diligence	<ul style="list-style-type: none"> ➤ Execute listing agreement with the listing agent; and ➤ the Receiver and the listing agent to review all available documents concerning the Property, including financial and other information, which the Receiver intends to source from the Company and the Lender, in order to prepare marketing materials and to commence the Sale Process. 	Prior to and shortly following ² the launch date, which is projected to be on or around February 6, 2024
Finalize marketing materials	<ul style="list-style-type: none"> ➤ Listing agent and the Receiver to: <ul style="list-style-type: none"> ○ prepare a summarized marketing brochure (the “Teaser”); ○ populate an online data room; ○ prepare a confidentiality agreement (“CA”); and ○ prepare a Confidential Information Memorandum (“CIM”). 	
Prospect Identification	<ul style="list-style-type: none"> ➤ Listing agent will qualify and prioritize prospects; and ➤ Listing agent may also have pre-marketing discussions with targeted prospects. 	

¹ Changes to the Sale Process in the Pre-Filing Report are in bold font.

² Certain of the diligence materials contemplated in phase 1 have not yet been assembled.

Milestone	Description of Activities	Timeline
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ Teaser and marketing materials printed and sent to prospects; ○ place “for sale” signs on the Real Property; ○ publication of the acquisition opportunity on regional websites and/or forums; ○ telephone and email canvass of leading prospects; and ○ meet with and interview prospective purchasers. 	February 6 to March 12, 2024
Stage 2	<ul style="list-style-type: none"> ➤ Listing agent to provide detailed information to qualified prospects which sign the CA, including the CIM and access to the data room; ➤ Listing agent and the Receiver to facilitate due diligence by interested parties, including tours of the Real Property; and ➤ Receiver and legal counsel will prepare a vendor’s form of Purchase and Sale Agreement (“PSA”) which will be made available in the data room. 	
Stage 3	<ul style="list-style-type: none"> ➤ Prospective purchasers to submit PSAs. 	
<i>Phase 3 – Offer Review and Negotiations</i>		
Bidding	<ul style="list-style-type: none"> ➤ Short listing of bidders; and ➤ Further bidding - prospective purchasers may be asked to re-submit PSAs on one or more occasions. The format for subsequent rounds of bidding will be determined by the Receiver, in consultation with the Lender, and will either be via further rounds of sealed bids, or via an auction, with the top bidders (as determined by the Receiver, in consultation with the Lender) invited to participate in the process. 	By March 21, 2024
Selection of Successful Bid	<ul style="list-style-type: none"> ➤ Select successful bidder and finalize definitive documents. 	
Sale Approval Motion and Closing	<ul style="list-style-type: none"> ➤ Prepare motion materials for Court approval. ➤ Motion for sale approval. 	By the end of March 2024 or as soon as possible thereafter ³
Close Transaction	As soon as possible following Court approval	

³ Subject to Court availability.

6. Additional aspects of the Sale Process include:
- a) the Property will be marketed on an “as is, where is” basis;
 - b) in order to facilitate due diligence or maximize participation by interested parties in the Sale Process, the Receiver will have the right to extend any of the timelines in the Sale Process, provided the Lender does not reasonably object to the extension of the timeline, in the Interim Receiver’s discretion;
 - c) the Receiver may bring a motion to amend the Sale Process, including any timelines, if it believes appropriate to better facilitate the sale of the Property;
 - d) the Receiver will have the right to reject any and all offers, including the highest dollar value offer(s), acting reasonably;
 - e) if the highest and best offer received does not generate proceeds sufficient to repay the Lender in full, and the Lender does not consent to the proposed transaction, then the Lender will be entitled to submit a credit bid to purchase the Property; and
 - f) any transaction will be subject to Court approval.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Appendix “A”



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

December 12, 2023

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Court File NO.: CV-23-007109900-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

FOREMOST FINANCIAL CORPORATION.

Applicant

- and -

2521311 ONTARIO INC. O.A. TOWNS OF THURNBURY

Respondents

REPORT OF KSV RESTRUCTURING INC.
AS PROPOSED RECEIVER

DECEMBER 12, 2023

1.0 Introduction

1. This report (the “**Report**”) is filed by KSV Restructuring Inc. (“**KSV**”) as proposed receiver (the “**Proposed Receiver**”), without security, of the property, assets and undertakings (the “**Property**”) of 2521311 Ontario Inc. o.a. Towns of Thornbury (the “**Company**”), including the real property known municipally as Lot 10 Louisa Street, Thornbury, ON (the “**Real Property**”), pursuant to section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended, and section 243(1) of the *Bankruptcy and Insolvency Act*, RSC 1985, c. B-3, as amended (the “**BIA**”).
2. The application to appoint KSV as receiver (the “**Receiver**”) is being made by Foremost Mortgage Holding Corporation (the “**Lender**”), which has both a mortgage registered on title to the Real Property and a general security agreement in respect of the Property. As of the date of this Report, KSV understands that the Lender is owed approximately \$8.8 million, with interest and costs continuing to accrue.
3. KSV has consented to act as Receiver of the Company. A copy of KSV’s consent is provided in Appendix “A”.
4. The principal purpose of the proposed receivership proceeding is to conduct a sale process (the “**Sale Process**”) for the Property that maximizes value for the Company’s stakeholders.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about this proceeding, including the Company and the Project (as defined below);
 - b) summarize the proposed Sale Process, including the retention of an agent to list the property for sale;
 - c) discuss the basis on which the Receiver intends to borrow from the Lender during these proceedings if funding is required, including the interest rate on those borrowings; and
 - d) recommend that the Court issue an order granting the relief being sought by Lender, including the appointment of the Receiver and approval of the Sale Process.

1.2 Restrictions

1. In preparing this Report, the Proposed Receiver has relied upon information provided by the Lender and its legal counsel, Paliare Roland Rosenberg Rothstein LLP (“**Paliare**”). The Proposed Receiver has not performed an audit or other verification of such information. The Proposed Receiver’s review of financial and other information regarding the Project is preliminary and subject to further review.

2.0 Background

1. The affidavit of Paul Rayment, the Executive Vice President of Foremost Financial Inc., an affiliate of the Lender sworn on December 12, 2023 (the “**Affidavit**”) in support of the Lender’s application for the appointment of the Receiver provides, *inter alia*, the Company’s background and the events that led to the commencement of these proceedings. Accordingly, a detailed discussion of the information in the Affidavit is not repeated herein.
2. The Company is real estate development company. The Company is developing a 23-unit townhome development known as the Towns of Thornbury (the “**Project**”) on the Real Property.
3. Final closings of the sales of townhomes were originally scheduled to be completed in January 2022; however, the Project is still under construction. The Proposed Receiver has been advised that the Project will require millions of dollars greater than budgeted to be completed, and that the Company does not have the capital to fund the remaining constructions costs. The Affidavit details the construction delays, cost overruns, stop work orders and material deficiencies on the Project, which continue to be investigated and quantified by the Lender.

4. The Proposed Receiver understands that the Company pre-sold 21 units and received deposits from the purchasers, totalling approximately \$1.64 million (the “**Deposits**”). The Proposed Receiver understands that all but approximately \$53,000 of the Deposits has been used by the Borrower to fund construction costs. The Deposits are insured by Berkley Insurance Company (“**Berkley**”). Berkley has a second mortgage on the Real Property as security for the Company’s obligations to Berkley.

3.0 Creditors

3.1 Foremost

1. The Lender has a senior ranking mortgage on the Real Property, as well as a general security agreement on the Property. The Proposed Receiver understands that the Lender’s loan (the “**Loan**”) to the Company initially matured on April 1, 2022. Through two amendments, the maturity date was extended to October 1, 2023, but the Company did not repay the Loan at that time.
2. On November 6, 2023, the Lender demanded repayment of the Loan and issued Notices of Intention to Enforce Security pursuant to Section 244 of the BIA.
3. In anticipation of being appointed Receiver, the Proposed Receiver has retained DLA Piper (Canada) LLP (“**DLA**”) to act as its counsel. As of the date of this Report, DLA is reviewing the Lender’s security so that it could provide the Receiver with an opinion on the validity and enforceability of same (the “**Security Opinion**”). DLA will update the Court on the status of its Security Opinion on the return of the Lender’s application.

3.2 Other Creditors

1. As noted above, Berkley has a second mortgage on the Real Property.
2. The Proposed Receiver understands that Jose Cruz, a business partner of Nicklaus Sampogna, a director and officer of the Company and guarantor of the Lender’s advances to the Company, has registered a third mortgage on the Real Property to secure his advances to the Borrower, which advances were used to assist in construction.
3. The Proposed Receiver understands that at least one party, Cooper Equipment Rentals Limited (“**Cooper**”), has registered a construction lien on the Real Property. Cooper’s lien is in the amount of \$71,634.77. The Proposed Receiver also understands that two trade contractors had previously registered liens on title, but that those liens have since been vacated.
4. As of the date of this Report, the Proposed Receiver does not have further information concerning the Company’s unsecured creditors. The Proposed Receiver will attempt to obtain a current list of creditors from the Company, when and if appointed.

4.0 Sale Process

4.1 Request for Qualifications from Realtors

1. The Proposed Receiver is consulting with the Lender regarding the retention of a listing agent. As of the date of this Report, a listing agent has not yet been retained, but it is anticipated that one will be prior to the return of the Application. The Proposed Receiver will either file a short supplemental pre-filing report advising of the name of the Listing Agent and the rationale for its retention, or Paliare will advise the Court of same on the return of the Application.
2. Subject to Court approval, the Proposed Receiver recommends that the Sale Process proceed substantially on the basis summarized in the table below:

Milestone	Description of Activities	Timeline ¹
<i>Phase 1 – Underwriting</i>		
Due diligence	<ul style="list-style-type: none"> ➤ Execute listing agreement with the listing agent; and ➤ the Receiver and the listing agent to review all available documents concerning the Property, including financial and other information, which the Receiver intends to source from the Company and the Lender, in order to prepare marketing materials and to commence the Sale Process. 	Prior to launch date, which is projected to be on or around January 8, 2024
Finalize marketing materials	<ul style="list-style-type: none"> ➤ Listing agent and the Receiver to: <ul style="list-style-type: none"> ○ prepare a summarized marketing brochure (the “Teaser”); ○ populate an online data room; ○ prepare a confidentiality agreement (“CA”); and ○ prepare a Confidential Information Memorandum (“CIM”). 	
Prospect Identification	<ul style="list-style-type: none"> ➤ Listing agent will qualify and prioritize prospects; and ➤ Listing agent may also have pre-marketing discussions with targeted prospects. 	
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ Teaser and marketing materials printed and sent to prospects; ○ place “for sale” signs on the Real Property; ○ publication of the acquisition opportunity on regional websites and/or forums; ○ telephone and email canvass of leading prospects; and ○ meet with and interview prospective purchasers. 	January 8 to February 12, 2024

¹ Given the upcoming holiday season, the commencement of the Sale Process may be delayed by a few days depending on the date that the listing agent is retained as it will require time to prepare for the Sale Process. The overall duration of the Sale Process is not expected to change unless warranted based on the level of interest in the opportunity, as determined by the Receiver.

Milestone	Description of Activities	Timeline ¹
Stage 2	<ul style="list-style-type: none"> ➤ Listing agent to provide detailed information to qualified prospects which sign the CA, including the CIM and access to the data room; ➤ Listing agent and the Receiver to facilitate due diligence by interested parties, including tours of the Real Property; and ➤ Receiver and legal counsel will prepare a vendor's form of Purchase and Sale Agreement ("PSA") which will be made available in the data room. 	
Stage 3	<ul style="list-style-type: none"> ➤ Prospective purchasers to submit PSAs. 	
<i>Phase 3 – Offer Review and Negotiations</i>		
Bidding	<ul style="list-style-type: none"> ➤ Short listing of bidders; and ➤ Further bidding - prospective purchasers may be asked to re-submit PSAs on one or more occasions. The format for subsequent rounds of bidding will be determined by the Receiver, in consultation with the Lender, and will either be via further rounds of sealed bids, or via an auction, with the top bidders (as determined by the Receiver, in consultation with the Lender) invited to participate in the process. 	By February 21, 2024
Selection of Successful Bid	<ul style="list-style-type: none"> ➤ Select successful bidder and finalize definitive documents. 	
Sale Approval Motion and Closing	<ul style="list-style-type: none"> ➤ Prepare motion materials for Court approval. ➤ Motion for sale approval. 	By the end of February 2024
Close Transaction	As soon as possible following Court approval	

3. Additional aspects of the Sale Process include:

- a) the Property will be marketed on an “as is, where is” basis;
- b) in order to facilitate due diligence or maximize participation by interested parties in the Sale Process, the Receiver will have the right to extend any of the timelines in the Sale Process, provided the Lender does not reasonably object to the extension of the timeline, in the Receiver’s discretion;
- c) the Receiver may bring a motion to amend the Sale Process, including any timeline, if it believes appropriate to better facilitate the sale of the Property;
- d) the Receiver will have the right to reject any and all offers, including the highest dollar value offer(s), acting reasonably;
- e) if the highest and best offer received does not generate proceeds sufficient to repay the Lender in full, and the Lender does not consent to the proposed transaction, then the Lender will be entitled to submit a credit bid to purchase the Property; and
- f) any transaction will be subject to Court approval.

4.2 Sale Process Recommendation

1. The Proposed Receiver recommends that the Court issue an order approving the Sale Process for the following reasons:
 - a) the Sale Process is fair, open and transparent and is intended to canvass the market broadly on an orderly basis. The terms of the Sale Process are substantially consistent with real estate sale processes conducted in the context of receivership proceedings, including by KSV in several of its real estate receivership mandates, including the ongoing Stateview Group of Companies receivership proceedings;
 - b) there will be no delay commencing the Sale Process. The listing agent is in the process of being retained, subject to approval by the Court of the Sale Process. This should allow for the process to be conducted on a timely basis, which will assist to reduce professional and other costs;
 - c) the duration of the Sale Process is sufficient to allow interested parties to perform diligence and to submit an offer on or before the offer deadline. It is KSV's experience that listings become "stale" if exposed to the market for excessive periods of time, which is a risk of a longer process in this matter. The marketing process is subject to the Receiver's right to extend or amend timelines, as appropriate; and
 - d) the Lender has consented to the Sale Process.
2. Based on the foregoing, KSV recommends that the Court approve the Sale Process.

5.0 Receiver's Certificates

1. To the extent that funding is required during these proceedings, it is contemplated that such funding will be provided by the Lender and will be done by way of Receiver's Certificates in accordance with the model Receivership Order.
2. The proposed interest rate under the Receiver's Certificates is HSBC prime rate plus 4% (being 11.2% as of the date of this Report). The Proposed Receiver believes that the interest rate is reasonable for the following reasons:
 - a) it is in line with or lower than the current interest rate on similar facilities, including recent debtor-in-possession loans made in the context of proceedings under the *Companies' Creditors Arrangement Act*. A copy of a table summarizing (as of August 2023) court-approved financing facilities is attached hereto at **Appendix "B"** to this Report;
 - b) based on KSV's recent experience, including its commercial real estate experience, the interest rate is reasonable for a loan of this nature; and
 - c) should funding be required, the Receiver's Certificates will function to provide liquidity to fund these proceedings.

6.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

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

Appendix “B”



SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00710990-00CL

DATE: December 19, 2023

NO. ON LIST:4

TITLE OF PROCEEDING: Foremost Mortgage Holdings Corporation v 2521311 Ontario Inc O.A
Towns of Thornbury et al

BEFORE: JUSTICE CAVANAGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
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For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Brendan Bissell	Counsel for 2521311 Ontario Inc o.a Towns of Thornbury	bbissell@reconllp.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Edmond Lamek	Counsel for Receiver	edmond.lamek@dlapiper.com

ENDORSEMENT OF JUSTICE CAVANAGH:

This Application came before the Court on Friday December 15, 2023 for scheduling and was spoken to at a case conference before me on December 19, 2023. The Applicant and Respondent have agreed on the following terms:

1. KSV Restructuring Inc. shall be immediately appointed as interim receiver (“**Interim Receiver**”) pursuant to the form of Order, if approved, to be signed by me today (the “**December 19 Order**”). The Interim Receiver shall not have any authority or obligation to sell or market for sale the assets of the Respondent without further Court order, provided that the Interim Receiver may begin any necessary internal review and to prepare for the marketing process so that sales and marketing may commence if appropriate without delay at that time, including the retention of a listing agent.
2. The Applicant and Respondent, by their counsel, consent to the form of receivership order included in the Application Record (and attached hereto as Schedule “A”) (the “**Receivership Order**”) and agree between them that, subject to the court’s approval, the Receivership Order shall issue as follows:
 - (a) On or after January 31, 2024 if the Respondent has failed to provide the Applicant and the Interim Receiver with an unconditional commitment letter (the “**Commitment Condition**”) on or before January 31, 2024 to fully repay the Applicant as well as all amounts subject to the Interim Receiver’s Charge and the Interim Receiver’s Borrowings Charge (as defined in the December 19 Order) (the “**Payment Obligations**”) within 30 days of the commitment letter.
 - (b) If the Respondent has met the Commitment Condition, then the parties agree that the Respondent will have a further 30 days to permit the funding of the Payment Obligations.
 - (c) In the event that the Payment Obligations are paid in full prior to the issuance of the Receivership Order, then the Interim Receiver shall promptly bring a motion for an order for the Interim Receiver’s discharge and dismissing the application.
3. I grant the requested Order, on consent. Order to issue in form of Order signed by me today.
4. The parties shall return before me on February 5, 2024 at 9:30 a.m. for 15 minutes.

Appendix “C”

This Listing Agreement (the "**Agreement**") is entered into between **Slavens & Associates Real Estate Inc.** (the "**Listing Brokerage**") and **KSV Restructuring Inc.** (the "**Seller**") as interim receiver of the real property located at Lot 10 Louisa Street, Thornbury, Ontario (the "**Real Property**"), as well as all other property and assets related to the Real Property (the "**Property**"), pursuant to an order (the "**Interim Receivership Order**") of the Ontario Superior Court of Justice (the "**Court**") issued on December 19, 2023 and without personal or corporate liability and solely in its capacity as interim receiver under the Interim Receivership Order.

To the extent of any conflict or inconsistency between this Agreement and the MLS Listing Agreement (form 520), this Agreement shall prevail.

The Listing Brokerage and the Seller acknowledges and agrees as follows:

1. Termination Rights. The Seller may without penalty or cost to the Seller terminate the Agreement at any time, if the Listing Brokerage is in default hereunder or under any other agreement with the Seller. In addition, this Agreement shall automatically terminate if: (a) the Interim Receivership Order is revoked, overturned on appeal, suspended or terminated; and/or (b) the Seller is restricted in or enjoined from dealing with the Property by a court of competent jurisdiction; and/or (c) any of the mortgagees of the Property or any other future lenders are permitted by court order to enforce their rights and/or remedies against the Property.

2. Price. While it is the Seller's intention to obtain the highest and best offer for the Property, the Listing Brokerage acknowledges and agrees that the Seller need not accept the highest offers and/or the best offers or any offer, and that acceptance by the Seller of any offers for the Property are subject at all times to the Seller's approval in its sole and absolute discretion and as well as approval by the Court. No fee, commission or other compensation is payable to the Listing Brokerage (except as detailed in Section 6 below) in respect of the Property unless and until the sale of the Property has been completed and the purchase price consideration payable to the Seller has been paid in its entirety.

3. Holdover Period Commission. Any fee, commission or other compensation payable to the Listing Brokerage in connection with a holdover period, being six months from the termination of the Listing Agreement ("Holdover Period"), shall: (a) only apply to those purchasers who were introduced to the Seller or to the Property by the Listing Brokerage during the Listing Period and who the Listing Brokerage has previously disclosed in writing to the Seller no later than three (3) days following the earlier of the expiration or termination of the Agreement; and (b) be reduced by any fee, commission and/or other compensation paid to another broker or agent for the sale of the Property as the new Listing Brokerage (the "New Agent") on the basis of an agreement with the New Agent entered into with respect to the Holdover Period. If the Listing Brokerage had introduced up to a maximum of two (2) different prospective bona fide purchasers to the Seller during the Listing Period (each being a "Serious Prospect") and said Serious Prospect had entered into material negotiations with the Seller to purchase the Property, but said material negotiations had not resulted in a binding agreement of purchase and sale, then to the extent that each of the Listing Brokerage and the Seller agree in writing to designate said prospective purchaser as a Serious Prospect prior to the expiration of the Listing Period, and so long as the Seller is not prohibited from doing so, and provided that the New Agent has agreed to forego its fee should a sale to a Serious Prospect be completed, the Listing Brokerage shall be entitled to its commission in connection with the transaction being completed with the Serious Prospect upon terms and conditions acceptable to the Seller in their sole and absolute discretion, which transaction must be subject to Court approval and a binding and unconditional agreement of purchase and sale executed by each of the parties thereto prior to the expiration of the Holdover Period. During the Holdover Period, the Listing Brokerage will not be entitled to any commission, payment or fee as the Seller's agent if the Listing Team (as defined below) represents the purchaser.

4. Listing Brokerage's Duties. The Listing Brokerage covenants and agrees with the Seller to:

(a) pursuant to the Seller's instructions as outlined below, offer the Property for sale on an unpriced basis (save and except as described in (b) below with respect to the Multiple Listings Service ("MLS"));

(b) if instructed by the Seller, offer the Property for sale on MLS, for which the listed price shall be \$1.00, or as otherwise directed by the Seller, and the Commissions to Co-operating Brokerage shall be as listed on Schedule "A";

(c) unless otherwise agreed by the Seller, diligently market the Property for sale and use commercially reasonable efforts to sell the Property pursuant to the process set out in Schedule "B" attached hereto (the "**Sale Process**");

(d) co-operate with all licensed real estate brokers and agents in the sale of the Property (collectively the "Cooperating Agents" and each a "Cooperating Agent"), with any commissions or fees of such Cooperating Agents to be paid by the Seller as set out in Schedule "A";

(e) ensure that there is continuity in the assignment of individual staff members and partners to the work performed by the Listing Brokerage under the terms of this engagement. In particular, the Listing Brokerage agrees to ensure that Darren Slavens and Sarah Chris (collectively, the "**Listing Agent Team**") will be available to perform work in connection with the Listing Brokerage's engagement and will devote the time required to undertake the assignment contemplated herein;

(f) subject to the instructions of the Seller, to assist the Seller in negotiating binding agreements of purchase and sale subject to Court approval with those parties identified by the Seller. Only the Seller shall have authority to accept offers and the Listing Brokerage shall not have any authority whatsoever to enter into any sale, financing or other contract on behalf of the Seller and/or to otherwise bind the Seller in any manner whatsoever;

(g) continue to assist the Seller in connection with the sale of the Property and seeking Court approval after the execution of a binding agreement of purchase and sale with respect to the same until such sale has been successfully concluded; and

(h) unless the Seller's written consent is provided in advance, to act solely for the benefit of the Seller in connection with the marketing and sale of the Property and not to have any direct or indirect interest in any entity purchasing or proposal to purchase the Property and not to receive any payments or other benefits from said purchasers or potential purchasers.

5. Commission Payable to the Listing Brokerage. Subject to the terms set out herein, the Seller shall pay to the Listing Brokerage upon the successful completion of sale of the Property, a commission payable in accordance with Schedule "A" attached hereto (the "Listing Fee"). The Seller acknowledges that payment of HST applies on all commissions payable. As it relates to the commission payable, a sale constitutes a Court approved sale of the Property, share transaction, exercise of first right to purchase, option or other form of sale or transfer of the rights of the Property. The Seller agrees to notify the Listing Brokerage of the successful completion or closing. The Seller hereby instructs its solicitors to distribute payment to the Listing Brokerage in the amount noted above directly out of the proceeds of sale in accordance with an accepted agreement of purchase and sale and to have same addressed as a closing cost to the transaction.

6. Refinancing and Credit Bid Fees. If anytime during the listing period, as provided in Section 18, the Court approves: (i) a refinancing of some or all the mortgages on the Real Property by 2521311 Ontario Inc. o.a Towns of Thornbury or people or entities related to them that results in a discontinuation of the Sale Process, the Listing Brokerage shall be entitled to a fee of \$10,000 (plus applicable taxes and actual disbursements); or (ii) a credit bid by a mortgagee of the Real Property, the Listing Brokerage shall be entitled to a fee of \$10,000 (plus applicable taxes and actual disbursements).

7. Acknowledgments. The Listing Brokerage acknowledges and agrees in favour of the Seller that: (a) the Property is to be marketed and sold on an "as is, where is" basis and, accordingly, any agreement of purchase and sale shall provide an acknowledgment by such purchaser that the Property is being sold by the Seller on an "as is, where is" basis, and that no representations or warranties have been or will be made by the Seller or anyone acting on its behalf, to the Listing Brokerage or such purchaser as to the condition of the Property or any buildings located thereon; (b) the Seller may annex a schedule to the transfer/deed of land (or other registrable document with respect to the sale) expressly excluding any covenants deemed to be included pursuant to the Land Registration Reform Act of Ontario, other than one to the effect that the Seller has the right to convey the Property; (c) in lieu of a transfer/deed of land for the Property, the Seller will vest title to the Property by way of an approval and vesting order issued by the Court; and (d) the sale of the Property requires the prior approval of the Court in said Court's sole and absolute discretion.

8. Advertisement Expenses, Third Party Consultants and Reporting. All advertising and sales promotion materials shall be subject to the approval of the Seller and all such advertisement and promotional material shall be prepared, published and distributed by the Listing Brokerage and shall be at the expense of the Listing Brokerage. All third-party reports and legal service fees requested and/or approved by the Seller shall be at the expense of the Seller. The Listing Brokerage agrees to provide the Seller with detailed reporting regarding the status of the Sale Process, including weekly lists of its solicitation efforts, the parties interested in the opportunity, the status of their diligence and such other information as is reasonably requested by Seller to be kept apprised of all material developments in the Sale Process. The Listing Brokerage will participate in no less than one weekly update call with the Seller, in Seller's discretion.

9. Indemnity. The Listing Brokerage confirms that it owes an obligation to the Seller and its officers, employees and agents (collectively, the “Indemnified Parties”) to carry out its activities in a competent and professional manner acting reasonably and in good faith. As such, the Listing Brokerage hereby indemnifies the Indemnified Parties with respect to claims made by third parties against the Indemnified Parties arising out of work performed by the Listing Brokerage or the Listing Brokerage’s failure to comply with its obligations hereunder. This indemnity shall survive the expiration or termination of the Agreement.

10. Confidentiality. The Listing Brokerage shall treat and shall cause its agents to treat as confidential and shall not disclose, during as well as after the rendering of the service contracted herein, any confidential information, records or documents to which the Listing Brokerage becomes privy as a result of its performance of the Agreement and shall take all necessary steps to ensure the confidentiality of information in the Listing Brokerage’s possession or control except for disclosure that may be required for the reasonable performance by the Listing Brokerage of its responsibilities hereunder.

11. Assignment. This Agreement shall not be assigned in whole or in part by the Listing Brokerage without the prior written consent of the Seller which consent may be unreasonably and/or arbitrarily withheld and any assignment made without that consent is void and of no effect.

12. Seller’s Capacity. Notwithstanding the foregoing or anything else contained herein or elsewhere, the Listing Brokerage acknowledges and agrees that approval of the Sale Process (including the retention of the Listing Brokerage) and any transaction or transactions involving a sale of the Property require the prior approval of the Court in the Court’s sole and absolute discretion.

13. Warranty. Subject to Section 12 above and the remainder of this Section 13, the Seller represents and warrants that upon approval by the Court the Seller will have the exclusive authority and power to execute this Agreement and to authorize the Listing Brokerage to offer the Property for sale. Notwithstanding the foregoing, the Listing Brokerage acknowledges and agrees that the Seller has only limited knowledge about the Property and cannot confirm any third-party interests or claims with respect to the Property such as rights of first refusal, options, easements, mortgages, encumbrances or other otherwise concerning the Property, which may affect the sale of the Property.

14. Execution. This Agreement and any other agreement delivered in connection therewith, and any amendments thereto, may be executed by electronic copy or such similar format and if so executed and transmitted, will be for all purposes as effective as if the parties had delivered an executed original of this Agreement, or such other agreement or amendment, as the case may be, and shall be deemed to be made when the receiving party confirms this Agreement, or such agreement or amendment, as the case may be, to the requesting party by electronic copy or such similar format. This Agreement may be executed in several counterparts, and each of which so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument and, notwithstanding their date of execution, shall be deemed to bear date as of the date first written above.

15. Jurisdiction. This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario. If any provision hereof is invalid or unenforceable in any jurisdiction where this Agreement is to be performed, such provision shall be deemed to be deleted and the remaining portions of this Agreement shall remain valid and binding on the parties hereto.

16. Finder’s Fees. The Seller does not consent to the Listing Brokerage or any Cooperating Agents (or their respective affiliates) receiving and retaining, in addition to the commission provided for or otherwise contemplated in this Agreement, a finder’s fee for any financing of the Property.

17. Verification of Information. The Seller authorizes the Listing Brokerage to obtain any information from any regulatory authorities, governments, mortgagees or others affecting the Property and the Seller agrees to execute and deliver such further authorizations in this regard as may be reasonably required. For greater certainty, none of the Listing Brokerage or the Listing Brokerage’s representatives may bind the Seller or execute any documentation on behalf of the Seller. The Seller hereby authorizes, instructs and directs the above noted regulatory authorities, governments, mortgagees or others to release any and all information to the Listing Brokerage.

18. Listing Period. The term of this Agreement shall begin upon acceptance of this Agreement (the “Commencement Date”) and shall expire one minute before midnight on the sixth month anniversary of the Commencement Date or upon earlier termination as otherwise prescribed herein. Notwithstanding any other provision in this Agreement, the Listing Brokerage shall not advertise the Property on MLS until the Seller provides expressed authority to do so and all marketing materials have been approved. The Listing Brokerage shall have five (5) days following said approval to post the Property on the MLS.

SLAVENS AND ASSOCIATES REAL ESTATE INC.

Per: _____

Name:

Title:

**KSV RESTRUCTURING INC. SOLELY IN ITS
CAPACITY AS COURT APPOINTED INTERIM
RECEIVER OF 2521311 ONTARIO INC. AND NOT
IN ITS PERSONAL CAPACITY**

Per: _____

Name: Robert Kofman

Title: President

Schedule "A"

In respect of a transaction that is not a credit bid or refinancing, the Listing Brokerage will:

- a. be entitled to a 2% total commission on the gross selling price (plus HST, if applicable) up to \$10 million, if a transaction is solely completed by the Listing Brokerage. If co-operating, the commission will be increased to 3.5%, with 2.5% being payable to the Cooperating Agent and 1% to the Listing Brokerage, plus applicable taxes; and
- b. in addition to the above amount, on sale amounts over \$10 million, the Listing Brokerage will be entitled to 4% commission, based on the excess of the gross selling price over \$10 million (plus HST), if solely completed by the Listing Brokerage. If co-operating, the commission will be increased to 6% with 2.5% being payable to the Cooperating Agent and 3.5% to the Listing Brokerage, plus applicable taxes.

Section 6 of this Agreement sets out the fees payable to the Listing Brokerage in respect of a refinancing or credit bid.

Schedule "B"

Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Due diligence	<ul style="list-style-type: none"> ➤ Execute listing agreement with the listing agent; and ➤ the Receiver and the listing agent to review all available documents concerning the Property, including financial and other information, which the Receiver intends to source from the Company and the Lender, in order to prepare marketing materials and to commence the Sale Process. 	Prior to and shortly following¹ the launch date, which is projected to be on or around February 6, 2024
Finalize marketing materials	<ul style="list-style-type: none"> ➤ Listing agent and the Receiver to: <ul style="list-style-type: none"> ○ prepare a summarized marketing brochure (the "Teaser"); ○ populate an online data room; ○ prepare a confidentiality agreement ("CA"); and ○ prepare a Confidential Information Memorandum ("CIM"). 	
Prospect Identification	<ul style="list-style-type: none"> ➤ Listing agent will qualify and prioritize prospects; and ➤ Listing agent may also have pre-marketing discussions with targeted prospects. 	
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ Teaser and marketing materials printed and sent to prospects; ○ place "for sale" signs on the Real Property; ○ publication of the acquisition opportunity on regional websites and/or forums; ○ telephone and email canvass of leading prospects; and ○ meet with and interview prospective purchasers. 	February 6 to March 12, 2024
Stage 2	<ul style="list-style-type: none"> ➤ Listing agent to provide detailed information to qualified prospects which sign the CA, including the CIM and access to the data room; ➤ Listing agent and the Receiver to facilitate due diligence by interested parties, including tours of the Real Property; and ➤ Receiver and legal counsel will prepare a vendor's form of Purchase and Sale Agreement ("PSA") which will be made available in the data room. 	
Stage 3	<ul style="list-style-type: none"> ➤ Prospective purchasers to submit PSAs. 	
<i>Phase 3 – Offer Review and Negotiations</i>		
Bidding	<ul style="list-style-type: none"> ➤ Short listing of bidders; and ➤ Further bidding - prospective purchasers may be asked to re-submit PSAs on one or more occasions. The format for subsequent rounds of bidding will be determined by the Receiver, in consultation with the Lender, and will either be via further rounds of sealed bids, or via an auction, with the top bidders (as determined by the Receiver, in consultation with the Lender) invited to participate in the process. 	By March 21, 2024
Selection of Successful Bid	<ul style="list-style-type: none"> ➤ Select successful bidder and finalize definitive documents. 	

¹ Certain of the diligence materials contemplated in phase 1 have not yet been assembled. The change to this phase of the Sale Process is highlighted.

Milestone	Description of Activities	Timeline
Sale Approval Motion and Closing	<ul style="list-style-type: none"> ➤ Prepare motion materials for Court approval. ➤ Motion for sale approval. 	By the end of March 2024 or as soon as possible thereafter ²
Close Transaction	As soon as possible following Court approval	

² Subject to Court availability.