

**ONTARIO
SUPERIOR COURT OF JUSTICE**

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondents

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

**CASE CONFERENCE BRIEF OF THE SURETIES
(Case Conference April 14, 2026 at 12:00 PM)**

April 10, 2026

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Insurance Company

TO: SERVICE LIST

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BACKGROUND

1. In May 2020, 1776411 Ontario Ltd. (“**1776411**”) acquired the property at 1333 Weber Street, Kitchener for the development of a multi-phase condominium project (the “**Project**”).
2. In Ontario, a condominium developer must register with Tarion Warranty Corporation and post security in order to secure the deposits paid by unit purchasers and guarantee the developer’s statutory warranty obligations. Developers typically obtain and provide Tarion Bonds for this purpose. A unit purchaser’s deposits must be held in a designated trust account and may only be released to the developer to finance the development of the project if the developer obtains an Excess Condominium Deposit Insurance (“**ECDI**”) Policy which guarantees that the deposits will be repaid if the developer fails to deliver the purchaser’s condominium unit in accordance with the purchase agreement.
3. 1776411 sought the necessary Tarion Bonds and ECDI Policies for the Project from Aviva Insurance Company of Canada and Liberty Mutual Insurance Company (collectively, the “**Sureties**”), through their administrative agent. As a condition of obtaining the required security, on July 29, 2021, Werner Leuschner, Kamal Patel, 1639993 Ontario Ltd., and Jaykam Developers Limited (collectively, the “**Indemnitors**”) were required to execute an Indemnity Agreement in favour of the Sureties, pursuant to which the Indemnitors agreed to indemnify the Sureties for any and all losses incurred under any Bonds and Policies issued to 1776411. In reliance on the Indemnity Agreement, the Sureties issued the requested Tarion Bonds and ECDI Policies, without which 1776411 would not have been able to proceed with the Project or obtain the release of purchasers’ deposits totalling more than \$7 million. **[TAB 1]**

4. On October 12, 2023, KSV Restructuring Inc. (the “**Receiver**”) was appointed as receiver and manager of the assets of 1776411 pursuant to a Receivership Order (the “**Receivership Order**”). There is no dispute that the Receivership Order does not include a stay of proceedings against any of the Indemnitors. **[TAB 2]**

5. The Receiver obtained an order permitting it to disclaim numerous agreements of purchase and sale entered by 1776411 with respect to the Project, with the result that the purchaser deposits paid thereunder were required to be returned by the Sureties, together with interest in accordance with the *Condominium Act*. The Sureties are not aware of any factual or legal basis for disputing the losses and expenses incurred by the Sureties or the Sureties’ right to recover the same under the Indemnity Agreement, and the Indemnitors have not advised of any such basis. **[TAB 3]**

6. On November 25, 2025, the Sureties commenced an action against the Indemnitors seeking payment of \$12,561,718.20 pursuant to the Indemnity Agreement (the “**Indemnity Action**”). The Indemnity Action is a claim for contractual indemnity; it is not a guarantee action, as incorrectly asserted by the Receiver. As such, the Indemnity Action does not depend on the outcome of any underlying claim or other proceeding. Notably, the Indemnity Action does not fall within the scope of matters contemplated by the Consolidated Practice Directions concerning the Commercial List. Importantly, given the nature of the Indemnity Action and the extensive and well-established case law regarding surety indemnity agreements, the Indemnity Action is well-suited for determination by way of summary judgment following the close of pleadings. **[TAB 4]**

THE INDEMNITY ACTION SHOULD PROCEED INDEPENDENTLY

7. The Indemnitors have delivered a Notice of Intent to Defend; however, no Statement of Defence has been delivered. In response to the Sureties’ demand for a defence, the Indemnitors

incorrectly asserted that all proceedings in connection with the Project were stayed and referred the Statement of Claim to the Receiver. [TAB 5]

8. The Receiver subsequently advised of its view that the Indemnity Action should be heard on the Commercial List together with the unrelated other actions referred to in the Receiver's Case Conference Brief, and advised that a Case Conference would be scheduled to address the issue.

9. The Sureties advised of their position that the Receiver has no standing in relation to the Indemnity Action or the defendants therein, and that the Receiver's attempted procedural management of the Indemnity Action falls outside the scope of its mandate and is therefore *ultra vires* to the Receiver's authority. The Sureties asserted that their participation in a Case Conference was unnecessary; however, the Receiver suggested that it "might not be a good look" if the Sureties did not attend. [TAB 6]

10. The Receiver asserts that it is "unknown whether the surety claim is being held in abeyance"; however, the Sureties have confirmed in no uncertain terms their intention to proceed expeditiously and they have demanded that a Statement of Defence be delivered. The Indemnitors rely on the pendency of this Case Conference to resist pleading.

11. Procedurally tying the Indemnity Action to the unrelated, more complex proceedings, as proposed by the Receiver, would materially prejudice the Sureties by delaying recovery on a claim well-suited for expeditious determination. In addition, it should be noted that interest is accruing on the amount owing by the Indemnitors at the rate of 18% per annum.

12. The Sureties do not consent to the Indemnity Action being tried together with the other actions listed in the Case Conference Brief of the Receiver.

Tab 1

INDEMNITY AGREEMENT

BY:

1776411 ONTARIO LTD., IN ITS CAPACITY AS THE GENERAL PARTNER OF 1333 WEBER STREET KITCHENER LP
8-258 EDGEWATER CRESCENT
KITCHENER, ONTARIO
N2A 4M2

(hereinafter called the "Principal")

AND BY:

1639993 ONTARIO LTD.
8-258 EDGEWATER CRESCENT
KITCHENER, ONTARIO
N2A 4M2

JAYKAM DEVELOPERS LIMITED
29 IDLE RIDGE COURT
KITCHENER, ONTARIO
N2A 3W3

WERNER LEUSCHNER, in a personal capacity
8-258 EDGEWATER CRESCENT
KITCHENER, ONTARIO
N2A 4M2

KAMAL PATEL, in a personal capacity
142 FERGUS AVENUE
KITCHENER, ONTARIO
N2A 2H2

(hereinafter called an "Indemnitor" and collectively called the "Indemnitors")

IN FAVOUR OF:

AVIVA INSURANCE COMPANY OF CANADA

(hereinafter called "Aviva")

AND:

LIBERTY MUTUAL INSURANCE COMPANY

(hereinafter called "Liberty")

AND:

WESTMOUNT GUARANTEE SERVICES INC., in its capacity as administrative agent for Aviva Insurance Company of Canada, and Liberty Mutual Insurance Company

(hereinafter called "Westmount")

(hereinafter individually and collectively called the "Surety")

IN CONSIDERATION OF THE ARRANGEMENT AND ISSUE BY THE SURETY OF BONDS AND/OR POLICIES AS DEFINED HEREUNDER AND IN ACCORDANCE WITH AN AGREED UPON SURETY FACILITY, THE UNDERSIGNED COVENANT AND AGREE AS FOLLOWS:

1. This Indemnity Agreement amends, restates, and replaces all other Indemnity Agreements in their entirety with respect to the condominium project located at 1333 Weber St. E., Kitchener, ON.
2. *Date and place of execution of the present agreement* - The present agreement, for all legal intents and purposes, is deemed to have been executed the 29th day of July, 2021, in the Province of Ontario.
3. *The "Principal"* - All references herein to the "Principal" mean one or the other or each of the parties designated hereinabove as the "Principal".
4. *The "Undersigned"* - For purposes of the present agreement, "Undersigned" means collectively the Principal and the Indemnitors, and their respective successors and permitted assigns.
5. *Purpose of the present agreement and definition of "Bonds and/or Policies"* - The purpose of the present agreement is:
 - a. to set forth the rights of the Surety and other beneficiaries, and
 - b. to set forth the rights and obligations of the Undersigned flowing from the execution of one or several bonds and/or policies to guarantee the obligations of any Principal or other forms of guarantee or obligation or one or several policies of insurance (herein called the "Bonds and/or Policies"); the word "Bonds and/or Policies" includes any alteration, renewal, continuance, replacement or extension of such bonds or policies of insurance.
6. *Bonded Obligations* - For purposes of the present agreement, any reference to "Bonded Obligations" means obligations or undertakings in respect of which one or more Bonds and/or Policies which have been issued or which are issued or amended in the future.

7. *Indemnitors' interest in the Principal* - The Indemnitors acknowledge that the present agreement will remain in full force and effect and continue to bind them even if they never had (or no longer have) any interest in the Principal or each of them.
8. *Consideration for the present agreement* - The Undersigned acknowledge that the Surety requires their signatures to the present agreement in consideration:
- a. of the issue of Bonds and/or Policies, whether past, present and future, by the Surety or by others referred to in paragraph 8 herein, directly or indirectly,
 - b. of the Surety refraining from cancelling such Bonds and/or Policies, and
 - c. (outside the Province of Quebec), of the sum of Two Dollars and other good and valuable consideration paid and furnished by the Surety to each of the Undersigned (the receipt and sufficiency of which are hereby acknowledged).
9. *Additional beneficiaries of the present agreement* - All of the terms and conditions of the present agreement are for the benefit of:
- a. any successors or assigns of the Surety, including as a result of mergers, acquisitions of portfolios, or otherwise,
 - b. any surety, joint or several, any re-insurance company and any other surety procured by the Surety upon the request of the Principal to issue Bonds and/or Policies, whether or not such Bonds and/or Policies are issued by the Surety or whether or not the Surety retains any interest in any such Bonds and/or Policies, and
 - c. any agent appointed by the Surety or acting on behalf of the Surety for the administration, arrangement and/or issuance of any Bonds and/or Policies.
10. *Parties bound by the present agreement* - Each of the Undersigned acknowledges that it is bound by all of the terms and conditions of the present agreement, as are its representatives, successors and permitted assigns.
11. *Joint and several obligation of the Undersigned* - The Undersigned agree that they bind themselves jointly and severally with respect to all of the obligations assumed hereunder; this means that each of the Undersigned may be compelled separately to perform all of the Undersigned's obligations hereunder.
12. *Waiver of the benefit of division* - The Undersigned specifically waive the benefit of division, which would, in the absence of the present waiver, permit any one Undersigned to require the Surety to divide its claim proportionately amongst all the Undersigned.
13. *Waiver of the benefit of discussion* - The Indemnitors specifically waive the benefit of discussion, which would, in the absence of the present waiver, permit the Indemnitors to require the Surety to exhaust its recourses against the Principal, before calling upon the Indemnitors under the present agreement.
14. *Obligations in respect of Bonds and/or Policies, Bonded Obligations and the present agreement* - The Principal agrees to fulfill and the Indemnitors agree to cause the Principal to fulfill all of the Principal's obligations under:
- a. Bonds and/or Policies, and
 - b. Bonded Obligations.

The Undersigned undertake to do nothing which could give rise to a claim or a default under the terms of the present agreement, of any Bond and/or Policy or of any Bonded Obligation.

15. *Indemnification of the Surety* - The Undersigned undertake to indemnify and save harmless the Surety and any agent acting on behalf of the Surety in full for any and all losses, charges, damages, expenses, costs, claims, demands and liabilities that it may suffer arising from the issue of one or several Bonds and/or Policies, or arising from a decision not to issue any Bond and/or Policies, or arising from any claims being made, or arising by reason of the Surety undertaking its obligations under any Bond and/or Policies, or arising from any default by the Undersigned under the present agreement or in enforcing any of the conditions or covenants thereof. The present undertaking includes, without limitation, the obligation of the Undersigned to reimburse to the Surety and any agent acting on behalf of the Surety all sums which it might be called upon to pay:
- a. as a result of a judgment, arbitration award or settlement;
 - b. as damages of any nature, including punitive and exemplary damages, as the case may be;
 - c. in respect of any claim, liability or loss;
 - d. as expenditure, costs or fees that it may incur, including the cost of internal or external adjusters, lawyers and consultants;
 - e. in satisfaction of judicial and extra-judicial fees and disbursements of the Surety's counsel on a substantial indemnity scale and legal fees of claimants' counsel; and
 - f. as administration costs related to claims under Bonds and/or Policies and under this agreement.
16. *Obligation to pay the premium* - The Undersigned undertake to pay to the Surety:
- a. the initial premium for the issue of any Bond and/or Policy, in conformity with the Surety's tariff in force, or such other tariff as may be agreed upon with the Principal; and
 - b. thereafter, any additional or other premium, in conformity with the Surety's tariff in force or such other tariff as may be agreed upon with the Principal until such time as the Surety receives proof to its satisfaction, confirming its complete release from all Bonds and/or Policies issued by it, and from the renewal or extension of such Bonds and/or Policies.

17. *Reduction of obligations* - The Undersigned's obligations hereunder, may be reduced to zero from time to time without affecting the validity, perfection or enforceability of this Indemnity Agreement for subsequent obligations until this Indemnity Agreement is terminated in accordance with the terms hereof.
18. *Subordination of Indemnitors* - None of the Indemnitors shall enforce any rights of contribution or indemnity against any Principal or its property and undertakings until such Principal's obligations to the Surety under this agreement have been satisfied in full.
19. *Undersigned's obligation to advance funds required by the Surety to meet its obligations* - In order to permit the Surety to meet its obligations under the Bonds and/or Policies, the Undersigned undertake to advance to the Surety upon demand, funds or satisfactory guarantees sufficient to allow the Surety to perform any or all of its obligations under the Bonds and/or Policies, which could be subject to indemnification under the terms of the present agreement, even before any payment has been made by the Surety to a third party. Without limiting the generality of the foregoing, the Undersigned undertake to advance funds or furnish guarantees, as soon as the Surety establishes or increases a reserve with respect to a claim or a situation relating to any Bonds and/or Policies, up to the amount of such reserve which will be established by the Surety in its sole discretion.
20. *Advance and payment to the Surety when the Principal requires the Surety to take part in an action or a defence* - The Undersigned undertake to advance and pay to the Surety funds sufficient to satisfy any judgment or arbitration award which could be rendered against the Surety, as well as disbursements or costs incurred by the Surety or awarded against it, including judicial or extra-judicial fees and disbursements of the Surety's counsel on a substantial indemnity scale, when the Principal requires the Surety to take part in any legal action or in the defense of any legal proceedings. The Undersigned undertake to make further advances and payments when required by the Surety.
21. *Investment and use of advances to the Surety* - The Surety may hold any advance made by any Undersigned, in such form as the Surety may in its sole discretion decide, and shall have no obligation to invest, or provide any income or return on any such advance. The Surety may use all or any part of such advance and any income earned thereon, in payment or compromise of any of the Undersigned's obligations hereunder.
22. *Decision as to the payment of claims* - The Undersigned acknowledge that the Surety will have the right, in its sole and entire discretion, to decide whether to pay, settle or contest any claim under a Bond, without any obligation to consult or advise the Undersigned in advance of so doing.
23. *Proof of payments made by the Surety* - The Undersigned acknowledge their obligation to indemnify the Surety in virtue of the present agreement, upon presentation by the latter of a release or a copy of a cheque or any other proof of payment, which will be deemed to be complete proof of the amount paid and of the Surety's right to make such payment as a result of the issue of the Bonds and/or Policies and, consequently, its right to demand reimbursement from the Undersigned under the terms of the present agreement.
24. *Surety's right of access to the books and records of the Undersigned* - The Undersigned hereby grant to the Surety full right of access to, examination of and making of copies of, during normal business hours, their books, records, files, computer records and accounts, for such period as any rights and obligations under Bonds and/or Policies remain in effect or so long as the Undersigned are potentially or actually indebted to the Surety for any sum or sums whatsoever.
25. *Undertaking to furnish certain information* - The Undersigned undertake to furnish to the Surety, on demand, all information or pertinent documentation required by the Surety relevant to:
- a. the Undersigned's financial position;
 - b. any modification to the corporate or partnership structure of any of the Undersigned, particularly any change of name, merger, amalgamation, etc.
26. *Undertaking to deliver certain documents to the Surety* - So long as the Surety has any potential liability under any Bond and/or Policy, the Undersigned undertake, without delay, to deliver to the Surety copies of the following documents:
- a. the annual or interim financial statements of each Undersigned;
 - b. any petition for a receiving order, petition in bankruptcy or proceeding for arrangement with its creditors made against or by an Undersigned;
 - c. any proposal by an Undersigned to its creditors; and
 - d. any notice of default or action involving an Undersigned, which could result in a claim under a Bond and/or Policy and every letter, document advice, statement of claim or writ received by an Undersigned on behalf of any person who asserts or threatens any claim against a Bond, Policy or an Undersigned.
27. *Co-operation and discharge* - The Undersigned undertake to cooperate with the Surety in any way which may assist the Surety in limiting, reducing or discharging its obligations under any Bond and/or Policy in accordance with its terms and particularly in respect of any proceeding taken against the Surety, without any obligation on the Surety's part to indemnify them. The present undertaking includes that of being present at any examination or trial relating to any Bond and/or Policy or to any right granted to the Surety under the present agreement. The Surety may, at any time, take such action as it deems necessary or proper to obtain its release from any and all liability under any Bond and/or Policy.
28. *Information concerning the Undersigned* - The Undersigned specifically authorize the Surety to obtain any credit or any other information, including, without limitation, personal information concerning any or all Undersigned which it desires and which is pertinent to the conclusion or the execution of the present agreement and to the issue of any Bond and/or Policy, and any person, credit bureau, bank, financial institution, obligee and accountant possessing any such information is, by this agreement, authorized to communicate such information to the Surety, on demand, during the life of the present agreement and, if necessary, thereafter. In so doing, the Undersigned expressly acknowledge and agree that they are hereby giving their individual consents to the Surety to obtain, use and distribute such personal information, in compliance with all applicable federal and provincial privacy legislation.
29. *Authorization to the Surety to make changes* - The Surety is hereby authorized to make the following changes, without notice to the Indemnitors and without relieving the obligations of the Undersigned herein:

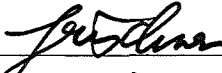
- a. in the terms of any Bond and/or Policy or Bonded Obligations;
 - b. in the designation of any obligee of a Bond and/or Policy;
 - c. respecting any renewal, continuation, replacement, reinstatement or extension of any Bond and/or Policy;
 - d. correcting errors in and executing any substitute to any Bond and/or Policy with the same or different conditions, provisions, amounts and obligees; and
 - e. for the purpose of completing the present agreement or any Bond and/or Policy or of correcting errors of declaration or description of Bonds and/or Policies or of the present agreement.
30. *Validity of the present agreement notwithstanding the absence of the signatures of one or more Undersigned or witnesses* - The present agreement will be and will remain in full force, even if one or more of the Undersigned designated herein, or one or more of the witnesses have not signed the present agreement or their signature has been adjudged invalid.
31. *Failure of the Principal to sign or deliver any Bond and/or Policies* - The Undersigned are fully responsible under the present agreement even in the event that the Principal has not signed any Bond and/or Policy signed by the Surety or that a Bond and/or Policy has not been delivered to an obligee, without prejudice to the Surety's right to assert that it is not liable under such Bond and/or Policy.
32. *Settlement with one or several Undersigned* - In the event of a claim by the Surety against the Undersigned in virtue of the present agreement or in virtue of any other rights of the Surety, the Undersigned specifically authorize the Surety to settle such claim with one or several of the Undersigned, without reference to the others and such settlement shall not affect or reduce the obligations of such others. The Undersigned expressly renounce and waive any rights which they may have to be discharged from their obligations or to have such obligations reduced by reason of the discharge of one or several Undersigned.
33. *Surety's rights following settlement with one Undersigned* - The Undersigned agree that any settlement made by the Surety with one of them will not affect novation of the obligations of the Undersigned in question (i.e. substituting or extinguishing its obligations) and the present agreement will retain all of its force in the event of a default by such Undersigned to honour the terms of the settlement and without prejudice to all of the Surety's rights against the other Undersigned.
34. *Interest rate* - All sums due by the Undersigned in virtue of the present agreement will bear interest in favour of the Surety, on the thirtieth (30th) day following the demand for payment from the Surety, at the rate of eighteen (18%) percent per annum, with such interest to be calculated monthly not in advance, and any unpaid interest shall be added to the outstanding sums due, and same shall collectively bear interest in the same manner and at the same rate, with interest on overdue interest to be calculated and compounded monthly at the same rate, until such time as the entire sums due are paid in full to the Surety.
35. *Persons authorized to request the execution of Bonds and/or Policies* - Requests to the Surety to execute any Bond and/or Policy may be made by any of the Principal or (where a Principal is not an individual) any officer, employee or partner of any of the Principal, or by an agent or broker which the Surety reasonably believes represents any Principal, or by any Indemnitor. Such requests, whether made in writing (mailed, delivered or faxed), by telegraph, by email, by personal interview or by telephone, shall be regarded as sufficient and ample authority for the Surety to execute any such Bond and/or Policy.
36. *Surety's right to refuse to issue a Bond and/or Policy* - The Undersigned acknowledge that the Surety, in its sole and entire discretion, has the right to refuse to issue, furnish or procure any Bond and/or Policy and the Undersigned renounce and waive any recourse against the Surety resulting from such refusal.
37. *Notice of issue of Bonds and/or Policies* - The Indemnitors expressly agree that the Surety is not obliged to advise them of the issue of any Bond and/or Policy nor to deliver a copy to the Indemnitors.
38. *Notice of changes in any Bonds and/or Policies or any Bonded Obligations* - The Indemnitors expressly agree that the Surety is not obliged to advise them of any change, addition, substitution or extension made to any Bond and/or Policy or Bonded Obligations; moreover, the Indemnitors renounce any right to raise such changes, additions, substitutions or extensions for the purpose of reducing or eliminating their obligations by virtue of the present agreement.
39. *Termination of the present agreement and its effect upon outstanding Bonds and/or Policies* - The present agreement shall only be terminated by any Indemnitor, upon prior written notice to Westmount Guarantee Services Inc. ("Westmount"), in its capacity as administrative agent to the Surety, by registered mail at its head office, at least thirty days prior to its effective date; however, any such termination shall only be in respect of future obligations; for greater certainty, such termination shall have no effect, and shall not modify, nor exclude, nor discharge that Indemnitor's obligations relating to Bonds and/or Policies issued prior to the effective date of termination or Bonds and/or Policies issued after the effective date of termination by reason of undertakings by the Surety prior to such date. In any event, and notwithstanding the termination in respect of any particular Indemnitor, the present agreement will remain in full force and effect as regards the other Undersigneds without any obligation on the part of the Surety to advise such other Undersigneds of such termination. It shall be the responsibility of the terminating party to ascertain the correct address at the time of Westmount. Such address is always a matter of public record. The current contact information of Westmount is 600 Cochrane Drive, Suite 205, Markham, Ontario L3R 5K3.
40. *Effect of the execution of a new indemnity agreement* - The execution of a new indemnity agreement with respect to any Principal, shall not have the effect of terminating the present agreement which shall remain in full force and effect, unless expressly terminated in writing according to the terms hereunder.
41. *Events not affecting the obligations of the Undersigned* - The Undersigned acknowledge that the following events are in addition to any other rights of the Surety under the present agreement and shall not in any way release, waive or abridge any right or remedy of the Surety under the present agreement:
- a. the fact that another guarantee has been or will be given to the Surety (particularly any other security or indemnity agreement); or
 - b. the fact that the Surety has consented to any action taken by the Principal; or
 - c. any action, judgment, arbitration award or settlement arising from the present agreement; or

- d. the fact that the Surety has renounced or waived any recourse against whomsoever or has given to whomsoever a release in virtue of the present agreement or other agreements or in respect of any security.
- 42. *Surety's additional rights* - The rights of the Surety by virtue of the present agreement are in addition to any rights which the Surety may have by law or otherwise.
- 43. *Surety's right to intervene* - In the event of: any default of the Principal under any Bond and/or Policy; or any default of the Undersigned or any of them under the present agreement; or any action by the Undersigned or any of them which could affect the rights of the Surety under any Bond and/or Policy or under the present agreement; or any act of bankruptcy of the Undersigned or any of them or the insolvency of the Undersigned or any of them or the making by the Undersigned or any of them of any arrangement with its creditors; or any default by the Undersigned or any of them with respect to any of its secured creditors; or any other act, event, circumstance or occurrence which, in the Surety's reasonable discretion, gives rise to any concern as to the enforcement of its right hereunder, the Surety may, without notice of default, intervene in any project for the purpose of assuming its obligations and exercising any of its rights under the Bonds and/or Policies.
- 44. *Modifications of the terms of the present agreement* - No derogation from the terms of the present agreement, nor any modification of such terms, may be set up against the Surety without the prior written consent of one of its officers.
- 45. *Applicable law* - The present agreement will be interpreted in accordance with the laws in force in the Province named in Paragraph 1 hereof.
- 46. *Seal and corporate resolution* - The Undersigned agree that the absence of any corporate seal or corporate resolution will not invalidate the obligations of any Undersigned under the present agreement.
- 47. *Gender and number* - In the present agreement the singular form includes the plural and the plural includes the singular; also the feminine includes the masculine and the masculine includes the feminine.
- 48. *Headings* - The insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this agreement.
- 49. *Language* - The parties hereto have requested that the present agreement be drafted in the English language. Les parties aux présentes ont requis que la présente convention soit rédigée dans la langue anglaise.
- 50. *Counterparts* - This document may be executed in any number of counterparts, each of which when so executed and delivered, shall be deemed an original and all of which taken together shall be deemed to constitute one and the same document. Signature pages may be detached from multiple separate counterparts and attached to a single counterpart so that all signature pages are attached to the same document.
- 51. *Facsimile and Electronic Transmission* - This document shall be sufficient and effective in all respects if executed and delivered by facsimile or other electronic means (including in "pdf" format). A photocopied, faxed or emailed copy of this executed document may be relied upon by all of the parties thereto to the same extent as if it were an original executed version.
- 52. *Electronic Execution* - It is expressly acknowledged and agreed that the execution of this document may be made or manifested in an electronic format, and may be executed by way of an electronic signature (as such term is defined in the Electronic Commerce Act 2000, S.O. 2000 as amended), undertaken by or through a computer program or any other electronic means, as expressly provided or contemplated by (and in accordance with the provisions of) the Electronic Commerce Act 2000, S.O. 2000, as amended. If this document is executed by way of an electronic signature pursuant to the foregoing, it shall be deemed to be valid, binding and enforceable upon the party or parties so executing same electronically. If and when a party hereto executes this document by or through electronic signing platform, then such party or parties shall, upon the request of the other, be obliged to forthwith provide the other party hereto with a certificate of completion (or any similar certificate) produced or issued by the electronic signing platform which confirms, verifies and/or validates the electronic signature of the party or parties so executing same electronically, provided that the failure to provide such certificate shall not negate the validity and/or enforceability of this document by the parties hereto.

THE UNDERSIGNED ACKNOWLEDGE HAVING RECEIVED A COPY OF THE AGREEMENT, CAREFULLY READ IT AND THAT THEY UNDERSTAND ALL OF THE TERMS AND CONDITIONS OF THE PRESENT AGREEMENT AND THAT THERE EXIST NO OTHER AGREEMENTS OR UNDERSTANDINGS WHICH IN ANY WAY COULD LESSEN OR MODIFY THE OBLIGATIONS SET FORTH HEREIN.

CORPORATE INDEMNITORS AND / OR PARTNERSHIPS SIGN HEREUNDER. IF THE UNDERSIGNED IS A CORPORATION, EXECUTE IN FULL CORPORATE NAME BY PROPER OFFICER(S) AND ATTACH CORPORATE RESOLUTION(S). IF THE UNDERSIGNED IS A PARTNERSHIP, SET FORTH NAME IN FULL, WITH THE SIGNATURE(S) OF THE PARTNER(S) EXECUTING ON ITS BEHALF SET OUT IMMEDIATELY BELOW. EACH PARTNER SHOULD ALSO SIGN SEPARATELY AS A PERSONAL INDEMNITOR.

Principal: 1776411 ONTARIO LTD., IN ITS CAPACITY AS THE GENERAL PARTNER OF 1333 WEBER STREET KITCHENER LP



 Signature
Werner Leuschner - President

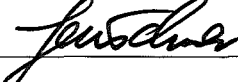
 Name & Title of Authorized Signing Officer (in block letters)

 Signature

 Name & Title of Authorized Signing Officer (in block letters)

I / We have authority to bind the corporation

Indemnitor: 1639993 ONTARIO LTD



 Signature
Werner Leuschner

 Name & Title of Authorized Signing Officer (in block letters)

 Signature

 Name & Title of Authorized Signing Officer (in block letters)

I / We have authority to bind the corporation

Indemnitor: JAYKAM DEVELOPERS LIMITED

Signature

Signature

Name & Title of Authorized Signing Officer (in block letters)

Name & Title of Authorized Signing Officer (in block letters)

I / We have authority to bind the corporation

PERSONAL INDEMNITORS SIGN HEREUNDER

Witness: Stefan Leuschner
Name in block letters

WERNER LEUSCHNER, in a personal capacity

[Signature]
Signature of Witness

[Signature]
Signature of Personal Indemnitor

Address: 8-258 Edgewater Crerc.
Kitchener, ON N2A 4H2

Witness: _____
Name in block letters

KAMAL PATEL, in a personal capacity

Signature of Witness

Signature of Personal Indemnitor

Address: _____

Indemnitor: JAYKAM DEVELOPERS LIMITED



Signature

KAMAL PATEL PRESIDENT

Name & Title of Authorized Signing Officer (in block letters)

Signature

Name & Title of Authorized Signing Officer (in block letters)

I / We have authority to bind the corporation

PERSONAL INDEMNITORS SIGN HEREUNDER

Witness:

Name in block letters

Signature of Witness

Address:

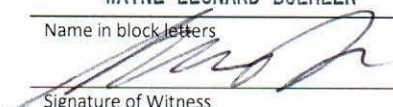
WERNER LEUSCHNER, in a personal capacity

Signature of Personal Indemnitor

Witness:

WAYNE LEONARD BOEHLER

Name in block letters


Signature of Witness

Address:

KAMAL PATEL, in a personal capacity



Signature of Personal Indemnitor

Tab 2

Court File No. CV-23-00706813-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	THURSDAY, THE 12 th
)	
JUSTICE CAVANAGH)	DAY OF OCTOBER, 2023

GENESIS MORTGAGE INVESTMENT CORP.

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondents

**ORDER
(Appointing Receiver)**

THIS APPLICATION made by the Genesis Mortgage Investment Corp. (the "**Applicant**") for an Order pursuant to section 243(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended (the "**CJA**") appointing KSV Restructuring Inc. ("**KSV**") as receiver and manager (in such capacities, the "**Receiver**") without security, of (i) the real property legally described in Schedule "A" hereto (the "**Real Property**"), (ii) all of the right, title and interest of 1776411 Ontario Ltd. ("**177**") and 1333 Weber Street Kitchener LP (the "**Partnership**", and collectively with 177, the "**Debtor**") in the personal property arising from, pertaining to, located on, or used in the operation or maintenance of the Real Property, and all proceeds therefrom, and (iii) all of the Debtor's rights and interests in, to, under, and in respect of all material agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder (collectively with (i) and (ii), the "**Property**") was heard this day via Zoom videoconference.

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ON READING the affidavit of Michael Yeung sworn October 2, 2023 and the Exhibits thereto and on hearing the submissions of counsel for Applicant, KSV, and such other parties listed on the Participant Information Form, no one else appearing although duly served as appears from the affidavit of service of Milan Singh-Cheema sworn October 6th, 2023 and on reading the consent of KSV to act as the Receiver,

SERVICE

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

APPOINTMENT

2. THIS COURT ORDERS that pursuant to section 243(1) of the BIA and section 101 of the CJA, KSV is hereby appointed Receiver, without security, of the Property.

RECEIVER'S POWERS

3. THIS COURT ORDERS that the Receiver is hereby empowered and authorized, but not obligated, to act at once in respect of the Property and, without in any way limiting the generality of the foregoing, the Receiver is hereby expressly empowered and authorized to do any of the following where the Receiver considers it necessary or desirable:
 - (a) to take possession of and exercise control over the Property and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - (b) to receive, preserve, and protect the Property, or any part or parts thereof, including, but not limited to, the changing of locks and security codes, the relocating of Property to safeguard it, the engaging of independent security personnel, the taking of physical inventories and the placement of such insurance coverage as may be necessary or desirable;

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- (c) to manage, operate, and carry on the business of the Debtor, including the powers to enter into any agreements, incur any obligations in the ordinary course of business, cease to carry on all or any part of the business, or cease to perform or disclaim any contracts of the Debtor or in respect of the Property;
- (d) to engage construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, counsel and such other persons from time to time and on whatever basis, including on a temporary basis, to assist with the exercise of the Receiver's powers and duties, including without limitation those conferred by this Order;
- (e) to undertake any construction at the Property necessary to bring the Property into compliance with applicable laws and building codes;
- (f) to purchase or lease such machinery, equipment, inventories, supplies, premises or other assets to continue the business of the Debtor or any part or parts thereof;
- (g) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor and to exercise all remedies of the Debtor in collecting such monies, including, without limitation, to enforce any security held by the Debtor;
- (h) to settle, extend or compromise any indebtedness owing to the Debtor;
- (i) to deal with any lien claims, trust claims, and trust funds that have been or may be registered (as the case may be) or which arise in respect of the Property, including any part or parts thereof, and, with approval of this court, to make any required distribution(s) to any contractor or subcontractor of the Debtor or to or on behalf of any beneficiaries of such

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trust funds pursuant to section 85 of the *Construction Act*, R.S.O. 1990, c. C.30;

- (j) to execute, assign, issue and endorse documents of whatever nature in respect of any of the Property, including, without limitation, in respect of construction permits and any requirements related thereto, whether in the Receiver's name or in the name and on behalf of the Debtor, for any purpose pursuant to this Order;
- (k) to initiate, prosecute and continue the prosecution of any and all proceedings and to defend all proceedings now pending or hereafter instituted with respect to the Debtor, the Property or the Receiver, and to settle or compromise any such proceedings. The authority hereby conveyed shall extend to such appeals or applications for judicial review in respect of any order or judgment pronounced in any such proceeding;
- (l) to undertake environmental or worker's health and safety assessments of the Property and the operations of the Debtor thereon;
- (m) to market any or all of the Property, including, without limitation, condominium units, including advertising and soliciting offers in respect of any and all such the Property or any part or parts thereof and negotiating such terms and conditions of sale as the Receiver in its discretion may deem appropriate;
- (n) to sell, convey, transfer, lease or assign the Property or any part or parts thereof out of the ordinary course of business,
 - (i) without the approval of this Court in respect of any transaction not exceeding \$250,000, provided that the aggregate consideration for all such transactions does not exceed \$1,000,000; and

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(ii) with the approval of this Court in respect of any transaction in which the purchase price or the aggregate purchase price exceeds the applicable amount set out in the preceding clause;

and in each such case notice under subsection 63(4) of the Ontario *Personal Property Security Act*, or section 31 of the Ontario *Mortgages Act*, as the case may be, shall not be required.

- (o) to apply for any vesting order or other orders necessary to convey the Property or any part or parts thereof to a purchaser or purchasers thereof, free and clear of any liens or encumbrances affecting such Property;
- (p) to report to, meet with and discuss with such affected Persons (as defined below) as the Receiver deems appropriate on all matters relating to the Property and the receivership, and to share information, subject to such terms as to confidentiality as the Receiver deems advisable;
- (q) to register a copy of this Order and any other Orders in respect of the Property against title to any of the Property;
- (r) to apply for any permits, licences, approvals or permissions as may be required by any governmental authority and any renewals thereof for and on behalf of and, if thought desirable by the Receiver, in the name of the Debtor and to meet with and discuss with such governmental authorities and execute any such agreements required in connection with or as a result of such permits, licenses, approvals or permissions (but solely in its capacity as Receiver and not in its personal or corporate capacity);
- (s) to enter into agreements with any trustee in bankruptcy appointed in respect of the Debtor, including, without limiting the generality of the foregoing, the ability to enter into occupation agreements for any property owned or leased by the Debtor;

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- (t) to exercise any shareholder, partnership, joint venture or other rights which the Debtor may have; and
- (u) to take any steps reasonably incidental to the exercise of these powers or the performance of any statutory obligations.

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

4. THIS COURT ORDERS that (i) the Debtor; (ii) all of its current and former directors, officers, employees, agents, accountants, legal counsel and shareholders, and all other persons acting on its instructions or behalf; (iii) all construction managers, project managers, contractors, subcontractors, trades, engineers, quantity surveyors, consultants and service providers, and all other persons acting on their instructions or behalf; and (iv) all other individuals, firms, corporations, governmental bodies or agencies, or other entities having notice of this Order (all of the foregoing, collectively, being "**Persons**" and each being a "**Person**") shall forthwith advise the Receiver of the existence of any Property in such Person's possession or control, shall grant immediate and continued access to the Property to the Receiver, and shall deliver all such Property to the Receiver upon the Receiver's request.
5. THIS COURT ORDERS that all Persons shall forthwith advise the Receiver of the existence of any books, documents, securities, contracts, orders, corporate and accounting records, and any other papers, records and information of any kind related to the business or affairs of the Debtor, and any computer programs, computer tapes, computer disks, or other data storage media containing any such information (the foregoing, collectively, the "**Records**") in that Person's possession or control, and shall provide to the Receiver or permit the Receiver to make, retain and take away copies thereof and grant to the Receiver unfettered access to and use of accounting, computer, software and physical facilities relating thereto, provided however that nothing in this paragraph 5 or in paragraph 6 of this Order shall require the delivery of Records, or the granting of access to Records, which may not be disclosed or

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

9. THIS COURT ORDERS that all rights and remedies against the Debtor, the Receiver, or affecting the Property, including, without limitation, licenses and permits, are hereby stayed

and suspended except with the written consent of the Receiver or leave of this Court, provided however that this stay and suspension does not apply in respect of any "eligible financial contract" as defined in the BIA, and further provided that nothing in this paragraph shall (i) empower the Receiver or the Debtor to carry on any business which the Debtor is not lawfully entitled to carry on, (ii) exempt the Receiver or the Debtor from compliance with statutory or regulatory provisions relating to health, safety or the environment, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

12. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from the Debtor to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall

assess or otherwise require the Receiver to post a security deposit as a condition to the transfer/establishment of the account.

RECEIVER TO HOLD FUNDS

13. THIS COURT ORDERS that all funds, monies, cheques, instruments, and other forms of payments received or collected by the Receiver from and after the making of this Order from any source whatsoever, including without limitation the sale of all or any of the Property and the collection of any accounts receivable in whole or in part, whether in existence on the date of this Order or hereafter coming into existence, shall be deposited into one or more new accounts to be opened by the Receiver (the "**Post Receivership Accounts**") and the monies standing to the credit of such Post Receivership Accounts from time to time, net of any disbursements provided for herein, shall be held by the Receiver to be paid in accordance with the terms of this Order or any further Order of this Court.

EMPLOYEES

14. THIS COURT ORDERS that all employees of the Debtor shall remain the employees of the Debtor until such time as the Receiver, on the Debtor's behalf, may terminate the employment of such employees. The Receiver shall not be liable for any employee-related liabilities, including any successor employer liabilities as provided for in section 14.06(1.2) of the BIA, other than such amounts as the Receiver may specifically agree in writing to pay, or in respect of its obligations under sections 81.4(5) or 81.6(3) of the BIA or under the *Wage Earner Protection Program Act*.

PIPEDA

15. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the Canada *Personal Information Protection and Electronic Documents Act*, the Receiver shall disclose personal information of identifiable individuals to prospective purchasers or bidders for the Property and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Property (each, a "**Sale**"). Each prospective purchaser or bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Receiver, or in the alternative

destroy all such information. The purchaser of any Property shall be entitled to continue to use the personal information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Debtor, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed.

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

18. THIS COURT ORDERS that the Receiver and counsel to the Receiver shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges unless otherwise ordered by the Court on the passing of accounts, and that the Receiver and counsel to the Receiver shall be entitled to and are hereby granted a charge (the "**Receiver's Charge**") on the Property, as security for such fees and disbursements, both before and after the making of this Order in respect of these proceedings, and that the Receiver's Charge shall form a first charge on the Property in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, but subject to sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.
19. THIS COURT ORDERS that the Receiver and its legal counsel shall pass its accounts from time to time, and for this purpose the accounts of the Receiver and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.
20. THIS COURT ORDERS that prior to the passing of its accounts, the Receiver shall be at liberty from time to time to apply reasonable amounts, out of the monies in its hands, against its fees and disbursements, including legal fees and disbursements, incurred at the standard rates and charges of the Receiver or its counsel, and such amounts shall constitute advances against its remuneration and disbursements when and as approved by this Court.

FUNDING OF THE RECEIVERSHIP

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

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charges and encumbrances, statutory or otherwise, in favour of any Person, but subordinate in priority to the Receiver's Charge and the charges as set out in sections 14.06(7), 81.4(4), and 81.6(2) of the BIA.

22. THIS COURT ORDERS that neither the Receiver's Borrowings Charge nor any other security granted by the Receiver in connection with its borrowings under this Order shall be enforced without leave of this Court.
23. THIS COURT ORDERS that the Receiver is at liberty and authorized to issue certificates substantially in the form annexed as Schedule "B" hereto (the "**Receiver's Certificates**") for any amount borrowed by it pursuant to this Order.
24. THIS COURT ORDERS that the monies from time to time borrowed by the Receiver pursuant to this Order or any further order of this Court and any and all Receiver's Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis, unless otherwise agreed to by the holders of any prior issued Receiver's Certificates.

SERVICE AND NOTICE

25. THIS COURT ORDERS that the E-Service Protocol of the Commercial List (the "**Protocol**") is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<https://ksvadvisory.com/experience/case/1776411ontario>'.
26. THIS COURT ORDERS that if the service or distribution of documents in accordance with the Protocol is not practicable, the Receiver is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by

forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Debtor's creditors or other interested parties at their respective addresses as last shown on the records of the Debtor and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

CRITICAL PAYMENTS

27. THIS COURT ORDERS that the Receiver may, with the written consent of Applicant, make payments owing by the Debtor to suppliers, contractors, subcontractors and other creditors in respect of amounts owing prior to the date of this Order. Such payments are in aggregate not to exceed \$250,000.

DEPOSITS

28. THIS COURT ORDERS that notwithstanding anything else contained herein, the "Property" as defined in the preamble of this Order shall not include any current or future funds related to deposits held in trust by McCarter Grespan Lawyers with respect to the purchase of a residential unit located on any of the Real Property.

GENERAL

29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

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

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this Court, as may be necessary or desirable to give effect to this Order or to assist the Receiver and its agents in carrying out the terms of this Order.

32. THIS COURT ORDERS that the Receiver be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Receiver is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.
 33. THIS COURT ORDERS that the Applicant shall have its costs of this motion, up to and including entry and service of this Order, provided for by the terms of the Applicant's security or, if not so provided by the Applicant's security, then on a substantial indemnity basis to be paid by the Receiver from the Debtor's estate with such priority and at such time as this Court may determine.
 34. THIS COURT ORDERS that any interested party may apply to this Court to vary or amend this Order on not less than seven (7) days' notice to the Receiver and to any other party likely to be affected by the order sought or upon such other notice, if any, as this Court may order.
 35. THIS COURT ORDERS that this Order and all of its provisions are effective as of 12:01 a.m. Toronto Time on the date of this Order and are enforceable without the need for entry and filing.
-

SCHEDULE "A"

PIN: 22590-0550 (LT) *Estate/Qualifier:* Fee Simple LT Absolute Plus

Description: LOTS 29, 30, 31, 32, 33, 34, 45, 46, 47, 48, 49, 50 AND 91 AND PART LOTS 12, 13, 14, 15, 16, 17, 43, 44, 86, 87, 89 AND 90, PLAN 322, AND LOT 127 STREETS AND LANES, (BEING A LANE, PLAN 322, CLOSED BY BY-LAW AS IN 175368) AND PART LOT 126 STREETS AND LANES, (BEING PART OF HERMAN AVENUE, PLAN 322, CLOSED BY BY-LAW AS IN 175368) AND PART LOT 141 STREETS AND LANES, (BEING PART OF HERMAN AVENUE, PLAN 322, CLOSED BY BY-LAW AS IN 210008) AND PART LOT 173 STREETS AND LANES, (BEING PART OF WEBER STREET, PLAN 322 (RENAMED SUNNYSIDE AVENUE) CLOSED BY BY-LAW AS IN 270276), ALL BEING PARTS 1, 2 AND 3, PLAN 58R-21405; SUBJECT TO AN EASEMENT AS IN 687124; SUBJECT TO AN EASEMENT IN GROSS OVER PART 3, PLAN 58R-21405 AS IN WR1306081; SUBJECT TO AN EASEMENT IN GROSS OVER PART 2, PLAN 58R-21405 AS IN WR1324371; SUBJECT TO AN EASEMENT AS IN WR1326075; CITY OF KITCHENER

Address: 1333 WEBER STREET EAST KITCHENER

SCHEDULE "B"
RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") of the Property (as defined in the Order (as defined below)) of 1776411 Ontario Inc. and 1333 Weber Street Kitchener LP appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 12th day of October, 2023 (the "**Order**") made in an application having Court file number CV-23-00706813-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$[●], being part of the total principal sum of \$500,000 which the Receiver is authorized to borrow under and pursuant to the Order.
2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.
3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.
4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.
5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the

Receiver to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Receiver to deal with the Property as authorized by the Order and as authorized by any further or other order of the Court.
7. The Receiver does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the ____ day of _____, 20__.

KSV Restructuring Inc., solely in its capacity
as Receiver of the Property, and not in its
personal capacity

Per: _____
Name:
Title:

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,
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

GENESIS MORTGAGE INVESTMENT CORP. and **1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP**

Applicant

Respondents

Court File No.: CV-23-00706813-00CL

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

Proceedings commenced in Toronto

**ORDER
(October 12, 2023)**

BENNETT JONES LLP
One First Canadian Place, Suite 3400
P.O. Box 130
Toronto, ON M5X 1A4

Sean Zweig (LSO# 57307I)
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Lawyers for the Applicant

Tab 3



Court File No. CV-23-00706813-00CL

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

THE HONOURABLE

)

TUESDAY, THE 8th

JUSTICE KIMMEL

)

DAY OF OCTOBER, 2024

)

B E T W E E N :

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

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**

APPROVAL AND VESTING ORDER

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 real property listed on Schedule “B” of the Sale Agreement (as defined below) (the “**Real Property**”) and all the other assets, undertakings and properties of each of the Respondents (collectively, the “**Debtors**”), and all proceeds thereof (together with the Real Property, the “**Property**”), for an order, *inter alia*, (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Genesis Mortgage

Investment Corporation, Elm Acquisitions Corp., and Dorr Capital Corporation, (collectively, the “**Purchaser**”), as purchaser, dated March 4, 2024, as amended (the “**Sale Agreement**”), as assigned to GFD 1333W Limited Partnership on October 7, 2024, and vesting in 1333W Lands Ltd. (the “**Assignee**”) the Respondents' right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement), (ii) authorizing and directing the Receiver to terminate and disclaim certain of the of the existing agreements of purchase and sale with respect to the purchase of condominium units, (iii) approving a deposit return protocol (the “**Deposit Return Protocol**”) for deposits paid by condominium purchasers who have their existing agreements of purchase and sale with respect to the purchase of condominium units disclaimed or terminated, and (iv) sealing the summary of offers attached as Confidential Appendix ”1” to the Second Report of the Receiver dated September 27, 2024 (the “**Second Report**”), was heard this day by judicial videoconference via Zoom.

ON READING the Second Report of the Receiver, and the appendices thereto, the Supplement to the Second Report of the Receiver dated October 4, 2024 (the “**Supplementary Second Report**”), and the appendices thereto, and on hearing the submissions of counsel for the Receiver, the Applicant, Westmount Guarantee Services Inc., CMLS Financial Ltd., and such other parties that appear on the counsel slip, no one appearing for any other person, although properly served as appears from the affidavit of Chad Kopach sworn September 30, 2024, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion dated September 27, 2024 (the “**NOM**”), the related motion material filed in support of that NOM, including the Receiver’s Motion Record, Volume 1 dated September 27, 2024, and the Receiver’s

Motion Record, Volume 2 (Confidential Appendix) dated September 27, 2024 (collectively, the “**Motion Material**”), be and is hereby abridged, that service of the NOM and the Motion Material is hereby validated, and that further service thereof is hereby dispensed with.

APPROVAL AND VESTING

2. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Receiver is hereby authorized and approved, with such minor amendments as the Receiver may deem necessary. The Receiver is hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Assignee.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Assignee substantially in the form attached as **Schedule “A”** hereto (the “**Receiver's Certificate**”), all of the Debtor’s right, title and interest in and to Purchased Assets described in the Sale Agreement, including, without limitation, the Real Property listed on **Schedule “B”** hereto, shall vest absolutely in the Assignee, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, constructive, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “**Claims**”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Justice Cavanagh made on October 12, 2023; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property*

Security Act (Ontario) or any other personal property registry system; (iii) all mortgages, pledges, charges, liens, debentures, trust deeds, assignments by way of security, security interests, conditional sales contracts or other title retention agreements or similar interests or instruments charging, or creating a security interest in, the Purchased Assets or any part thereof or interest therein, and any agreements, leases, options, easements, rights of way, restrictions, executions, or other encumbrances (including notices or other registrations in respect of any of the foregoing) affecting legal or beneficial title to the Purchased Assets or any part thereof or interest therein, including but not limited to any of the foregoing which are registered on title to the Purchased Assets following the date hereof but prior to the registration in the Land Registry Office for the Land Titles Division of Waterloo (No. 58) of an Application for Vesting Order to which this Order is attached; (iv) all rights and claims of any condominium purchasers pursuant to any existing agreements of purchase and sale with respect to the purchase of condominium units which are terminated or disclaimed; and (v) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “D”**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Waterloo (No. 58) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Assignee as the owner of the subject Real Property identified in

Schedule “B” hereto in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule “C”** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead of the Purchased Assets, and that from and after the delivery of the Receiver's Certificate all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Receiver to file with the Court a copy of the Receiver's Certificate, forthwith after delivery thereof.

6. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;
- (b) any applications for a bankruptcy order now or hereafter issued pursuant to the *Bankruptcy and Insolvency Act* (Canada) in respect of any of the Respondents and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of any of the Respondents,

the vesting of the Purchased Assets in the Assignee pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Debtors and shall not be void or voidable by creditors of any of the Debtors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other

reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

TERMINATION AND DISCLAIMER OF AGREEMENTS OF PURCHASE AND SALE

7. **THIS COURT ORDERS** that the Receiver is hereby authorized, on or following closing of the Transaction, to terminate and disclaim all of the existing agreements of purchase and sale with respect to the purchase of condominium units within Tower B in the Project (as each term is defined in the Second Report) and, upon the delivery of the Receiver's Certificate in accordance with this Order, any rights or claims thereunder or relating thereto are not continuing obligations effective against the Real Property or binding on the Assignee in any way whatsoever.

8. **THIS COURT ORDERS** that the Receiver is hereby authorized, following closing of the Transaction, with notice to be provided by the Assignee to the Receiver within 120 days of the closing of the Transaction, to terminate and disclaim the existing agreements of purchase and sale with respect to the purchase of condominium units within Tower A (as defined in the Second Report) in the Project that are not being assumed by the Assignee, and upon the Receiver terminating and disclaiming such agreements of purchase and sale, any rights or claims thereunder or relating thereto shall not be continuing obligations effective against the Real Property or binding on the Assignee in any way whatsoever.

DEPOSIT RETURN PROTOCOL

9. **THIS COURT ORDERS** that the Deposit Return Protocol attached as Appendix "A" to Supplementary Second Report dated October 4, 2024, be and same is hereby approved.

SEALING AND GENERAL

10. **THIS COURT ORDERS** that the summary of offers received in the Sale Process and attached as Confidential Appendix “1” to the Second Report, shall be and are hereby sealed, kept confidential and shall not form part of the public record until the earlier of (a) 30 days following the closing of the Transaction, or (b) further Order of this Court.

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

12. **THIS COURT ORDERS** that this Order is effective from today’s date and is enforceable without the need for entry and filing.

 Digitally signed by
Jessica Kimmel
Date: 2024.10.09
15:14:48 -04'00'

Schedule “A” – Form of Receiver’s Certificate

Court File No. CV-23-00706813-00CL

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

B E T W E E N :

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

- and -

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

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****RECEIVER’S CERTIFICATE****RECITALS**

I. Pursuant to an Order of The Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on October 12, 2023, KSV Restructuring Inc. (“**KSV**”) was appointed as receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property listed on Schedule “B” of the Sale Agreement (as defined below) (the “**Real Property**”) and all the other assets, undertakings and properties of each of the Respondents, and all proceeds thereof (together with the Real Property, the “**Property**”).

II. Pursuant to an Order of the Court dated October 8, 2024, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and Genesis Mortgage Investment

Corporation, Elm Acquisitions Corp., and Dorr Capital Corporation (collectively, the “**Purchaser**”), as purchaser, dated March 4, 2024, as amended (the “**Sale Agreement**”), and provided for the vesting in 1333W Lands Ltd. (the “**Assignee**”) of the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

THE RECEIVER CERTIFIES the following:

1. The Assignee has paid and the Receiver has received the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser;
3. The Transaction has been completed to the satisfaction of the Receiver; and
4. This Certificate was delivered by the Receiver at _____ [TIME] on _____ [DATE].

KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver and manager, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

Schedule “B” – Legal Description of the Property

PIN 22590-0550 (LT) in LRO No. 58

LOTS 29, 30, 31, 32, 33, 34, 45, 46, 47, 48, 49, 90 AND 91 AND PART LOTS 12, 13, 14, 15, 16, 17, 43, 44, 86, 87, 89 AND 90, PLAN 322, AND LOT 127 STREETS AND LANES, (BEING A LANE, PLAN 322, CLOSED BY BY-LAW AS IN 175368) AND PART LOT 126 STREETS AND LANES, (BEING PART OF HERMAN AVENUE, PLAN 322, CLOSED BY BY-LAW AS IN 175368) AND PART LOT 141 STREETS AND LANES, (BEING PART OF HERMAN AVENUE, PLAN 322, CLOSED BY BY-LAW AS IN 210008) AND PART LOT 173 STREETS AND LANES, (BEING PART OF WEBER STREET, PLAN 322 (RENAMED SUNNYSIDE AVENUE) CLOSED BY BYLAW AS IN 270276), ALL BEING PARTS 1, 2 AND 3, PLAN 58R-21405, SUBJECT TO AN EASEMENT AS IN 687124, SUBJECT TO AN EASEMENT IN GROSS OVER PART 3, PLAN 58R-21405 AS IN WR1306081, SUBJECT TO AN EASEMENT IN GROSS OVER PART 2, PLAN 58R-21405 AS IN WR1324371, SUBJECT TO AN EASEMENT AS IN WR1326075, CITY OF KITCHENER

Schedule “C”- List of Encumbrances to be expunged and discharged

- 1) Instrument No. WR508428 registered December 7, 2009 being a Notice Of Change Of Address For Service–Instrument.
- 2) Instrument No. WR1299640 registered November 24, 2020 being a Charge to and in favour of WESTMOUNT GUARANTEE SERVICES INC., in the original principal amount of \$20,000,000;
- 3) Instrument No. WR1306083 registered Dec. 17, 2020 being a Postponement in favour of The Corporation of the City of Kitchener;
- 4) Instrument No. WR1324372 registered March 12, 2021 being a Postponement in favour of The Regional Municipality of Waterloo;
- 5) Instrument No. WR1367209 registered August 17, 2021 being a Charge to and in favour of CMLS Financial Ltd., Computershare Trust Company of Canada, and Genesis Mortgage Investment Corp., in the original principal amount of \$82,000,000;
- 6) Instrument No. WR1367210 registered August 17, 2021, being a Notice of Assignment of Rents General in favour of CMLS Financial Ltd., Computershare Trust Company of Canada, and Genesis Mortgage Investment Corp.;
- 7) Instrument No. WR1367215 registered August 17, 2021 being a Postponement in favour of CMLS Financial Ltd., Computershare Trust Company of Canada, and Genesis Mortgage Investment Corp.;
- 8) Instrument No. WR1507433 being a Notice registered May 8, 2023 amending WR1299640;
- 9) Instrument No. WR1507448 registered May 8, 2023 being a Charge to and in favour of Corfinancial Corp. in the original principal amount of \$3,500,000;
- 10) Instrument No. WR1518428 registered July 6, 2023 is a Construction Lien from Gold Star Drywall Services Inc. in the claimed amount of \$787,259.65.
- 11) Instrument No. WR1518912 registered July 7, 2023 is a Construction Lien from Dean-Lane Contractors Inc. in the claimed amount of \$2,157,415.
- 12) Instrument No. WR1519072 registered July 10, 2023 is a Construction Lien from Conestoga Roofing & Sheet Metal Ltd. in the claimed amount of \$311,562.
- 13) Instrument No. WR1521083 registered July 19, 2023 is a Construction Lien from Aluminum Window Designs Ltd. in the claimed amount of \$1,662,600.

- 14) Instrument No. WR1521506 registered July 20, 2023 is a Construction Lien from Greentech Sealants Inc. in the claimed amount of \$220,190.
- 15) Instrument No. WR1521825 registered July 21, 2023 is a Construction Lien from Classic Tile Contractors Limited in the claimed amount of \$591,923.
- 16) Instrument No. WR1522293 registered July 25, 2023 is a Construction Lien from Stubbe's Precast Commercial Ltd. and Stubbe's Precast Inc. in the claimed amount of \$1,374,127.
- 17) Instrument No. WR1522297 registered July 25, 2023 is a Construction Lien from O'connor Electric Ltd. in the claimed amount of \$344,955.
- 18) Instrument No. WR1525011 registered August 3, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$135,600.
- 19) Instrument No. WR1525014 registered August 3, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$66,912.
- 20) Instrument No. WR1525022 registered August 3, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$364,425.
- 21) Instrument No. WR1525872 registered August 9, 2023 is a Construction Lien from Pearson Metal Inc. in the claimed amount of \$647,217.
- 22) Instrument No. WR1525921 registered August 9, 2023 is a Construction Lien from HGL Electrical in the claimed amount of \$3,123,088.
- 23) Instrument No. WR1527801 registered August 17, 2023 is a Construction Lien from Matthews Equipment Limited in the claimed amount of \$85,018.
- 24) Instrument No. WR1530052 registered August 29, 2023 is a Construction Lien from ABA Architects Inc. in the claimed amount of \$432,315.
- 25) Instrument No. WR1530175 registered August 29, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$45,878.
- 26) Instrument No. WR1530179 registered August 29, 2023 is a Construction Lien from Oxford Builders Supplies Inc. in the claimed amount of \$143,133.
- 27) Instrument No. WR1532157 registered September 6, 2023 is a Construction Lien from Gillam Urban Constructors Inc. in the claimed amount of \$1,748,531.
- 28) Instrument No. WR1532406 registered September 7, 2023 is a Certificate of Action from Stubbe's Precast Commercial Ltd. and Stubbe's Precast Inc. re Instrument No. WR1522293.

- 29) Instrument No. WR1533262 registered September 12, 2023 is a Construction Lien from O'connor Electric Ltd. in the claimed amount of \$12,555.
- 30) Instrument No. WR1534716 registered September 20, 2023 is a Certificate of Action from Pearson Metal Inc. re Instrument No. WR1525872.
- 31) Instrument No. WR1535931 registered September 27, 2023 is a Certificate of Action from Dean-Lane Contractors Inc. re Instrument No. WR1518912.
- 32) Instrument No. WR1536124 registered September 27, 2023 is a Certificate of Action from O'connor Electric Ltd. re Instrument No. WR1522297 and WR1533262.
- 33) Instrument No. WR1536918 registered September 29, 2023 is a Certificate of Action from Classic Tile Contractors Limited re Instrument No. WR1521825.
- 34) Instrument No. WR1537429 registered October 3, 2023 is a Construction Lien from Gillam Urban Constructors Inc. and Gillam Communities 1333 Weber Street Limited Partnership in the claimed amount of \$2,467,563.
- 35) Instrument No. WR1537430 registered October 3, 2023 is a Construction Lien from Gillam Urban Constructors Inc. and Gillam Communities 1333 Weber Street Limited Partnership in the claimed amount of \$873,036
- 36) Instrument No. WR1537590 registered October 4, 2023 is a Certificate of Action from Oxford Builders Builders Supplies Inc. re Instrument No. WR1525011, WR1525014, WR1525022, WR1530179, WR1530175.
- 37) Instrument No. WR1537739 registered October 5, 2023 is a Certificate of Action from Conestoga Roofing & Sheet Metal Ltd. re Instrument No. WR1519072.
- 38) Instrument No. WR1537806 registered October 5, 2023 is a Certificate of Action from Aluminum Window Design Installations Inc. re Instrument No. WR1521083.
- 39) Instrument No. WR1538280 registered October 10, 2023 is a Certificate of Action from ABA ARCHITECTS INC.re Instrument No. WR1530052.
- 40) Instrument No. WR1538717 registered October 11, 2023 is a Notice of an Exclusive Listing Agreement made as of March 22, 2019 between 1776411 Ontario Ltd. and Rego Realty Inc.
- 41) Instrument No. WR1538754 registered October 12, 2023 is a Certificate of Action from Gold Star Drywall Services Inc. re Instrument No. WR1518428.
- 42) Instrument No. WR1538821 registered October 12, 2023 is a Certificate of Action from Gillam Urban Constructors Inc. re Instrument No. WR1532157.

- 43) Instrument No. WR1538822 registered October 12, 2023 is a Certificate of Action from Gillam Urban Constructors Inc. And Gillam Communities 1333 Weber Street Limited Partnership re Instrument No. WR1537429.
- 44) Instrument No. WR1538823 registered October 12, 2023 is a Certificate of Action from Gillam Urban Constructors Inc. And Gillam Communities 1333 Weber Street Limited Partnership re Instrument No. WR1537430.
- 45) Instrument No. WR1543864 registered November 7, 2023 is an Application to Register Court Order from Ontario Superior Court Of Justice - Commercial List re appointing receiver KSV.
- 46) Instrument No. WR1549167 registered December 5, 2023 is a Notice of Security Interest from Enercare Home and Commercial Services Limited Partnership, and Enercare Home and Commercial Services Inc. in the consideration of \$1,225,341.72.
- 47) Instrument No. WR1551094 registered December 15, 2023 is a Construction Lien from Troy Life & Fire Safety Ltd. in the claimed amount of \$184,715.
- 48) Instrument No. WR1551772 registered December 20, 2023 is a Notice of Security Interest from Metergy Solutions Inc. in the consideration of \$3,621,837.
- 49) Instrument No. WR1562497 registered March 13, 2024 is a Certificate of Action from Troy Life & Fire Safety Ltd. re Instrument No. WR1551094.

Schedule “D” - Permitted Encumbrances**General**

1. Any subsisting reservations, limitations, provisions and conditions contained in any original grants from the Crown of any land or interests therein.
2. All Applicable Laws, including municipal, provincial or federal statutes, by laws, regulations or ordinances.
3. Any rights of expropriation, access, use or any other right conferred or reserved by or in any statute of Canada or a Province of Canada.
4. Any encumbrances filed by or at the request of the Purchaser or which are otherwise expressly approved by the Purchaser in writing.

Specific

5. Transfer Easement registered on August 20, 1980 in favour of the Hydro-Electric Commission of Kitchener-Wilmont as Instrument No. 687124.
6. Notice (airport zoning regulations) registered on May 4, 2009 in favour of His Majesty the King in Right of Canada as Instrument No. WR459096.
7. Transfer Easement registered on December 17, 2020 in favour of The Corporation of the City of Kitchener as Instrument No. WR1306081.
8. Notice (encroachment agreement) registered on February 17, 2021 in favour of The Corporation of the city of Kitchener as Instrument No. WR1318720.
9. Transfer Easement registered on March 12, 2021 in favour of The Regional Municipality of Waterloo as Instrument No. WR1324371.
10. Transfer Easement registered on March 19, 2021 in favour of Rogers Communications Inc. as Instrument No. WR1326075.
11. Notice (development agreement) registered on August 20, 2021 in favour of The Corporation of the City of Kitchener as Instrument No. WR1368206.
12. Notice registered on August 20, 2021 in favour of The Corporation of the city of Kitchener as Instrument No. WR1368207.
13. Application for Absolute Title registered on April 21, 2022 as Instrument No. WR1429995.
14. Notice (encroachment agreement) registered on May 5, 2022 in favour of The Corporation of the city of Kitchener as Instrument No. WR1434025.
15. Notice registered on September 20, 2022 in favour of The Corporation of the City of Kitchener as Instrument No. WR1467608.

Court File No. CV-23-00706813-00CL

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

and

1776411 ONTARIO LTD. et al.
Respondents

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

Proceeding commenced at Toronto

APPROVAL AND VESTING ORDER

BLANEY McMURTRY LLP
Barristers & Solicitors
2 Queen Street East, Suite 1500
Toronto ON M5C 3G5

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(416) 593-3927 (Tel)
egolden@blaney.com

Chad Kopach (LSO #48084G)
(416) 593-2985 (Tel)
ckopach@blaney.com

Lawyers for KSV Restructuring Inc.
in its capacity as Court-appointed Receiver

Tab 4



Court File No.:

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

**AVIVA INSURANCE COMPANY OF CANADA and
LIBERTY MUTUAL INSURANCE COMPANY**

Plaintiffs

– and –

**WERNER LEUSCHNER, KAMAL PATEL, 1639993 ONTARIO LTD. and
JAYKAM DEVELOPERS LIMITED**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS:

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff.
The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a Statement of Defence in Form 18A prescribed by the *Rules of Civil Procedure*, serve it on the Plaintiff's lawyer or, where the Plaintiff does not have a lawyer, serve it on the Plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this Statement of Claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your Statement of Defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a Statement of Defence, you may serve and file a Notice of Intent to Defend in Form 18B prescribed by the *Rules of Civil Procedure*. This will entitle you to ten more days within which to serve and file your Statement of Defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,000.00 for costs, within the time for serving and filing your statement of defence, you may move to have this proceeding dismissed by the court. If you believe the amount of costs is excessive, you may pay the plaintiff's claim and \$400 for costs and have the costs assessed by the court.

TAKE NOTICE: THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date: November 24, 2025

Issued by: _____
Local Registrar

Address of Court office:
330 University Ave.
Toronto, Ontario M5G 1R7

TO: **WERNER LEUSCHNER**
258 Edgewater Crescent, Unit 8
Kitchener, Ontario N2A 4M2

AND TO: **KAMAL PATEL**
142 Fergus Avenue
Kitchener, Ontario N2A 2H2

AND TO: **1639993 ONTARIO LTD.**
258 Edgewater Crescent, Unit 8
Kitchen, Ontario N2A 4M2

AND TO: **JAYKAM DEVELOPERS LIMITED**
29 Idle Ridge Court
Kitchen, Ontario N2A 3W3

CLAIM

1. The Plaintiffs, Aviva Insurance Company of Canada (“**Aviva**”) and Liberty Mutual Insurance Company (“**Liberty**” and, collectively with Aviva, the “**Surety**”), claim against the Defendants, jointly and severally, as follows:

- (a) Payment of the sum of \$12,561,718.20, plus further sums, the particulars of which will be provided prior to trial;
- (b) Indemnification in the amount of not less than \$7,491,718.19, plus further sums, the particulars of which will be provided prior to trial, pursuant to the provisions of the Indemnity Agreement (defined below) in respect of the payments which have been made and the expenses which have been incurred to date as a result of the issuance of the Bonds (also defined below);
- (c) Security, collateral and exoneration in the amount of \$5,070,000.00, plus such further amounts relating to present and future losses, charges, damages, expenses, costs, claims, demands, liabilities, premiums, and administration fees that may be incurred by the Surety as a result of the issuance of the Bonds, the particulars of which will be provided prior to trial;
- (d) A declaration that the Surety is entitled to indemnification and exoneration from the Defendants in respect of all present and future losses, charges, damages, expenses, costs, claims, demands, liabilities, premiums, and administration fees that may be incurred by the Surety as a result of the issuance of the Bonds;
- (e) Pre-judgment and post-judgment interest on all amounts owing to the Surety at an annual rate of 18% per year in accordance with the Indemnity Agreement, or alternatively, in accordance with the *Courts of Justice Act*, R.S.O. 1990, c. C. 43, as amended;
- (f) Costs of this action on a substantial indemnity basis, including applicable taxes thereon, in accordance with the provisions of the Indemnity Agreement; and
- (g) Such further and other relief as this Honourable Court may deem just.

THE PARTIES

2. The Plaintiffs are corporations incorporated pursuant to the laws of Canada which are licensed to carry on business as a surety in the Province of Ontario and elsewhere.

3. The Defendants, Werner Leuschner (“**Leuschner**”) and Kamal Patel (“**Patel**”), are individuals who executed the Indemnity Agreement in favour of the Surety and who reside in the Province of Ontario.

4. The Defendant, 1639993 Ontario Ltd. (“**1639993**”), is a corporation incorporated pursuant to the laws of the Province of Ontario and executed the Indemnity Agreement in favour of the Surety.

5. The Defendant, Jaykam Developers Limited (“**Jaykam**”), is a corporation incorporated pursuant to the laws of the Province of Ontario and executed the Indemnity Agreement in favour of the Surety.

6. 1776411 Ontario Ltd. (“**1776411**”) is a corporation incorporated under the laws of the Province Ontario.

7. On October 12, 2023, an Order (the “**Receivership Order**”) was made appointing KSV Restructuring Inc. (the “**Receiver**”) as receiver and manager of all the assets, undertakings and properties of 1776411 (the “**Receivership Proceedings**”).

8. The Defendants, Werner Leuschner and Kamal Patel were, at all material times, officers, directors, employees, agents and/or persons with effective control over 1776411 or its relevant activities.

THE INDEMNITY AGREEMENT

9. On or about July 29, 2021, the Defendants, Leuschner, Patel, 1639993 and Jaykam (collectively, the “**Indemnitors**”), executed an Indemnity Agreement (the “**Indemnity Agreement**”), in favour of the Surety, in which the Indemnitors jointly and severally agreed, among other things, to indemnify the Surety for any and all losses, charges, damages expenses, costs, claims, demands and liabilities that the Surety may suffer by reason of:

- (a) having issued one or several Bonds and/or Policies;
- (b) any claims being made;
- (c) the Surety undertaking its obligations under the Bond and/or the Policies;
- (d) any default by the Indemnitors under the Indemnity Agreement; or
- (e) in enforcing any of the covenants of the Indemnity Agreement.

10. The Surety states that the Indemnity Agreement provides that the liability of the Indemnitors shall extend to and include, without limitation, the obligation of the Indemnitors to reimburse to the Surety all sums which the Surety may be called upon to pay:

- (a) as a result of a judgment, arbitration award or settlement;
- (b) as damages of any nature, including punitive and exemplary damages, as the case may be;
- (c) in respect of any claim, liability or loss;
- (d) as expenditure, costs or fees that it may incur, including the cost of internal or external adjusters, lawyers and consultants;
- (e) in satisfaction of judicial and extra-judicial fees and disbursements of the Surety's counsel on a substantial indemnity scale and legal fees of claimants' counsel; and
- (f) as administration costs related to claims under Bonds and/or Policies and under the Indemnity Agreement.

11. The Indemnity Agreement provides that the Indemnitors acknowledge that the Surety has the right, in its sole and entire discretion, to decide whether to pay, settle or contest any claim under a bond, without any obligation to consult or advise the Indemnitors in advance of so doing.

12. The Indemnity Agreement further provides that the Indemnitors acknowledge their obligation to indemnify the Surety upon presentation by the Surety of a release, a copy of a cheque or any other proof of payment, which will be deemed to be complete proof of the amount paid and

of the Surety's right to make such payment as a result of the issue of a Bond and/or Policies and, consequently, the Surety's right to demand reimbursement from the Indemnitors under the terms of the Indemnity Agreement.

13. The Surety states that the Indemnity Agreement also provides that in order to permit the Surety to meet its obligations under a bond, the Indemnitors undertake to advance to the Surety, upon demand, funds or satisfactory guarantees sufficient to allow the Surety to perform any or all of its obligations under the Bonds and/or Policies, even before any payment has been made by the Surety to a third party. This obligation is referred to herein as "exoneration".

THE BONDS & POLICIES

14. In or around May 2020, 1776411 purchased a property located at 1333 Weber Street in the City of Kitchener (the "**Property**") with the intention of developing a multi-phase condominium project known as "Elevate Condos at 1333 Weber Street" (the "**Project**") thereon.

15. The Surety states that, at the request of the Indemnitors and in reliance upon the provisions of the Indemnity Agreement and in consideration thereof, the Surety executed and delivered the following Tarion Warranty Corporation Bonds and Master Deposit Insurance Policies in accordance with the *Ontario New Home Warranties Plan Act*, R.S.O. 1990, c O.31, as amended, and the *Condominium Act*, 1998, S.O. 1998, c. 19, as amended (collectively, "the **Bonds**"):

Project	Bond No.	Policy No.
Phase 1 of Elevate Condos at 1333 Weber Street ("Tower A")	201020002	202310059
Phase 2 of Elevate Condos at 1333 Weber Street ("Tower B")	201020055	232310003
Phase 2 of Elevate Condos at 1333 Weber Street ("Tower C")	221020006	N/A

THE PROJECT IS SOLD

16. Pursuant to an agreement of purchase and sale with the Receiver dated March 4, 2024 (the "**Sale Agreement**") Genesis Mortgage Investment Corporation, Elm Acquisitions Corp. and Dorr

Capital Corporation (collectively, the “**Purchasers**”) agreed to purchase the Project. On October 7, 2024, the Purchasers’ interest in the Sale Agreement was assigned to GFD 1333W Limited Partnership and vested in 1333W Lands Ltd. (collectively, the “**New Owner**”).

17. On October 8, 2024, the Court granted an approval and vesting order (the “**AVO**”) in the Receivership Proceedings, which, among other things, approved the transaction contemplated in the Sale Agreement (the “**Transaction**”) and authorized the Receiver on or following closing of the Transaction to terminate and disclaim all of the existing agreements of purchase and sale for units Tower B of the Project. The AVO further authorized the Receiver, following the closing of the Transaction, with notice to be provided by the New Owner to the Receiver within 120 days of the closing of the Transaction to terminate and disclaim the existing agreements of purchase and sale for units in Tower A of the Project that are not assumed by the New Owner. The 120 day deadline for terminating and disclaiming agreements of purchase and sale for units in Tower A of the Project was subsequently extended. The existing agreements of purchase and sale for units in Tower C were assumed by the New Owner.

18. The Receiver terminated and disclaimed all of the agreements of purchase and sale in respect of units in Tower B of the Project immediately following the closing of the Transaction. The Surety therefore received and was required to pay the Tower B unit purchasers’ claims for the return of the deposits that they paid under those agreements of purchase and sale, together with interest thereon in accordance with the provisions of the *Condominium Act*, 1998, S.O. 1998, c. 19, as amended, resulting in significant losses.

19. The Receiver has also terminated and disclaimed twenty-six (26) agreements of purchase and sale in respect of units in Tower A of the Project, with the result that the Surety has received and paid claims for the return of certain of the deposits paid by the unit purchasers under those agreements of purchase and sale. As set out above, under the AVO, the New Owner had the right to notify the Receiver to terminate and disclaim all of the remaining agreements of purchase and sale for units in Tower A of the Project, which would have resulted in the Surety incurring in excess of \$10 million in additional losses. In order to mitigate such losses, the Surety entered into an agreement with the New Owner pursuant to which the New Owner agreed not to terminate and disclaim any additional agreements of purchase and sale for units in Tower A of the Project in

exchange for which the Surety agreed to make a payment in the amount of \$4,780,000 to the New Owner, resulting in substantial loss mitigation (the “**Mitigation Payment**”).

CLAIMS FOR INDEMNIFICATION AND EXONERATION

20. The Surety states that, as a result of the issuance of the Receivership Order, 1776411’s failure to complete the Project, the Receiver terminating and disclaiming numerous agreements of purchase and sale, the Surety having to pay claims under the Bonds, and the agreement to make the Mitigation Payment in order to avoid paying further claims, the Surety has received and paid the numerous claims for the return of deposits under the Bonds, including interest thereon. The amounts paid by the Surety after applying the deposit amounts held in escrow in respect of the agreements of purchase sale total as follows:

Project	Amount Paid
Tower A	\$1,822,198.37
Tower B	\$5,206,519.15
Total:	\$7,028,717.52

21. The Surety has also incurred expenses in the amount of \$463,000.67 as a result of issuing the Bonds.

22. Pursuant to the terms of the Indemnity Agreement, the Surety is entitled to indemnification from the Indemnitors for the amounts paid to date in respect of the claims made under the Bonds (\$7,028,717.52) and the expenses incurred as a result of issuing the same (\$463,000.67) in the total amount of \$7,491,718.19, plus such further losses and expenses that may be incurred by the Surety to the date of judgment.

23. In addition, pursuant to the terms of the Indemnity Agreement, the Surety is entitled to exoneration from the Indemnitors in respect of the further anticipated claims and expenses under the Bonds and the Mitigation Payment, as follows:

- | | | |
|-----|--|----------------|
| (a) | The Mitigation Payment to the New Owner: | \$4,780,000.00 |
| (b) | Legal expenses in respect of Bond claims and recovery: | \$250,000.00 |
| (c) | Adjusting and consulting expenses: | \$40,000.00 |

24. The Surety specifically reserves the right to make further claims for indemnification and exoneration against the Indemnitors if and when Aviva makes additional payments in respect of any losses, charges, damages expenses, costs, claims, demands and liabilities, or receives any additional claims or demands under the Bonds.

25. The Surety hereby demands from the Indemnitors indemnification and exoneration in order for them to comply with their obligations under the Indemnity Agreement.

26. The Surety therefore requests judgment as against the Indemnitors in accordance with paragraph 1 above.

27. The Surety proposes that the trial of this action take place in the City of Toronto, Ontario.

Date: November 24, 2025

BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto ON M5H 4E3

Denise Bambrough (LSO#: 33144E)
Tel: (416) 367-6008
Email: dbambrough@blg.com

Mark A. Borgo (LSO#: 744750)
Tel: (416) 367-7887
Email: mborgbo@blg.com

Lawyers for the Plaintiffs,
Aviva Insurance Company of Canada and
Liberty Mutual Insurance Company

AVIVA INSURANCE COMPANY OF CANADA, et al.

- and -

WERNER LEUSCHNER, et al.

Plaintiffs

Defendants

**ONTARIO
SUPERIOR COURT OF JUSTICE
PROCEEDINGS COMMENCED AT TORONTO**

STATEMENT OF CLAIM

BORDEN LADNER GERVAIS LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West, Suite 3400
Toronto ON M5H 4E3

Denise Bambrough (LSO#: 33144E)
Tel: (416) 367-6008
Email: dbmbrough@blg.com

Mark A. Borgo (LSO#: 744750)
Tel: (416) 367-7887
Email: mborgo@blg.com

Lawyers for the Plaintiffs,
Aviva Insurance Company of Canada and Liberty Mutual
Insurance Company

Civil and Small Claims Court

N/A
N/A ON 99999

Case No.	CV-25-00756158-0000	Judicial Official	
Case Title	AVIVA INSURANCE COMPANY OF CANADA v. LEUSCHNER et al		
Receipt No.	25-CV-00009232	Receipt Date	25-11-2025 02:15 PM (EST)
Payor	AVIVA INSURANCE COMPANY OF CANADA	Transaction Date	25-11-2025 02:18 PM (EST)
Cashier	LM	Received	\$243.00
		Change Due	\$0.00

Payment Methods				
Method	Card Type	Reference No.	Void	Amount
Debit (POS)		00000006		\$243.00
				\$243.00

Cost Types				
Name	Assessment No.	Case No.	Amount	Balance
Issuing Fee - Statement of Claim	25-CV-0000011140	CV-25-00756158-0000	\$243.00	\$0.00
			\$243.00	\$0.00

Balances		
Due From	Case No.	Balance
		\$0.00

Tab 5

Fowler, Rachel

From: Trung Nguyen <TrungN@simpsonwagle.com>
Sent: March 24, 2026 5:01 PM
To: Borgo, Mark; Bambrough, Denise L.
Cc: Vy Rodulfo
Subject: RE: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158 [BLG-DOCUMENTS.FID20396570]

[External / Externe]

Hi Mark,

Thank you for your email and indulgence. Your proposal of seven (7) days is fair and reasonable.

Best regards,

Trung Nguyen

P: 905.639.1052 x 235
E: trung@simpsonwagle.com



SimpsonWagle
LAW LLP

From: Borgo, Mark <MBorgo@blg.com>
Sent: March 24, 2026 2:58 PM
To: Trung Nguyen <TrungN@simpsonwagle.com>; Bambrough, Denise L. <DBambrough@blg.com>
Cc: Vy Rodulfo <VyR@simpsonwagle.com>
Subject: RE: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158 [BLG-DOCUMENTS.FID20396570]

Hi Trung,

Thank you for confirming your position.

While our preference is to have pleadings closed before the Case Conference, we confirm that we will not take steps to note your clients in default at this time. That said, we will be seeking delivery of your clients' Statement of Defence within seven days following the Case Conference. Given the time that has elapsed since service of the Statement of Claim and the delivery of the Notice of Intent to Defend, this timeline is reasonable.

Best regards,

Mark A. Borgo

Partner

T 416.367.7887 | mborgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W., Toronto, ON,
Canada M5H 4E3

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From: Trung Nguyen <TrungN@simpsonwigg.com>

Sent: March 24, 2026 1:01 PM

To: Borgo, Mark <MBorgo@blg.com>; Bambrough, Denise L. <DBambrough@blg.com>

Cc: Vy Rodulfo <VyR@simpsonwigg.com>

Subject: RE: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158 [BLG-DOCUMENTS.FID20396570]

[External / Externe]

Hi Mark,

Further to our call last week, my clients' position is that it would be prudent to await the outcome of the Case Conference on April 14, 2026, before serving a defence. Subject to the directions of the Case Conference judge, my clients can serve their Statement of Defence within 10 days, or by April 24, 2026, as previously suggested below.

Thank you,

Trung Nguyen

P: 905.639.1052 x 235
E: trung@simpsonwigg.com



SimpsonWigle
LAW LLP

From: Borgo, Mark <MBorgo@blg.com>

Sent: March 18, 2026 7:11 PM

To: Trung Nguyen <TrungN@simpsonwigg.com>; Bambrough, Denise L. <DBambrough@blg.com>

Cc: Vy Rodulfo <VyR@simpsonwigg.com>

Subject: RE: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158 [BLG-DOCUMENTS.FID20396570]

Hi Trung,

Are you available tomorrow to discuss the timing for delivery of the Statement of Defence? We're available between 1:00 PM and 4:00 PM.

Thank you,

Mark A. Borgo**Partner**T 416.367.7887 | mborgo@blg.comBay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON,
Canada M5H 4E3**BLG** | Canada's Law Firm

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From: Trung Nguyen <TrungN@simpsonwigg.com>**Sent:** March 11, 2026 12:54 PM**To:** Borgo, Mark <MBorgo@blg.com>; Bambrough, Denise L. <DBambrough@blg.com>**Cc:** Vy Rodulfo <VyR@simpsonwigg.com>**Subject:** RE: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158 [BLG-DOCUMENTS.FID20396570]**[External / Externe]**

Hi Mark,

I don't necessary disagree with you, but given the receivers' position that three other proceedings are stayed, we need to appraise the receiver and obtain its position out of an abundance of caution.

Subject to the receiver's comments, we should be able to deliver a defence by the 24th.

Thanks,

Trung Nguyen

P: 905.639.1052 x 235
E: trung@simpsonwigg.com**SimpsonWigle**
LAW LLP**From:** Borgo, Mark <MBorgo@blg.com>**Sent:** March 11, 2026 12:15 PM**To:** Trung Nguyen <TrungN@simpsonwigg.com>; Bambrough, Denise L. <DBambrough@blg.com>**Cc:** Vy Rodulfo <VyR@simpsonwigg.com>**Subject:** RE: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158 [BLG-DOCUMENTS.FID20396570]

Trung,

As just advised, there is no stay in the Receivership Order affecting the Sureties' claim against your clients. We expect the Defendants to deliver their Statement of Defence by March 24, 2026.

Thanks,

Mark A. Borgo

Partner

T 416.367.7887 | mborgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W., Toronto, ON,
Canada M5H 4E3

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From: Trung Nguyen <TrungN@simpsonwagle.com>

Sent: March 11, 2026 11:46 AM

To: Borgo, Mark <MBorgo@blg.com>; Bambrough, Denise L. <DBambrough@blg.com>

Cc: Vy Rodulfo <VyR@simpsonwagle.com>

Subject: RE: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158 [BLG-DOCUMENTS.FID20396570]

[External / Externe]

Hi Mark,

Given the current receivership and receiver's position that all proceedings in connection with the subject property are stayed, we will need to appraise the receiver of your clients' claim and obtain their position.

Thanks,

Trung Nguyen

P: 905.639.1052 x 235

E: trung@simpsonwagle.com



SimpsonWigle
LAW LLP

From: Borgo, Mark <MBorgo@blg.com>

Sent: March 10, 2026 5:46 PM

To: Trung Nguyen <TrungN@simpsonwagle.com>; Bambrough, Denise L. <DBambrough@blg.com>

Cc: Vy Rodulfo <VyR@simpsonwagle.com>

Subject: RE: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158 [BLG-DOCUMENTS.FID20396570]

Hi Trung,

You advised that you would be in a position to discuss next steps with us by January 30, 2026. Despite our follow-up on February 5, 2026, we have not received any response.

If we do not receive your clients' Statement of Defence by **March 24, 2026**, we will proceed to note them in default.

Best regards,

Mark A. Borgo

Partner

T 416.367.7887 | mborgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Borgo, Mark

Sent: February 5, 2026 2:38 PM

To: 'Trung Nguyen' <TrungN@simpsonwagle.com>; Bambrough, Denise L. <DBambrough@blg.com>

Cc: Vy Rodulfo <VyR@simpsonwagle.com>

Subject: RE: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158 [BLG-DOCUMENTS.FID20396570]

Hi Trung,

Can you please let us know when we can expect to receive the Statement of Defence?

Thank you,

Mark A. Borgo

Partner

T 416.367.7887 | mborgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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this message to a named recipient, please notify us immediately, and permanently destroy this message and any copies you may have. Warning: Email may not be secure unless properly encrypted.

From: Trung Nguyen <TrungN@simpsonwagle.com>
Sent: January 12, 2026 6:45 PM
To: Borgo, Mark <MBorgo@blg.com>; Bambrough, Denise L. <DBambrough@blg.com>
Cc: Vy Rodulfo <VyR@simpsonwagle.com>
Subject: RE: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158 [BLG-DOCUMENTS.FID20396570]

[External / Externe]

Hi Mark and Denise,

As we have just been retained, we will need some time to investigate and prepare our clients' defence. We trust that your client will not take any steps to note our clients in default while we review the file, without first providing our office with reasonable notice of your intention to do so.

We hope to complete our initial review and be in a position to discuss next steps by January 30, 2026.

Thank you,

Trung Nguyen

P: 905.639.1052 x 235
E: trung@simpsonwagle.com



SimpsonWigle
LAW LLP

From: Vy Rodulfo <VyR@simpsonwagle.com>
Sent: January 7, 2026 3:15 PM
To: Borgo, Mark <MBorgo@blg.com>; Bambrough, Denise L. <DBambrough@blg.com>
Cc: Trung Nguyen <TrungN@simpsonwagle.com>
Subject: RE: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158 [BLG-DOCUMENTS.FID20396570]

Good afternoon,

Please find attached the Notice of Intent to Defence, served upon you pursuant to the *Rules of Civil Procedure*.

Kind regards,

Vy Rodulfo
Law Clerk

Phone: 905-639-1052 Ext 237
 Fax: 905-528-9008
 E-mail: vyr@SimpsonWigle.com
 Website: <http://www.simpsonwigle.com>



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From: Borgo, Mark <MBorgo@blg.com>
Sent: January 6, 2026 2:25 PM
To: Trung Nguyen <TrungN@simpsonwigle.com>
Cc: Vy Rodulfo <VyR@simpsonwigle.com>; Bambrough, Denise L. <DBambrough@blg.com>
Subject: RE: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158 [BLG-DOCUMENTS.FID20396570]

Hi Trung,

We acknowledge receipt of your letter dated January 5, 2026.

As you anticipate being retained by the Defendants later this week, we confirm that we will not take any adverse steps against the Defendants without providing reasonable written notice.

Could you please confirm whether your office will accept service of the claim on behalf of the Defendants, Kamal Patel and Jaykam Developers Limited?

Best regards,

Mark A. Borgo

Partner

T 416.367.7887 | mborgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON,
 Canada M5H 4E3

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From: Vy Rodulfo <VyR@simpsonwigle.com>
Sent: January 5, 2026 3:59 PM

To: Bambrough, Denise L. <DBambrough@blg.com>; Borgo, Mark <MBorgo@blg.com>
Cc: Trung Nguyen <TrungN@simpsonwagle.com>
Subject: FW: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158

[External / Externe]

Good afternoon,

I am resending the below email as there was a typo in Mr. Borgo's email address.

Yours truly,

Vy Rodulfo
Law Clerk

Phone: 905-639-1052 Ext 237
Fax: 905-528-9008
E-mail: vyr@SimpsonWigle.com
Website: <http://www.simpsonwagle.com>



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From: Vy Rodulfo <VyR@simpsonwagle.com>
Sent: January 5, 2026 3:46 PM
To: dbambrough@blg.com; mborgbo@blg.com
Cc: Trung Nguyen <TrungN@simpsonwagle.com>
Subject: Werner Leuschner, et al. ats. Aviva Insurance Company of Canada, et al. - CV-25-000756158

Dear Counsel,

Please see attached correspondence from Trung Nguyen with respect to the above-noted matter.

Yours truly,

Vy Rodulfo
Law Clerk

SimpsonWigle LAW LLP
103-1006 Skyview Dr.
Burlington ON L7P0V1

Phone: 905-639-1052 Ext 237
Fax: 905-528-9008

E-mail: vyr@SimpsonWigle.com
Website: <http://www.simpsonwigle.com>



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Tab 6

Fowler, Rachel

From: Eric Golden <egolden@blaney.com>
Sent: March 16, 2026 1:38 PM
To: Bambrough, Denise L.; Borgo, Mark
Cc: Chad Kopach; Mitch Vininsky; Ben Luder
Subject: RE: Aviva et al v Leuschner et al - CV-25-00756158-0000 (Elevate Condos) [BLG-DOCUMENTS.FID20396570]

Thanks for the quick response. I very much appreciate you making yourselves available in the proposed dates as a courtesy. Can you also confirm to Trung that no defence is due by the defendants in the surety action until the Case Conference is heard and whatever Endorsement is made?

I am 100% not going to stand in the way of anything BLG pitches to the CL judge at the Case Conference regarding the surety action (but I think you can get your surety motion for SJ heard so much faster on the CL, and your matter is currently not on the CL because you not would not have gotten leave to go it solo on the CL, so this could be an indirect way you to get leave and speed).

Bringing in the Receiver so that it's aware of the BLG position re surety action

Eric Golden
 Partner - Chair, Business Reorganization & Insolvency Group
egolden@blaney.com
 ☎ 416-593-3927 | ☎ 416-596-2049

From: Bambrough, Denise L. <DBambrough@blg.com>
Sent: Monday, March 16, 2026 12:50 PM
To: Eric Golden <egolden@blaney.com>; Borgo, Mark <MBorgo@blg.com>
Cc: Chad Kopach <ckopach@blaney.com>
Subject: RE: Aviva et al v Leuschner et al - CV-25-00756158-0000 (Elevate Condos) [BLG-DOCUMENTS.FID20396570]

Eric,

Is it our view that the Receiver is clearly overstepping its powers by attempting to influence the course of the litigation commenced by our clients in which the companies in receivership are not parties. Our clients' indemnity action was not commenced on the Commercial List and, as you are no doubt aware, the action does not involve any of the matters that are eligible for determination on the Commercial List in accordance with the governing Practice Direction. The Receivership Order did not include a stay of proceedings against any parties other than the respondent debtors, and there is no factual or legal basis for the indemnitors (not "guarantors") to obtain a stay of our clients' action.

Our clients' action could not be more straightforward – a Receivership Order was made, the Receiver obtained an Order permitting it to disclaim certain agreements of purchase and sale, and our client was required to return the deposits paid by the purchasers pursuant to the provisions of the Tarion Bonds and EDCI Policies that were issued in reliance on the indemnity agreement that was executed in favour of our clients. The deposit return process was ordered by the court and there is no factual or legal basis for disputing the losses incurred by our clients as a result of having to return the purchasers' deposits, together with interest thereon calculated in accordance with the requirements of the *Condominium Act*. Without seeing the indemnitors' Statement of Defence, we can advise that our clients will almost certainly instruct us to bring a motion for summary judgment based on well-established legal authority, most of which has arisen from indemnity actions that BLG has pursued on behalf of its surety clients. While we would certainly appreciate any opportunity to move our clients' action forward as

expeditiously as possible, we do not agree that tying it to unrelated, less straightforward actions involving other parties is in our clients' best interests.

Notwithstanding the foregoing, as it appears from your last email below that the Receiver intends to schedule a case conference for the week of April 13, 2026 and, if we do not attend, make submissions which suggest that the sureties have wrongfully refused to participate in the case conference (i.e. such that it "might not be a good look for BLG"), I will attend the case conference along with my insolvency partner, Sam Babe. We will make the submissions set out above and bring your correspondence below to the attention of the Court. Please be advised that Sam and I are available on any of April 14, 15, 16 or 17th.

We look forward to hearing from you regarding the date and time of the case conference.



Denise L. Bambrough

Partner

T 416.367.6008 | DBambrough@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Eric Golden <egolden@blaney.com>

Sent: March 13, 2026 5:18 PM

To: Bambrough, Denise L. <DBambrough@blg.com>; Borgo, Mark <MBorgo@blg.com>

Cc: Chad Kopach <ckopach@blaney.com>

Subject: RE: Aviva et al v Leuschner et al - CV-25-00756158-0000 (Elevate Condos) [BLG-DOCUMENTS.FID20396570]

Just BLG

Why would you and your clients say no?

How slowly do you think your action is going to proceed on the regular list, especially when the guarantors start launching delay tactic after delay tactic at your clients.

For example, when do you think a motion on the regular Toronto list by the guarantors gets heard for stay of the surety action pending discharge of the receiver on the receivership?

Why not jump at the opportunity to have your matter heard so much faster and cost effectively on the CL by the same judge who will be intimately familiar with the matter?

Plus might not be good look for BLG when the guarantors start talking about the surety action at the case conference, and the judge is told BLG and its clients did not wish to attend.

Call me to discuss

Eric Golden

Partner - Chair, Business Reorganization & Insolvency Group

egolden@blaney.com

📞 416-593-3927 | 📠 416-596-2049

From: Bambrough, Denise L. <DBambrough@blg.com>
Sent: Friday, March 13, 2026 5:06 PM
To: Eric Golden <egolden@blaney.com>; Borgo, Mark <MBorgo@blg.com>; TrungN@simpsonwigg.com
Cc: Chad Kopach <ckopach@blaney.com>
Subject: RE: Aviva et al v Leuschner et al - CV-25-00756158-0000 (Elevate Condos) [BLG-DOCUMENTS.FID20396570]

Eric,

We should have a call to discuss this matter before you proceed to schedule a case conference that our attendance will be requested at. We don't see any need for our clients to be herded by the Receiver or anyone else, and I don't believe that the Receiver even has any jurisdiction to get involved in this action. Our clients have commenced a straightforward indemnity action that can be dealt with on a summary basis regardless of what other actions involving the defendants may exist. Our clients have no interest in getting caught up in a myriad of other proceedings or any related delays, nor should they be required to do so.

Please let us know when you are available for a call.

Thanks,
Denise



Denise L. Bambrough

Partner

T 416.367.6008 | DBambrough@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON, Canada M5H 4E3

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From: Eric Golden <egolden@blaney.com>
Sent: March 13, 2026 4:56 PM
To: Bambrough, Denise L. <DBambrough@blg.com>; Borgo, Mark <MBorgo@blg.com>; TrungN@simpsonwigg.com
Cc: Chad Kopach <ckopach@blaney.com>
Subject: RE: Aviva et al v Leuschner et al - CV-25-00756158-0000 (Elevate Condos) [BLG-DOCUMENTS.FID20396570]

There are myriad claims, as you'll see from my next email. What I am saying is let's get everyone together in a 1 hour case conference shortly, everyone can put their position forward before a CL judge in the Elevate receivership, and get some structure and efficiency to the myriads claims as opposed to four different judges hearing one each over who know how long.

The Receiver is just herding the cats for now.

Eric Golden
Partner - Chair, Business Reorganization & Insolvency Group
egolden@blaney.com
📞 416-593-3927 | 📠 416-596-2049

From: Bambrough, Denise L. <DBambrough@blg.com>
Sent: Friday, March 13, 2026 4:52 PM
To: Eric Golden <egolden@blaney.com>; Borgo, Mark <MBorgo@blg.com>; TrungN@simpsonwigg.com
Cc: Chad Kopach <ckopach@blaney.com>
Subject: RE: Aviva et al v Leuschner et al - CV-25-00756158-0000 (Elevate Condos) [BLG-DOCUMENTS.FID20396570]

Eric,

Is the Receiver taking the position that Aviva's action against its indemnitors is stayed? If so, would you please provide us with the authority that the Receiver is relying upon for its position.

Thank you,
 Denise



Denise L. Bambrough

Partner

T 416.367.6008 | DBambrough@blg.com

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From: Eric Golden <egolden@blaney.com>
Sent: March 13, 2026 4:47 PM
To: Borgo, Mark <MBorgo@blg.com>; TrungN@simpsonwigg.com; Bambrough, Denise L. <DBambrough@blg.com>
Cc: Chad Kopach <ckopach@blaney.com>
Subject: FW: Aviva et al v Leuschner et al - CV-25-00756158-0000 (Elevate Condos)

Hello everyone,

See my next email regarding proposed dates for a case conference on the Commercial for the attached claim against the Elevate guarantors, and three other claims brought by three different plaintiffs (including the Elevate guarantors as plaintiffs in one claim) against the Elevate project lenders. I have canvassed dates from all lenders and will be proposing dates the week of April 13.

Eric Golden
 Partner - Chair, Business Reorganization & Insolvency Group
egolden@blaney.com
 ☎ 416-593-3927 | 📠 416-596-2049

From: Borgo, Mark <MBorgo@blg.com>
Sent: Wednesday, March 11, 2026 12:13 PM
To: Eric Golden <egolden@blaney.com>
Cc: Trung Nguyen <trungn@simpsonwigg.com>; Bambrough, Denise L. <DBambrough@blg.com>
Subject: RE: Aviva et al v Leuschner et al - CV-25-00756158-0000 (Elevate Condos) [BLG-DOCUMENTS.FID20396570]

Hi Eric,

Further to Mr. Nguyen's email below, paragraph 8 of the Receivership Order provides that the stay of proceedings applies only to the Debtor, 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP, and the Property. The Receivership Order does not stay the Sureties' claim against the Defendants, Werner Leuschner, Kamal Patel, 1639993 Ontario Ltd. and Jaykam Developers Limited, arising under the Indemnity Agreement executed in the Sureties' favour in respect of losses.

Thank you,

Mark A. Borgo

Partner

T 416.367.7887 | mborgo@blg.com

Bay Adelaide Centre, East Tower, 22 Adelaide St. W, Toronto, ON,
Canada M5H 4E3

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From: Trung Nguyen <TrungN@simpsonwigg.com>
Sent: Wednesday, March 11, 2026 11:55 AM
To: Eric Golden <egolden@blaney.com>
Cc: MBorgo@blg.com; Bambrough, Denise L. <dbambrough@blg.com>
Subject: Aviva et al v Leuschner et al - CV-25-00756158-0000 (Elevate Condos)

Hi Eric,

Our clients have been served with the attached claim. Please advise of the receivers' position on whether this action is stayed as with the other three proceedings.

Thank you,

Trung Nguyen

SimpsonWigle LAW LLP
103-1006 Skyview Dr.
Burlington ON L7P 0V1

P: 905.639.1052 x 235

E: trung@simpsonwigg.com



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GENESIS MORTGAGE INVESTMENT CORPORATION - and -

1776411 ONTARIO LTD., et al.

Applicant

Respondents

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

PROCEEDINGS COMMENCED AT TORONTO

CASE CONFERENCE BRIEF OF
THE SURETIES

BORDEN LADNER GERVAIS LLP

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Sam Babe (LSO#: 49498B)

Tel: (416) 367-6182
Email: sbabe@blg.com

Lawyers for Aviva Insurance Company of Canada and
Liberty Mutual Insurance Company