

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

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORP.

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**

**MOTION RECORD
(Returnable June 26, 2025)**

June 17, 2025

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SERVICE LIST

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

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

-and-

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

Respondents

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Tab 1

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

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORP.

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**

**NOTICE OF MOTION
(AVO Amendment Order)**

GFD 1333W Limited Partnership (“**GFD LP**”) will make a motion before the Honourable Justice Steele of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) on June 26, 2025 at 12:00 p.m. or as soon after that time as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☐ In writing under subrule 37.12.1(1).
- ☐ In writing as an opposed motion under subrule 37.12.1(4).
- ☐ In person.
- ☐ By telephone conference.
- ☒ By video conference.

At a Zoom link to be provided by the Court in advance of the motion.

THE MOTION IS FOR:

1. An order (the “**Second AVO Amendment Order**”) substantially in the form of the draft order attached at Tab 3 of the GFD LP’s Motion Record, among other things:
 - (a) abridging the time for and validating the service of this Notice of Motion and the Motion Record and dispensing with further service thereof; and
 - (b) amending the Approval and Vesting Order granted by this Court on October 8, 2024 (the “**AVO**”), as amended by Order dated February 20, 2025, to extend the period for the Assignee to provide notice to the Receiver of the APSs’ (each as defined below) to be disclaimed such that notice must be provided by no later than August 19, 2025.
2. Such further and other relief as counsel may request and this Court deems just.

THE GROUNDS FOR THE MOTION ARE:

Background

3. On October 12, 2023, following an application brought by Genesis Mortgage Investment Corporation (“**GMIC**”) (in its capacity as the junior secured lender in a syndicate of secured lenders (the “**Syndicate**”) of the Respondents), the Court issued an Order, among other things, appointing KSV Restructuring Inc. as the receiver and manager (the “**Receiver**”), without security, of all of the property, assets and undertakings (the “**Property**”) of 1333 Weber Street Kitchener LP (“**1333 Weber LP**”) and its general partner, 1776411 Ontario Limited (together with 1333 Weber LP, the “**Partnership**”).

4. The principal asset of the Partnership was the real property located at 1333 Weber Street East, City of Kitchener and the phased four-tower residential condominium project located thereon (the “**Project**”). The Project is currently comprised of the following four phases:

- (a) Phase 1: a partially complete residential building (“**Tower A**”);
- (b) Phases 2 and 3: a partially complete foundation and underground parking area where it is contemplated that two residential buildings will be erected (“**Tower B**” and “**Tower C**”); and
- (c) Phase 4: raw land wherein it is contemplated that a residential building will be erected.

5. Prior to the receivership, all 177 units of Tower A and 325 units of Towers B and C were sold pursuant to pre-construction agreements of purchase and sale (the “**APSs**”).

6. The Court-approved sale process for the Project did not result in any offers supported by the Syndicate by the bid deadline of January 30, 2024 – as such, GMIC advised the Receiver that it would submit a bid for the Project. Pursuant to an agreement of purchase and sale with the Receiver dated March 4, 2024 (the “**Sale Agreement**”), GMIC, along with Elm Acquisitions Corp. (“**Elm**”) and Dorr Capital Corporation (“**Dorr**”, and collectively with GMIC and Elm, the “**Purchasers**”) ultimately agreed to purchase the Project. On October 7, 2024, the Purchasers’ interest in the Sale Agreement was assigned to GFD LP, a limited partnership in which the Purchasers are the limited partners.

7. On October 8, 2024, the Court granted the AVO, which, among other things:

- (a) approved the transaction contemplated by the Sale Agreement (the “**Transaction**”);
 - (b) upon closing of the Transaction, vested in 1333W Lands Ltd. (the “**Assignee**”), the nominee of GFD LP’s general partner, the Respondents’ right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement);
 - (c) authorized the Receiver to terminate and disclaim the APSs within Tower B in the Project on or following closing of the Transaction, and within Tower A in the Project 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 as to which APSs are not being assumed by the Assignee; and
 - (d) approved a deposit return protocol pursuant to which deposits would be returned to the purchasers of units that were disclaimed by the Receiver in accordance with the AVO.
8. The Purchasers were not prepared to close the Transaction without certain disclaimers and terminations of APSs, and did not believe the Project would be economically viable if the APSs in respect of Towers A and B remained in place. This remains the case today.
9. Pursuant to the sales plan for Tower A (the “**Tower A Sales Plan**”), which was communicated to the purchasers of units in the Project (the “**Unit Purchasers**”) and was appended to the Receiver’s Second Report, the Purchasers will offer each Tower A Unit Purchaser the option to keep its unit if it enters into a revised APS with a 24% purchase price increase. If the Tower A Unit Purchaser does not agree to retain its unit on those terms, the APS for that unit may be disclaimed without the need to return to Court (in accordance with the

AVO). Alternatively, at GFD LP's election, the Receiver may determine the original APS firm and binding and the Assignee may proceed with the original APS.

10. If an APS is disclaimed, the unit will first be offered to Tower B and Tower C Unit Purchasers (respectively) before being marketed to the public. In accordance with a requirement of the Purchasers' lender, the Tower A Sales Plan provides that the APSs will be disclaimed in stages, with no more than 40 to be disclaimed at any time in accordance with the AVO.

11. The purpose of the 120 day period for the Assignee to identify APSs that would not be assumed was to allow the Assignee sufficient time to (i) engage in discussions and negotiations with the Unit Purchasers; and (ii) determine which APSs will be assumed in accordance with the Tower A Sales Plan.

12. The Transaction closed on October 29, 2024. Thereafter, representatives of GFD LP have engaged in productive discussions with the Tower A Unit Purchasers regarding the potential assumption of the APSs.

13. GFD LP subsequently brought a motion before this Court seeking an Order, among other things, amending the AVO (the "**AVO Amendment Order**") to extend the period for the Assignee to provide notice to the Receiver of the APSs to be disclaimed. That motion was ultimately adjourned by the Court at a hearing on January 23, 2025. GFD LP returned to Court on February 20, 2025 and obtained a revised form of AVO Amendment Order, among other things, extending the deadline to provide notice to the Receiver of the APSs to be disclaimed to June 30, 2025 – one month before the then Outside Occupancy Date under the Tower A Unit APSs.

14. After hearing from certain self-represented Unit Purchasers on February 20, the Court ultimately granted the Second AVO Amendment Order. In its endorsement, the Court also included language memorializing an agreement reached between GFD LP, Aviva, and Westmount Guarantee Services pursuant to which GFD LP agreed to pay additional claims and expenses under the Tarion Bond and the Master Deposit Insurance Policy that may be incurred by Aviva as a result of the extension of the Deadline (the “**Aviva Endorsement Language**”).

Recent Developments and Need for Further Extension

15. Since the AVO Amendment Order was granted, GFD LP has continued discussions with Tower A Unit Purchasers and has continued to oversee the construction of the Project. GFD LP, directly or through Captain RE, has been in contact with all 177 Tower A Unit Purchasers. Certain of the Tower A Unit Purchasers remain undecided or have not expressed a preference one way or the other as to whether they will enter into a new APS at the increased price.

16. Recent strikes by residential roofing contractors and high-rise plumbers working on the Project have necessitated a fifty-day extension of the Outside Occupancy Date provided for under the Tower A APSs from July 31, 2025 to September 19, 2025. Tower A Unit Purchasers have been notified of the strikes and the impact on the Outside Occupancy Date in notices provided by GFD LP from May 12 to June 11.

17. Given the recent delays and the corresponding extension of the Outside Occupancy Date, GFD LP believes that a further extension of the Deadline is appropriate in the circumstances on the same basis that this Court found the prior extension was appropriate.

18. Importantly, as noted above, GFD LP’s lender has required that only 40 units be disclaimed from the Project at any time. Given the recent delays, GFD LP has been unable to

estimate the time at which Units will be ready for occupation, which has led to corresponding delays in determining which Units should be disclaimed and marketed to the public. Further, as noted, certain Tower A Unit Purchasers have still not expressed a preference one way or the other as to whether they would prefer to enter into a revised APS. As such, GFD requires additional time to disclaim the Tower A APSs' in an orderly manner in compliance with the lender's requirement.

19. The relief sought is reasonable in the circumstances and will not materially prejudice the Tower A Unit Purchasers. The deposits will continue to bear interest until they are returned. Further, the revised extension would see the determination on all disclaimers made by August 19, which again will be a full month less than the outside occupancy date (September 19) under the Tower A APSs – as such, the Tower A Unit Purchasers are no worse off than they would be under their original contracts. Finally, the Tower A Unit Purchasers have no specific entitlement to the return of their deposit. Pursuant to the AVO, GFD LP is entitled to decide to assume the Tower A APSs, which would mean no deposits are returned. The requested extension will allow GFD LP to finish discussions with Tower A Unit Purchasers and prepare all units for sale in an organized fashion, which is to the benefit of all stakeholders.

Other Grounds

20. The inherent and equitable jurisdiction of the Court.
21. Rules 1.04, 1.05, 2.03, 3.02, 16, 37, and 39 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended.
22. Such further and other grounds as counsel may advise and this Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the Motion:

23. The Affidavit of Michael Yeung sworn June 17, 2025 and the exhibits attached thereto.
24. Such further and other material as counsel may advise and this Honourable Court may permit.

June 17, 2025

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CORP.

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
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Proceedings commenced in Toronto

**Notice of Motion
(Second AVO Amendment Order)**

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Tab 2

**ONTARIO
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(COMMERCIAL LIST)**

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORP.

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**

**AFFIDAVIT OF MICHAEL YEUNG
(Sworn June 17, 2025)**

I, **MICHAEL YEUNG**, of the City of Richmond, in the Province of British Columbia,
MAKE OATH AND SAY:

1. I am the Executive Vice President, Lending of Gentai Capital Corporation (“**Gentai**”), and an officer of Genesis Mortgage Investment Corporation (“**GMIC**”), a non-banking mortgage lender that is managed by Gentai. I have personal knowledge of the matters to which I depose in this affidavit, unless otherwise indicated. Where I have relied on other sources for information, I have so stated and I believe them to be true.

2. As discussed further below, GMIC, along with Elm Acquisitions Corp. (“**Elm**”) and Dorr Capital Corporation (“**Dorr**”, and collectively with GMIC and Elm, the “**Purchasers**”) agreed to purchase certain of the Respondents’ property pursuant to an agreement of purchase and sale dated

March 4, 2024 (the “**Sale Agreement**”), with the Receiver (as defined below) as the seller. On October 7, 2024, the Purchasers’ interest in the Sale Agreement was assigned to GFD 1333W Limited Partnership (“**GFD LP**”), a limited partnership in which the Purchasers are the limited partners.

3. The Sale Agreement and the transaction contemplated thereunder (the “**Transaction**”) was approved by this Court on October 8, 2024, pursuant to an approval and vesting order (the “**AVO**”, which is discussed in greater detail below), and upon closing of the Transaction, the Purchased Assets (as defined in the Sale Agreement) were vested in 1333W Lands Ltd. (the “**Assignee**”), the nominee of GFD LP’s general partner, GFD 1333W GP Inc.

4. The Purchased Assets include real property and a four-tower condominium project located thereon, which towers are at various stages of construction. At the time of the appointment of the Receiver, hundreds of units in the towers had been sold pursuant to pre-construction agreements of purchase and sale (the “**APSs**”). The AVO, among other things, authorized the Receiver to disclaim: (i) all of the APSs for units in Tower B (as defined below) on or following the closing of the Transaction, and (ii) any of the APSs for units in Tower A (as defined below) after the closing of the Transaction, with notice to be provided by the Assignee to the Receiver within 120 days of the closing of the Transaction as to which APSs should be disclaimed (the “**Deadline**”). The Transaction closed on October 29, 2024. As discussed further below, the Deadline was extended to June 30, 2025 by Order of this Court dated February 20, 2025 (the “**AVO Amendment Order**”).

5. I swear this affidavit in support of a motion by GFD LP for an Order (the “**Second AVO Amendment Order**”) to further extend the Deadline to August 19, 2025. The extension of the

Deadline is necessary given recent strikes by certain contractor groups involved in the construction of the Project, which, as discussed further below, has resulted in an extension of the “Outside Occupancy Date” under the original agreements of purchase and sale for units in Tower A from July 31, 2025 to September 19, 2025 (i.e. 50 days). As such, I do not believe the relief sought – a commensurate 50-day extension of the Deadline – will prejudice any stakeholder.

A. Background

6. Much of the background contained herein was set out in my affidavit sworn February 11, 2025 in support of the AVO Amendment Order, which is attached hereto (without appendices) as **Exhibit “A”**. That background is repeated here for ease of reference.

7. KSV Restructuring Inc. was appointed as the receiver and manager (the “**Receiver**”), without security, of all of the property, assets and undertakings (the “**Property**”) of 1333 Weber Street Kitchener LP (“**1333 Weber LP**”) and its general partner, 1776411 Ontario Limited (together with 1333 Weber LP, the “**Partnership**”), on October 12, 2023, following an application brought by GMIC. The principal asset of the Partnership was the real property located at 1333 Weber Street East, City of Kitchener and the phased four-tower residential condominium project located thereon (the “**Project**”).

8. The Project is currently comprised of the following four phases:

- (a) Phase 1: a partially complete residential building (“**Tower A**”);
- (b) Phases 2 and 3: a partially complete foundation and underground parking area where it is contemplated that two residential buildings will be erected (“**Tower B**” and “**Tower C**”); and

- (c) Phase 4: raw land wherein it is contemplated that a residential building will be erected.

As this Court has been previously advised, I understand that all 177 units of Tower A, 189 units of Tower B, and 137 units of Tower C were subject to pre-construction agreements of purchase and sale (“APSs”).

9. Following a Court-approved Sale Process that did not result in any acceptable bids for the Project, GMIC advised the Receiver that it would submit a bid for the Project. As noted above, GMIC, Elm, and Dorr, as Purchasers, ultimately entered in the Sale Agreement with the Receiver, and their interest in the Sale Agreement is now held through GFD LP. The AVO, among other things:

- (a) approved the Transaction for the Purchased Assets contemplated by the Sale Agreement between the Receiver and the Purchasers;
- (b) upon closing of the Transaction, vested in the Assignee the Respondents’ right, title and interest in and to the Purchased Assets;
- (c) authorized the Receiver to terminate and disclaim all of the APSs within Tower B in the Project on or following closing of the Transaction;
- (d) authorized the Receiver to terminate and disclaim certain of the APSs within Tower A in the Project 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 as to which APSs are not being assumed by the Assignee; and

- (e) approved a deposit return protocol managed by Aviva Insurance Company of Canada (“**Aviva**”) and its agent, MNP Ltd., pursuant to which deposits would be returned to the purchasers of units that were disclaimed by the Receiver in accordance with the AVO.

10. The Court also granted an Order on the same date, among other things, approving the process for distributions to be made from the proceeds of the Transaction.

11. As described in the Receiver’s supplement to its Second Report dated October 4, 2024, filed in connection with the motion for the AVO, the Purchasers were not prepared to close the Transaction without certain disclaimers and terminations of APSs, and did not believe the Project would be economically viable if the APSs in respect of Towers A and B remained in place. This remains the case today.

12. Pursuant to the sales plan for Tower A (the “**Tower A Sales Plan**”), which I understand was communicated to the purchasers of units in the Project (the “**Unit Purchasers**”) and was appended to the Receiver’s Second Report, GFD LP is offering each Tower A Unit Purchaser the option to keep its unit if it enters into a revised APS with a 24% purchase price increase (the “**Revised APS**”). If the Tower A Unit Purchaser does not agree to retain its unit on those terms, the APS for that unit may be disclaimed without the need to return to Court (in accordance with the AVO). Alternatively, at GFD LP’s election, the Receiver may determine the original APS is firm and binding and the Assignee may proceed with the original APS. If an APS is disclaimed, the unit will first be offered to Tower B and Tower C Unit Purchasers (respectively) before being marketed to the public. In accordance with a requirement of the Purchasers’ lender, the Tower A Sales Plan provides that the APSs will be disclaimed in stages, with no more than 40 to be

disclaimed at any time in accordance with the AVO. A copy of the correspondence to Unit Purchasers from counsel for the Receiver is attached hereto as **Exhibit “B”**.

13. The purpose of the original 120-day period for the Assignee to identify APSs that would not be assumed was to allow sufficient time to (i) engage in discussions and negotiations with the Unit Purchasers; and (ii) determine which APSs will be assumed in accordance with the Tower A Sales Plan.

14. The Transaction closed on October 29, 2024. Copies of the AVO and the Receiver’s closing certificate are attached hereto as **Exhibits “C” and “D”**, respectively.

B. AVO Amendment Order and Direction of Proceeds Order

15. Following the granting of the AVO, representatives of GFD LP engaged in productive discussions with the Tower A Unit Purchasers regarding their APSs. GFD LP retained: (i) Captain Real Estate Group Ltd. (“**Captain RE**”) as its broker to lead these discussions with the Unit Purchasers, and (ii) Channel 13 Advertising and Design Inc. to assist with marketing.

16. GFD LP subsequently brought a motion before this Court seeking an Order, among other things, amending the AVO (the “**AVO Amendment Order**”) to extend the period for the Assignee to provide notice to the Receiver of the APSs to be disclaimed. That motion was ultimately adjourned by the Court at a hearing on January 23, 2025. GFD LP returned to Court on February 20, 2025 and obtained a revised form of AVO Amendment Order, among other things, extending the deadline to provide notice to the Receiver of the APSs to be disclaimed to June 30, 2025 – one month before the then Outside Occupancy Date (July 31, 2025) under the Tower A Unit APSs.

17. At the original hearing on January 16 and the rescheduled hearing on February 20, the Court heard from certain Unit Purchasers who expressed concerns or opposed the requested extension of the Deadline. I understand that the main objection from the Unit Purchasers was that the requested extension would delay the return of deposits for Unit Purchasers that wish to get out of the Project as soon as possible, and that Unit Purchasers also expressed concern about communications provided to date.

18. After hearing from certain self-represented Unit Purchasers on February 20, the Court ultimately granted the AVO Amendment Order. A copy of the AVO Amendment Order is attached hereto as **Exhibit “E”**, and the Court’s related endorsement (the “**February 20 Endorsement**”) is attached hereto as **Exhibit “F”**.

19. The February 20 Endorsement also contained language at paragraph 11 memorializing an agreement reached between GFD LP, Aviva, and Westmount Guarantee Services pursuant to which GFD LP agreed to pay additional claims and expenses under the Tarion Bond and the Master Deposit Insurance Policy that may be incurred by Aviva as a result of the extension of the Deadline (the “**Aviva Endorsement Language**”). The extracted Aviva Endorsement Language is attached hereto as **Exhibit “G”**.

20. GFD LP was most recently before this Court for a motion on June 17, 2025 where it sought an administrative Order providing certain direction regarding the delivery of required schedules for new APSs entered into for Tower A Units. The relief sought on that motion was adjourned until a determination on the APSs to be disclaimed is made by GFD LP.

C. Recent Developments and Need for Further Extension

21. Since the AVO Amendment Order was granted, GFD LP has continued discussions with Tower A Unit Purchasers and has continued to oversee the construction of the Project. GFD LP, directly or through Captain RE, has been in contact with all 177 Tower A Unit Purchasers. Certain of the Tower A Unit Purchasers remain undecided or have not expressed a preference one way or the other as to whether they will enter into a new APS at the increased price.

22. The exterior construction of the Project is now complete, but certain delays outside the control of GFD LP have occurred that have necessitated the extension of the Outside Occupancy Date under the Tower A APSs. Specifically, two recent strikes have resulted in delays – the first being a strike by residential roofing contractors, which began on May 1 and ended on May 20, and the second being a strike by high-rise plumbers, which began on May 13 and ended on May 16.

23. The Tower A APSs provide that “Critical Dates”, including the Outside Occupancy Date, can be extended by the owner in the event an “Unavoidable Delay” has occurred. The definition of Unavoidable Delay includes a strike, plus any period of delay caused by the strike. As such, in a series of four notices sent to the Tower A Unit Purchasers from May 12 to June 11 (the “Notices”), GFD LP informed such Unit Purchasers of the strikes and that the strikes constituted an Unavoidable Delay. In its most recent notice dated June 11, in accordance with an information sheet published by Tarion in April 2025 discussing potential strikes and the impact on construction schedules, GFD LP informed the Tower A Unit Purchasers that the Outside Occupancy Date under the original APSs would be extended to September 19, 2025, being the length of the strikes plus an additional 30-day remobilization period. A copy of a sample addendum to the Tower A APSs,

which provides for the Unavoidable Delay concept, along with the Taron Information Sheet, is attached hereto as **Exhibit “H”**, and the Notices are attached hereto as **Exhibit “I”**.

24. Given the recent delays and the corresponding extension of the Outside Occupancy Date, GFD LP believes that a further extension of the Deadline is appropriate in the circumstances on the same basis that this Court found the prior extension was appropriate.

25. Importantly, as noted above, GFD LP’s lender has required that only 40 units be disclaimed from the Project at any time. Given the recent delays, GFD LP has been unable to estimate the time at which Units will be ready for occupation, which has led to corresponding delays in determining which Units should be disclaimed and marketed to the public. Further, as noted, certain Tower A Unit Purchasers have still not expressed a preference one way or the other as to whether they would prefer to enter into a revised APS. As such, GFD requires additional time to disclaim the Tower A APSs’ in an orderly manner in compliance with the lender’s requirement. The relief sought on this motion has been discussed with the Receiver and counsel to Aviva, and I understand that all Tower A Unit Purchasers will receive notice of this motion concurrently with the service list in these receivership proceedings.

26. GFD LP believes that the relief sought is reasonable in the circumstances and will not materially prejudice the Tower A Unit Purchasers. The deposits will continue to bear interest until they are returned. Further, the revised extension would see the determination on all disclaimers made by August 19, which again will be a full month less than the outside occupancy date (September 19) under the Tower A APSs – as such, the Tower A Unit Purchasers are no worse off than they would be under their original contracts. Finally, the Tower A Unit Purchasers have no specific entitlement to the return of their deposit. Pursuant to the AVO, GFD LP is entitled to

decide to assume the Tower A APSs, which would mean no deposits are returned. The requested extension will allow GFD LP to finish discussions with Tower A Unit Purchasers and prepare all units for sale in an organized fashion, which is to the benefit of all stakeholders.

D. Conclusion

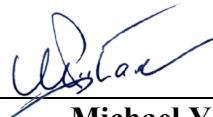
27. The requested extension will provide the time necessary for continued discussions between representatives of GFD LP and the Tower A Unit Purchasers as each work toward mutually beneficial, reasonable and tailored solutions. This Court granted similar relief in similar circumstances when it granted the AVO Amendment Order – the circumstances now continue to weigh in favour of granting a further extension of the Deadline. I therefore believe the relief sought is for the benefit of all parties, and is reasonable and appropriate in the circumstances. GFD LP also respectfully requests that this Court include the same Aviva Endorsement Language in its endorsement issued in connection with the extension, as the agreement reached between the parties remains reasonable and represents a practical solution. I swear this affidavit solely in support of GFD LP's motion for the Second AVO Amendment Order and for no other or improper purpose.

SWORN BEFORE ME over)
videoconference on this 17th day of June,)
2025 in accordance with Ontario *Regulation*)
431/20. The affiant was located in the City of)
Richmond, in the Province of British)
Columbia and the Commissioner was located)
in the City of Toronto, in the Province of)
Ontario.)



Thomas Gray

A Commissioner for Oaths in and for the
Province of Ontario



Michael Yeung

THIS IS **EXHIBIT “A”** REFERRED TO IN THE AFFIDAVIT
OF MICHAEL YEUNG, SWORN BEFORE ME
THIS 17th DAY OF JUNE, 2025.



THOMAS GRAY

A Commissioner for taking Affidavits
(or as may be)

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

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORP.

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**

**AFFIDAVIT OF MICHAEL YEUNG
(Sworn February 11, 2025)**

I, **MICHAEL YEUNG**, of the City of Richmond, in the Province of British Columbia,
MAKE OATH AND SAY:

1. I am the Executive Vice President, Lending of Gentai Capital Corporation (“**Gentai**”), and an officer of Genesis Mortgage Investment Corporation (“**GMIC**”), a non-banking mortgage lender that is managed by Gentai. I have personal knowledge of the matters to which I depose in this affidavit, unless otherwise indicated. Where I have relied on other sources for information, I have so stated and I believe them to be true.

2. As discussed further below, GMIC, along with Elm Acquisitions Corp. (“**Elm**”) and Dorr Capital Corporation (“**Dorr**”, and collectively with GMIC and Elm, the “**Purchasers**”) agreed to purchase certain of the Respondents’ property pursuant to an agreement of purchase and sale dated

March 4, 2024 (the “**Sale Agreement**”), with the Receiver (as defined below) as the seller. On October 7, 2024, the Purchasers’ interest in the Sale Agreement was assigned to GFD 1333W Limited Partnership (“**GFD LP**”), a limited partnership in which the Purchasers are the limited partners.

3. The Sale Agreement and the transaction contemplated thereunder (the “**Transaction**”) was approved by this Court on October 8, 2024, pursuant to an approval and vesting order (the “**AVO**”, which is discussed in greater detail below), and upon closing of the Transaction, the Purchased Assets (as defined in the Sale Agreement) were vested in 1333W Lands Ltd. (the “**Assignee**”), the nominee of GFD LP’s general partner, GFD 1333W GP Inc.

4. The Purchased Assets include real property and a four-tower condominium project located thereon, which towers are at various stages of construction. At the time of the appointment of the Receiver, hundreds of units in the towers had been sold pursuant to pre-construction agreements of purchase and sale (the “**APSs**”). The AVO, among other things, authorized the Receiver to disclaim: (i) all of the APSs for units in Tower B (as defined below) on or following the closing of the Transaction, and (ii) any of the APSs for units in Tower A (as defined below) after the closing of the Transaction, with notice to be provided by the Assignee to the Receiver within 120 days of the closing of the Transaction as to which APSs should be disclaimed. The Transaction closed on October 29, 2024.

5. On January 16, 2025, I swore an affidavit (the “**January 16th Affidavit**”) in support of a motion by GFD LP for an Order (the “**AVO Amendment Order**”), among other things, amending the AVO to extend the period for the Assignee to provide notice to the Receiver of the APSs’ to be disclaimed such that notice must be provided by no later than August 31, 2025 (the

“Extension”). As discussed in greater detail below, that motion was adjourned by the Court at a hearing on January 23, 2025 (the **“January 23 Hearing”**). A copy of the January 16th Affidavit (without appendices) is attached hereto as **Exhibit “A”**, and a copy of the Court’s January 23 endorsement is attached hereto as **Exhibit “B”**.

6. I believe that an extension of the Deadline (as defined below) remains necessary and appropriate in the circumstances for the reasons set forth in this affidavit. However, GFD LP is now seeking a revised form of the AVO Amendment Order pursuant to which the Deadline would be extended to only June 30, 2025. To be clear, the relief sought only affects Tower A Unit Purchasers, and does not impact Unit Purchasers in any other of the Project’s Towers. A copy of the revised form of AVO Amendment Order is attached hereto as **Exhibit “C”**, and a redline to the version sought at the January 23rd hearing is attached hereto as **Exhibit “D”**.

A. Background

7. Background relevant to this motion is set out in the January 16th Affidavit. Much of that background is repeated below for ease of reference. Capitalized terms used but not otherwise defined have the meanings ascribed in the January 16th Affidavit.

8. KSV Restructuring Inc. was appointed as the receiver and manager (the **“Receiver”**), without security, of all of the property, assets and undertakings (the **“Property”**) of 1333 Weber Street Kitchener LP (**“1333 Weber LP”**) and its general partner, 1776411 Ontario Limited (together with 1333 Weber LP, the **“Partnership”**), on October 12, 2023, following an application brought by GMIC. The principal asset of the Partnership was the real property located at 1333 Weber Street East, City of Kitchener and the phased four-tower residential condominium project located thereon (the **“Project”**).

9. The Project is currently comprised of the following four phases:
- (a) Phase 1: a partially complete residential building (“**Tower A**”);
 - (b) Phases 2 and 3: a partially complete foundation and underground parking area where it is contemplated that two residential buildings will be erected (“**Tower B**” and “**Tower C**”); and
 - (c) Phase 4: raw land wherein it is contemplated that a residential building will be erected (“**Tower D**”).

I understand that all 177 units of Tower A, 189 units of Tower B, and 137 units of Tower C were sold pursuant to pre-construction APSs.

10. Following a Court-approved Sale Process that did not result in any acceptable bids for the Project, GMIC advised the Receiver that it would submit a bid for the Project. As noted above, GMIC, Elm, and Dorr, as Purchasers, ultimately entered in the Sale Agreement with the Receiver, and their interest in the Sale Agreement is now held through GFD LP. The AVO, among other things:

- (a) approved the Transaction for the Purchased Assets contemplated by the Sale Agreement between the Receiver and the Purchasers;
- (b) upon closing of the Transaction, vested in the Assignee the Respondents’ right, title and interest in and to the Purchased Assets;
- (c) authorized the Receiver to terminate and disclaim all of the APSs within Tower B in the Project on or following closing of the Transaction;

- (d) authorized the Receiver to terminate and disclaim certain of the APSs within Tower A in the Project 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 as to which APSs are not being assumed by the Assignee; and
- (e) approved a deposit return protocol managed by Aviva Insurance Company of Canada (“**Aviva**”) pursuant to which deposits would be returned to the purchasers of units that were disclaimed by the Receiver in accordance with the AVO.

11. The Court also granted an Order on the same date, among other things, approving the process for distributions to be made from the proceeds of the Transaction.

12. As described in the Receiver’s supplement to its Second Report dated October 4, 2024, filed in connection with the AVO, the Purchasers were not prepared to close the Transaction without certain disclaimers and terminations of APSs, and did not believe the Project would be economically viable if the APSs in respect of Towers A and B remained in place. This remains the case today.

13. Pursuant to the sales plan for Tower A (the “**Tower A Sales Plan**”), which I understand was communicated to the purchasers of units in the Project (the “**Unit Purchasers**”) and was appended to the Receiver’s Second Report, GFD LP is offering each Tower A Unit Purchaser the option to keep its unit if it enters into a revised APS with a 24% purchase price increase (the “**Revised APS**”). If the Tower A Unit Purchaser does not agree to retain its unit on those terms, the APS for that unit may be disclaimed without the need to return to Court (in accordance with the AVO). Alternatively, at GFD LP’s election, the Receiver may determine the original APS is firm and binding and the Assignee may proceed with the original APS. If an APS is disclaimed,

the unit will first be offered to Tower B and Tower C Unit Purchasers (respectively) before being marketed to the public. In accordance with a requirement of the Purchasers' lender, the Tower A Sales Plan provides that the APSs will be disclaimed in stages, with no more than 40 to be disclaimed at any time in accordance with the AVO. A copy of the correspondence to Unit Purchasers from counsel for the Receiver is attached hereto as **Exhibit "E"**.

14. The purpose of the 120-day period (the "**Deadline**") for the Assignee to identify APSs that would not be assumed was to allow sufficient time to (i) engage in discussions and negotiations with the Unit Purchasers; and (ii) determine which APSs will be assumed in accordance with the Tower A Sales Plan.

15. The Transaction closed on October 29, 2024. Copies of the AVO and the Receiver's closing certificate are attached hereto as **Exhibits "F" and "G"**, respectively. A copy of the deposit return protocol approved by the AVO is attached hereto as **Exhibit "H"**.

B. Original Motion for Extension

16. Since the granting of the AVO, representatives of GFD LP have engaged in productive discussions with the Tower A Unit Purchasers regarding their APSs. GFD LP has retained: (i) Captain Real Estate Group Ltd. ("**Captain RE**") as its broker to lead these discussions with the Unit Purchasers, and (ii) Channel 13 Advertising and Design Inc. to assist with marketing throughout the process.

17. At the time I swore the January 16th Affidavit, I understood that 152 out of the 177 Tower A Unit Purchasers had been contacted by (or have themselves proactively contacted) Captain RE regarding the retention of their units. At that time, 60 had provided firm responses regarding their

intentions, while 92 were continuing to consider their options. Further, all 189 Tower B Unit Purchasers had been contacted by Captain RE regarding the potential to purchase Tower A units that are not retained by the Tower A Unit Purchasers. Of that group, 99 had confirmed whether they would be interested, while 89 had not yet communicated whether they would be interested.

18. Throughout these discussions, GFD LP worked to continue to prepare units in the Project for sale to the general public and to Tower A Unit Purchasers who wish to keep their units. Once the Transaction closed, the purchaser acted promptly and applied for a Vendor and Builder License from the Home Construction Regulatory Authority, a necessary step required to enroll with Tarion, to sell units to the public, and to execute the Revised APSs with Tower A Unit Purchasers who wish to keep their units. The license was obtained two weeks after closing, on November 12, 2024. However, warranty coverage and Qualification for Enrolment Confirmation (“**QFE Confirmation**”) is not yet in place from Tarion, as GFD LP’s application with Tarion was delayed, in part because the Vendor and Builder License was required first to advance the application. Further, GFD LP is currently working with its counsel retained to assist with the sale of the condominium units to prepare new agreements of purchase and sale and disclosure documents, and to prepare and obtain other relevant condominium documents that will be required to keep Tower A Unit Purchasers under a Revised APS and sell units to the public. Completion of these latter two steps were further delayed due to holiday closures in late December 2024 and early January 2025.

19. Given the Transaction closed on October 29, the Assignee is presently required to advise the Receiver which APSs in Tower A will be assumed and which are to be disclaimed by February 26, 2025. GFD LP originally sought the Extension, which would extend this deadline to August 31, 2025, to allow additional time to conclude discussions and negotiations and ensure that the

Tower A Unit Purchasers have sufficient time to make an informed decision as to whether they wish to keep their units. As noted above, the Extension only impacts the rights of the Tower A Unit Purchasers. The APSs in respect of the Tower B Units have already been disclaimed, with the return of those deposits being managed by Aviva pursuant to the deposit return protocol, and the Tower C Units have been assumed by GFD LP.

C. January 23 Hearing

20. I understand from Thomas Gray at Bennett Jones LLP that GFD LP's motion record was served on the Receivership service list, as well as on all Unit Purchasers. At the January 23 Hearing, I understand that a small number of Unit Purchasers attended and voiced objections to the relief sought. I understand that the main objections from the Unit Purchasers was that the requested Extension would delay the return of deposits for Unit Purchasers that wish to get out of the Project as soon as possible, and that Unit Purchasers also expressed concern about communications provided to date. As discussed further below, I believe much of the concern is related to misunderstandings and misconceptions about the Project. In an effort to address these concerns, GFD LP has issued additional communications to provide further background to Unit Purchasers (which communications are described in more detail below).

21. Given the objections of the few Unit Purchasers and in light of the fact that the existing Deadline is not until February 26, the Court adjourned the motion, noting that the motion could be brought back on proper notice to the Unit Purchasers affected by the relief sought.

22. Separate from the objections expressed by a few individual Unit Purchasers at the hearing, on the evening before the January 23 Hearing, Aviva and Westmount Guarantee Services ("**Westmount**") filed a responding motion record objecting to the relief sought on the basis that

the requested Extension could require Aviva to pay additional claims and expenses under the Tarion Bond and the Master Deposit Insurance Policy. Shortly before the January 23 Hearing, Aviva, Westmount, and GFD LP reached an agreement to resolve this objection pursuant to which GFD LP agreed to pay additional interest, delayed occupancy fees and other claims and expenses under the Tarion Bond and insurance policy. The parties requested that the endorsement language be memorialized by an endorsement from the Court (the “**Proposed Endorsement Language**”). A copy of the Proposed Endorsement Language is attached hereto as **Exhibit “I”**. Given the relief was adjourned, the proposed endorsement language was not included in the January 23 Endorsement.

D. Subsequent Developments and Continued Need for Extension

23. Since the January 23 Hearing, GFD LP has continued to have productive discussions with Tower A Unit Purchasers. It has now been in contact with all 177 Tower A Unit Purchasers. However, as of the date hereof, 92 Tower A Unit Purchasers remain either undecided or have not expressed a preference one way or the other as to whether they will enter into a new APS at the increased price. GFD LP has also continued discussions with Tower B Unit Purchasers regarding the purchase of Tower A Units. I understand that as of the date hereof, 83 remain undecided on the opportunity (or have not expressed a view one way or the other) to be put on a waitlist for Tower A units that become available after a Tower A Unit Purchaser’s APS is disclaimed.

24. In the meantime, GFD LP has continued to prepare units for sale to the general public, and stabilization of the Project remains ahead of schedule. GFD LP’s condominium counsel has now prepared all of the necessary documents to enter into Revised APSs with Tower A Unit Purchasers and sell condominium units to the public with new APSs. GFD LP is also continuing to progress

its Tarion warranty application. Tarion issued a Notice of Proposal on January 13, 2025, that provided the terms and conditions that GFD LP must meet in order to obtain QFE Confirmation, and GFD LP has engaged Westmount for a Tarion Bond to fulfill them. GFD LP expects the terms and conditions to be fulfilled within the coming weeks. Because Tarion warranty coverage is not yet in place, units are still currently unable to be sold to the general public and GFD LP cannot enter into Revised APSs with Tower A Unit Purchasers.

25. An extension of the Deadline remains appropriate in the circumstances. Importantly, as noted above, GFD LP's lender has required that only 40 units be disclaimed from the Project at any time. As such, additional time will likely be needed to disclaim the Tower A APSs' in an orderly manner in compliance with the lender's requirement. Moreover, until Tarion warranty coverage is in place, Tower A Unit Purchasers cannot be effectively assumed under a Revised APS and units cannot be marketed to the general public. Should the QFE Confirmation be obtained in February, GFD LP would have approximately two weeks or less to complete the Tower A Sales Plan, which would not provide Tower A Unit Purchasers with sufficient time to make an informed choice on the Revised APS.

26. In light of its continued progress, and in an effort to address potential Unit Purchasers' concerns, GFD LP is now seeking a shorter Extension, which would only run until June 30, 2025 – two months less than what was originally sought. On February 10, GFD LP issued tailored email letters to Unit Purchasers in Towers A, B, and C, respectively, to provide further details on the Project. Importantly, the Tower A Unit Purchasers were informed of GFD LP's intention to return to Court seeking the revised Extension at a hearing scheduled for February 20, and Tower B Unit Purchasers were provided contact details for Aviva for questions related to the deposit return protocol. Copies of the form of each letter are appended hereto at **Exhibit "J"**. GFD LP has since

informed me that it intends to begin mailing the tailored letters to each Unit Purchaser, starting on February 11, as an additional method of notification.

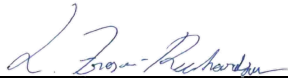
27. GFD LP believes that the relief sought is reasonable in the circumstances and will not materially prejudice the Tower A Unit Purchasers. The deposits will continue to bear interest until they are returned. Further, the revised Extension would see the determination on all disclaimers made by June 30, which is a full month less than the outside occupancy date (July 31) under the Tower A APSs – as such, the Tower A Unit Purchasers are no worse off than they would be under their original contracts. Finally, the Tower A Unit Purchasers have no specific entitlement to the return of their deposit. Pursuant to the AVO, GFD LP can decide to assume the Tower A APSs, which would mean no deposits are returned. The Extension will allow GFD LP to finish discussions with Tower A Unit Purchasers and prepare all units for sale in an organized fashion, which is to the benefit of all stakeholders.

E. Conclusion

28. The requested Extension will provide the time necessary for continued discussions between representatives of GFD LP and the Tower A Unit Purchasers as each work toward mutually beneficial, reasonable and tailored solutions. I therefore believe the relief sought is for the benefit of all parties, and is reasonable and appropriate in the circumstances. GFD LP also respectfully requests that this Court include the Proposed Endorsement Language in an endorsement issued in connection with the Extension, as the agreement reached between the parties remains reasonable

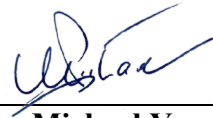
and represents a practical solution. I swear this affidavit solely in support of GFD LP's motion for the AVO Amendment Order and for no other or improper purpose.

SWORN BEFORE ME over)
videoconference on this 11th day of February,)
2025 in accordance with Ontario *Regulation*)
431/20. The affiant was located in the City of)
Richmond, in the Province of British)
Columbia and the Commissioner was located)
in the City of Toronto, in the Province of)
Ontario.)



Linda Fraser-Richardson

A Commissioner for Oaths in and for the
Province of Ontario



Michael Yeung

THIS IS **EXHIBIT “B”** REFERRED TO IN THE AFFIDAVIT
OF MICHAEL YEUNG, SWORN BEFORE ME
THIS 17th DAY OF JUNE, 2025.



THOMAS GRAY

A Commissioner for taking Affidavits
(or as may be)

From: [Chad Kopach](#)
To: [Chad Kopach](#)
Cc: ["Ben Luder"](#)
Subject: RE: 1333 Weber Street East, Kitchener - Tower A Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Transaction Closed
Date: Wednesday, October 30, 2024 1:06:24 PM
Attachments: [image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image001.png](#)
[image002.png](#)
[Tower A Sales Plan.pdf](#)

Further to my emails of September 27, October 4, October 9, and October 21, 2024, below, I confirm that the Elevate sale transaction has now closed.

In accordance with the Tower A Sales Plan (copy attached), which was Appendix J to the Receiver's Second Report dated September 27, 2024, you will be contacted by the representative for the new owner of the property. It may take several weeks before all Tower A purchasers have been contacted by the new owner's representative.

If the new owner and a Tower A purchaser do not reach an agreement on the terms of new agreement of purchase and sale for a Tower A Unit, the new owner will advise the Receiver, and the Receiver will send a further email to the Tower A purchaser confirming the termination and disclaimer of that Tower A purchaser's existing agreement of purchase and sale. Alternatively, at the option of the new owner, the Receiver may deem the original agreement of purchase and sale firm and binding and the new owner will proceed with it.

For any deals where the purchase and sale agreement is at an end, the purchaser will then receive a subsequent email on behalf of the deposit insurer with details on how to make a claim for the return of the deposit in accordance with the deposit return protocol, which was Appendix A to the Supplement to the Second Report of the Receiver dated October 4, 2024, and was approved pursuant to paragraph 9 of the Approval and Vesting Order of Justice Kimmel dated October 8, 2024.

Chad Kopach
Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

From: Chad Kopach <ckopach@blaney.com>
Sent: Monday, October 21, 2024 12:41 PM
To: Chad Kopach <ckopach@blaney.com>
Cc: 'Ben Luder' <bluder@ksvadvisory.com>
Subject: RE: 1333 Weber Street East, Kitchener - Tower A Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Rescheduled Closing - October 29, 2024

Good afternoon,

The purchaser has extended the closing date for the sale transaction from Monday, October 21, 2024, to Tuesday, October 29, 2024.

A further update will follow once the transaction has closed next week.

As always, if you have any questions with respect to the above, please contact Ben Luder (437-889-9995

or bluder@ksvadvisory.com).

Chad Kopach

Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

From: Chad Kopach

Sent: Wednesday, October 9, 2024 9:32 PM

To: Chad Kopach <ckopach@blaney.com>

Cc: 'Ben Luder' <bluder@ksvadvisory.com>

Subject: RE: 1333 Weber Street East, Kitchener - Tower A Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Sale Approval - Endorsement of Justice Kimmel October 9, 2024

Good evening,

Further my emails of September 27, 2024 and October 4, 2024, and to the motion in the above-noted matter that was heard yesterday, I attach the Endorsement of Justice Kimmel dated October 9, 2024. Among other things, the Approval and Vesting Order authorizing the Receiver's sale of the subject property has been approved by the Court. If you wish to review the orders, they will be uploaded to the Receiver's website at this link: <https://www.ksvadvisory.com/experience/case/1776411ontario>

The closing of the sale transaction has been rescheduled to October 21, 2024. I will provide a further update once the transaction has closed.

If you have any questions with respect to the above, please contact Ben Luder (437-889-9995 or bluder@ksvadvisory.com), who is cc'd on this email.

Chad Kopach

Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

From: Chad Kopach

Sent: Friday, October 4, 2024 3:31 PM

To: Chad Kopach <ckopach@blaney.com>

Cc: 'Ben Luder' <bluder@ksvadvisory.com>

Subject: RE: 1333 Weber Street East, Kitchener - Tower A Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Receiver's Motion returnable October 8, 2024 at 11:00 am

Good afternoon,

I attach the Receiver's Supplementary Motion Record dated October 4, 2024, which is sent to you pursuant to the Order of Justice Cavanagh dated October 12, 2023.

The Supplementary Motion Record includes, among other things, the deposit return protocol that was referenced in the Receiver's letter dated September 27, 2024.

The Receiver's website for this matter is at this link:

<https://www.ksvadvisory.com/experience/case/1776411ontario>

The Receiver's factum for the motion returnable October 8, 2024, at 11:00 am can be downloaded here:

<https://blaney.sharefile.com/d-seb55906504f242d9b0f2012e32e75b71>

If you have any questions with respect to the above, please contact Ben Luder (437-889-9995 or bluder@ksvadvisory.com), who is cc'd on this email.

Chad Kopach

Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

From: Chad Kopach

Sent: Friday, September 27, 2024 3:47 PM

To: Chad Kopach <ckopach@blaney.com>

Cc: Ben Luder <bluder@ksvadvisory.com>

Subject: 1333 Weber Street East, Kitchener - Notice to Tower A Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Receiver's Motion returnable October 8, 2024 at 11:00 am

Our firm is counsel to the Receiver, KSV Restructuring Inc., in the above-noted matter.

This email is sent to the purchasers of units in Tower A of the condominium development at the property municipally known as 1333 Weber Street East, Kitchener (the "**Project**").

I attach the Receiver's Motion Record dated September 27, 2024, seeking Court approval for the sale of the Project, together with an explanatory letter from the Receiver dated September 27, 2024 regarding, among other things, the treatment of the Tower A pre-sale purchase agreements, both of which are being sent to you pursuant to the Order of Justice Cavanagh dated October 12, 2023, and the Endorsement of Justice Osborne dated September 25, 2024.

The Receiver's Motion will be heard via Zoom on October 8, 2024 at 11:00 am. The Zoom conference details are set out in the attached letter.

If you have any questions with respect to the above, please contact Ben Luder (437-889-9995 or bluder@ksvadvisory.com), who is cc'd on this email.



Chad Kopach

Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

☐ [Blaney.com](https://www.blaney.com)



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From: [Chad Kopach](#)
To: [Chad Kopach](#)
Cc: ["Ben Luder"; "avivadepositreturn@mnt.ca"](#)
Subject: RE: 1333 Weber Street East, Kitchener - Tower B Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Transaction Closed
Date: Wednesday, October 30, 2024 1:07:56 PM
Attachments: [image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image001.png](#)
[image002.png](#)

Further to my emails of September 27, October 4, October 9 and October 21, 2024, below, I confirm that the Elevate sale transaction has now closed.

As a result, and pursuant to paragraph 7 of the Approval and Vesting Order of Justice Kimmel dated October 8, 2024, all Tower B unit agreements of purchase and sale have been terminated and disclaimed. The Tower B purchasers are now able to make a claim for the return of their deposit under the deposit return protocol, which was Appendix A to the Supplement to the Second Report of the Receiver dated October 4, 2024, and was approved by the Court pursuant to paragraph 9 of the Approval and Vesting Order.

The deposit insurers' agent, MNP Ltd., will send each Tower B purchaser an email that will include individualized claim forms, together with instructions on how to submit a claim for the return of their deposit. The email will come from MNP Ltd. at avivadepositreturn@mnt.ca. Tower B purchasers may wish to add this email to their "Safe Senders" list now to avoid any delay in receiving their claim forms. It may take several weeks before all Tower B purchasers have been contacted by the deposit insurers' agent.

At the option of the new owner, Tower B purchasers may be contacted with an option to purchase units in Tower A.

Chad Kopach
Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

From: Chad Kopach <ckopach@blaney.com>
Sent: Monday, October 21, 2024 12:41 PM
To: Chad Kopach <ckopach@blaney.com>
Cc: 'Ben Luder' <bluder@ksvadvisory.com>
Subject: RE: 1333 Weber Street East, Kitchener - Tower B Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Rescheduled Closing - October 29, 2024

Good afternoon,

The purchaser has extended the closing date for the sale transaction from Monday, October 21, 2024, to Tuesday, October 29, 2024.

A further update will follow once the transaction has closed next week.

As always, if you have any questions with respect to the above, please contact Ben Luder (437-889-9995 or bluder@ksvadvisory.com).

Chad Kopach
Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

From: Chad Kopach

Sent: Wednesday, October 9, 2024 9:33 PM

To: Chad Kopach <ckopach@blaney.com>

Cc: 'Ben Luder' <bluder@ksvadvisory.com>

Subject: RE: 1333 Weber Street East, Kitchener - Tower B Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Sale Approval - Endorsement of Justice Kimmel October 9, 2024

Good evening,

Further my emails of September 27, 2024 and October 4, 2024, and to the motion in the above-noted matter that was heard yesterday, I attach the Endorsement of Justice Kimmel dated October 9, 2024. Among other things, the Approval and Vesting Order authorizing the Receiver's sale of the subject property has been approved by the Court. If you wish to review the orders, they will be uploaded to the Receiver's website at this link: <https://www.ksvadvisory.com/experience/case/1776411ontario>

The closing of the sale transaction has been rescheduled to October 21, 2024. I will provide a further update once the transaction has closed.

If you have any questions with respect to the above, please contact Ben Luder (437-889-9995 or bluder@ksvadvisory.com), who is cc'd on this email.

Chad Kopach
Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

From: Chad Kopach

Sent: Friday, October 4, 2024 3:33 PM

To: Chad Kopach <ckopach@blaney.com>

Cc: 'Ben Luder' <bluder@ksvadvisory.com>

Subject: RE: 1333 Weber Street East, Kitchener - Tower B Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Receiver's Motion returnable October 8, 2024 at 11:00 am

Good afternoon,

I attach the Receiver's Supplementary Motion Record dated October 4, 2024, which is sent to you pursuant to the Order of Justice Cavanagh dated October 12, 2023.

The Supplementary Motion Record includes, among other things, the deposit return protocol that was referenced in the Receiver's letter dated September 27, 2024.

The Receiver's website for this matter is at this link:

<https://www.ksvadvisory.com/experience/case/1776411ontario>

The Receiver's factum for the motion returnable October 8, 2024 at 11:00 am can be downloaded here:

<https://blaney.sharefile.com/d-seb55906504f242d9b0f2012e32e75b71>

If you have any questions with respect to the above, please contact Ben Luder (437-889-9995 or bluder@ksvadvisory.com), who is cc'd on this email.

Chad Kopach
Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

From: Chad Kopach

Sent: Friday, September 27, 2024 3:49 PM

To: Chad Kopach <ckopach@blaney.com>

Cc: Ben Luder <bluder@ksvadvisory.com>

Subject: 1333 Weber Street East, Kitchener - Notice to Tower B Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Receiver's Motion returnable October 8, 2024 at 11:00 am

Our firm is counsel to the Receiver, KSV Restructuring Inc., in the above-noted matter.

This email is sent to the purchasers of units in Tower B of the condominium development at the property municipally known as 1333 Weber Street East, Kitchener (the "**Project**").

I attach the Receiver's Motion Record dated September 27, 2024, seeking Court approval for the sale of the Project, together with an explanatory letter from the Receiver dated September 27, 2024 regarding, among other things, the treatment of the Tower B pre-sale purchase agreements, both of which are being sent to you pursuant to the Order of Justice Cavanagh dated October 12, 2023, and the Endorsement of Justice Osborne dated September 25, 2024.

The Receiver's Motion will be heard via Zoom on October 8, 2024 at 11:00 am. The Zoom conference details are set out in the attached letter.

If you have any questions with respect to the above, please contact Ben Luder (437-889-9995 or bluder@ksvadvisory.com), who is cc'd on this email.



Chad Kopach
Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

☐ [Blaney.com](https://www.blaney.com)



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From: [Chad Kopach](#)
To: [Chad Kopach](#)
Cc: ["Ben Luder"](#)
Subject: RE: 1333 Weber Street East, Kitchener - Tower C Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Transaction Closed
Date: Wednesday, October 30, 2024 1:08:26 PM
Attachments: [image003.png](#)
[image004.png](#)
[image005.png](#)
[image006.png](#)
[image007.png](#)
[image008.png](#)
[image001.png](#)
[image002.png](#)

Further to my emails of September 27, October 4, October 9 and October 21, 2024, below, I confirm that the Elevate sale transaction has now closed.

All Tower C unit agreements of purchase and sale have been assigned to the new owner. The new owner's representative will be in touch with all Tower C purchasers regarding their agreements in due course. It may take several weeks before all Tower C purchasers have been contacted by the new owner's representative.

Chad Kopach
Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

From: Chad Kopach <ckopach@blaney.com>
Sent: Monday, October 21, 2024 12:42 PM
To: Chad Kopach <ckopach@blaney.com>
Cc: 'Ben Luder' <bluder@ksvadvisory.com>
Subject: RE: 1333 Weber Street East, Kitchener - Tower C Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Rescheduled Closing - October 29, 2024

Good afternoon,

The purchaser has extended the closing date for the sale transaction from Monday, October 21, 2024, to Tuesday, October 29, 2024.

A further update will follow once the transaction has closed next week.

As always, if you have any questions with respect to the above, please contact Ben Luder (437-889-9995 or bluder@ksvadvisory.com).

Chad Kopach
Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

From: Chad Kopach
Sent: Wednesday, October 9, 2024 9:33 PM
To: Chad Kopach <ckopach@blaney.com>
Cc: 'Ben Luder' <bluder@ksvadvisory.com>
Subject: RE: 1333 Weber Street East, Kitchener - Tower C Purchasers - Genesis v. 1776411 Ontario

Ltd. - CV-23-00706813-00CL - Sale Approval - Endorsement of Justice Kimmel October 9, 2024

Good evening,

Further my emails of September 27, 2024 and October 4, 2024, and to the motion in the above-noted matter that was heard yesterday, I attach the Endorsement of Justice Kimmel dated October 9, 2024. Among other things, the Approval and Vesting Order authorizing the Receiver's sale of the subject property has been approved by the Court. If you wish to review the orders, they will be uploaded to the Receiver's website at this link: <https://www.ksvadvisory.com/experience/case/1776411ontario>

The closing of the sale transaction has been rescheduled to October 21, 2024. I will provide a further update once the transaction has closed.

If you have any questions with respect to the above, please contact Ben Luder (437-889-9995 or bluder@ksvadvisory.com), who is cc'd on this email.

Chad Kopach
Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

From: Chad Kopach

Sent: Friday, October 4, 2024 3:34 PM

To: Chad Kopach <ckopach@blaney.com>

Cc: 'Ben Luder' <bluder@ksvadvisory.com>

Subject: RE: 1333 Weber Street East, Kitchener - Tower C Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Receiver's Motion returnable October 8, 2024 at 11:00 am

Good afternoon,

I attach the Receiver's Supplementary Motion Record dated October 4, 2024, which is sent to you pursuant to the Order of Justice Cavanagh dated October 12, 2023.

The Receiver's website for this matter is at this link:

<https://www.ksvadvisory.com/experience/case/1776411ontario>

The Receiver's factum for the motion returnable October 8, 2024 at 11:00 am can be downloaded here:

<https://blaney.sharefile.com/d-seb55906504f242d9b0f2012e32e75b71>

If you have any questions with respect to the above, please contact Ben Luder (437-889-9995 or bluder@ksvadvisory.com), who is cc'd on this email.

Chad Kopach
Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

From: Chad Kopach

Sent: Friday, September 27, 2024 3:50 PM

To: Chad Kopach <ckopach@blaney.com>

Cc: Ben Luder <bluder@ksvadvisory.com>

Subject: 1333 Weber Street East, Kitchener - Notice to Tower C Purchasers - Genesis v. 1776411 Ontario Ltd. - CV-23-00706813-00CL - Receiver's Motion returnable October 8, 2024 at 11:00 am

Our firm is counsel to the Receiver, KSV Restructuring Inc., in the above-noted matter.

This email is sent to the purchasers of units in Tower C of the condominium development at the property municipally known as 1333 Weber Street East, Kitchener (the "**Project**").

I attach the Receiver's Motion Record dated September 27, 2024, seeking Court approval for the sale of the Project, together with an explanatory letter from the Receiver dated September 27, 2024 regarding, among other things, the treatment of the Tower C pre-sale purchase agreements, both of which are being sent to you pursuant to the Order of Justice Cavanagh dated October 12, 2023, and the Endorsement of Justice Osborne dated September 25, 2024.

The Receiver's Motion will be heard via Zoom on October 8, 2024 at 11:00 am. The Zoom conference details are set out in the attached letter.

If you have any questions with respect to the above, please contact Ben Luder (437-889-9995 or bluder@ksvadvisory.com), who is cc'd on this email.



Chad Kopach
Partner

ckopach@blaney.com

☐ 416-593-2985 | ☐ 416-594-5095

☐ [Blaney.com](https://www.blaney.com)



This communication is intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this telecommunication in error, please notify the sender immediately by return electronic mail and destroy the message.

THIS IS **EXHIBIT “C”** REFERRED TO IN THE AFFIDAVIT
OF MICHAEL YEUNG, SWORN BEFORE ME
THIS 17th DAY OF JUNE, 2025.

A handwritten signature in black ink, appearing to be 'T. Gray', is positioned above a horizontal line.

THOMAS GRAY

A Commissioner for taking Affidavits
(or as may be)



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

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

THIS IS **EXHIBIT “D”** REFERRED TO IN THE AFFIDAVIT
OF MICHAEL YEUNG, SWORN BEFORE ME
THIS 17th DAY OF JUNE, 2025.



THOMAS GRAY

A Commissioner for taking Affidavits
(or as may be)

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 “**Property**”) and all the other assets, undertakings and properties of each of the Respondents, including all the assets held in trust or required to be held in trust by or for any of the Respondents, or by their lawyers, agents and/or any other person, and all proceeds thereof (together with the Property, the “**Specified 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, as the original purchaser, dated March 4, 2024, as amended and as assigned to GFD 1333W Limited Partnership (the “**Purchaser**”), as purchaser (the “**Sale Agreement**”), and provided for the vesting in the Purchaser 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 Purchaser 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 4:40 p.m on October 29, 2024.

J

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

Per:



Name: Mitch Vininsky

Title: Managing Director

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

RECEIVER'S CERTIFICATE

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

THIS IS **EXHIBIT “E”** REFERRED TO IN THE AFFIDAVIT
OF MICHAEL YEUNG, SWORN BEFORE ME
THIS 17th DAY OF JUNE, 2025.



THOMAS GRAY

A Commissioner for taking Affidavits
(or as may be)



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE

)

THURSDAY, THE 20TH

JUSTICE CAVANAGH

)

DAY OF FEBRUARY, 2025

)

GENESIS MORTGAGE INVESTMENT CORP.

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondents

**ORDER
(AVO Amendment Order)**

THIS MOTION made by GFD 1333W Limited Partnership (“**GFD LP**”) for an Order, among other things, amending paragraph 8 of the Approval and Vesting Order granted by this Court in these proceedings on October 8, 2024 (the “**AVO**”) was heard this day via Zoom videoconference.

ON READING the Motion Record of GFD LP, including the affidavits of Michael Yeung sworn January 16, 2025 and February 11, 2025 and the Exhibits thereto, and on hearing the submissions of counsel for GFD LP and such other parties listed on the Participant Information Form, no one else appearing although duly served as appears from the affidavit of service,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record, and the Affidavits of Michael Yeung is hereby abridged and validated and this Motion is properly returnable today and hereby dispenses with further service or notice thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms used but not otherwise defined herein have the meanings ascribed in the AVO.


AMENDMENT OF AVO

3. **THIS COURT ORDERS** that paragraph 8 of the AVO is hereby amended to delete the words “within 120 days of the closing of the Transaction” and to insert in their place “by no later than June 30, 2025”, such that the Assignee shall be required to provide the contemplated notice to the Receiver by no later than June 30, 2025.

MISCELLANEOUS

4. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. as of the date that it is made and is enforceable without the need for entry and filing.

5. **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.



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

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

Applicant

Respondents

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceedings commenced in Toronto

ORDER
(AVO Amendment Order)

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

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Tel: (416) 777-6254
Email: zweigs@bennettjones.com

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Tel: (416) 777-7924
Email: grayt@bennettjones.com

Lawyers for GFD 1333W Limited Partnership

THIS IS **EXHIBIT “F”** REFERRED TO IN THE AFFIDAVIT
OF MICHAEL YEUNG, SWORN BEFORE ME
THIS 17th DAY OF JUNE, 2025.



THOMAS GRAY

A Commissioner for taking Affidavits
(or as may be)



ONTARIO SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL SLIP/ENDORSEMENT

COURT FILE NO.: CV-23-00706813-00CL DATE: February 20, 2025

NO. ON LIST: 3

TITLE OF PROCEEDING: **GENESIS MORTGAGE INVESTMENT CORPORATION VS 1176411 ONTARIO LIMITED et, al**
BEFORE JUSTICE: **CAVANAGH**

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party, Crown:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig Thomas Gray	GFD 1333W Limited Partnership	zweigs@bennettjones.com grayt@bennettjones.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
Denise Bambrough	Aviva Insurance Company of Canada	dbambrough@blg.com
Eric Golden	KSV Restructuring Inc. (Receiver)	egolden@blaney.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Jordan Edward Gormley	Unit Owner Self-Represented	Jordang_27@yahoo.ca
Pardeep Dwivedi	Unit Owner Self-Represented	dwivedipardeep@gmail.com
Jerico Espinas	Unit Owner Self-Represented	jespinas@elmdevelopments.com

Umair Khan	Unit Owner Self-Represented	umairkhan.mech@gmail.com
Nitin Grover	Unit Owner Self-Represented	Nickgr06@outlook.com
Frank Revelpulle	Unit Owner Self-Represented	frankrevel@yahoo.ca
Frances Escalona	Unit Owner Self-Represented	francesescalona@gmail.com
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Retesh Gondal	Unit Owner Self-Represented	reteshgondal@gmail.com
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Susana Pereira	Unit Owner Self-Represented	srpereira2010@hotmail.com
Axhire Gjuta	Unit Owner Self-Represented	aneziri@hotmail.com
Nathan Araujo and Stephanie Shouldice	Unit Owner Self-Represented	araujoshouldice@gmail.com
Chris Christodoulou	Unit Owner Self-Represented	chris@dtfc.ca

ENDORSEMENT OF JUSTICE CAVANAGH:

[1] GFD 1333W Limited Partnership (“GFD LP”), through 1333W Lands Ltd. (the “Assignee”), the nominee of its general partner, purchased real property located at 1333 Weber Street East, Kitchener, Ontario (the “Project”).

[2] The Project is a phased four-tower residential condominium project consisting of Phase 1: a partially completed residential building (“Tower A”); (b) Phases 2 and 3: a partially complete foundation and underground parking area where it is contemplated that two residential buildings will be erected; and (c) Phase 4: raw land where it is contemplated that a residential building with erected.

[3] Th Approval and Vesting Order dated October 8, 2024 (“AVO”) authorizes the Receiver to terminate and disclaim the agreements of purchase and sale within Tower A in the Project following closing of the sale transaction with notice to be provided by the Assignee to the Receiver within 120 days of the closing of the transaction as to which APSs are not being assumed by the Assignee. The AVO approved a deposit returned protocol pursuant to which deposits would be returned to the purchasers of units that were disclaimed by the Receiver in accordance with the AVO.

[4] GFD LP brought a motion for an order amending the AVO to extend the period for the Assignee to provide notice to the Receiver of the APSs to be disclaimed such that notice must be provided by no later than August 31, 2025. This motion was originally returnable on January 23, 2025 was adjourned on that date to allow GFD LP to address concerns voiced at that motion and reschedule the hearing.

[5] GFD LP rescheduled its motion to be heard today. Notice was provided to persons who had entered into APSs for units in Tower A. A number of such persons appeared at the hearing today.

[6] The purpose of the 120-day period for the Assignee to identify APSs that would not be assumed was to allow sufficient time to (i) engage in discussions and negotiations with the unit purchasers; and (ii) determine which APSs will be assumed in accordance with the Tower A sales plan.

[7] GFD LP, in order to address concerns raised by potential unit purchasers, is now seeking a shorter extension, which would only run until June 30, 2025. On February 10, 2025, GFD LP issued email letters to unit purchasers in Towers A, B, and C, respectively, to provide further details on the project. Tower A unit purchasers were informed of GFD LP's intention to return to court seeking the revised extension.

[8] GFD LP's lender has required that only 40 units be disclaimed from the Project at any time. As such, additional time will likely be needed to disclaim the Tower A APSs in an orderly manner in compliance with the lender's requirement. I was advised at the hearing that Tarion approvals were received yesterday which will allow the sales process to move forward. The deposits will continue to bear interest until they are returned. Further, the revised extension would see the determination of all disclaimers made by June 30, which is one month before the outside occupancy date under the Tower A APSs.

[9] At the hearing, several unit purchasers spoke to address issues with respect to his or her particular APS and unit. Counsel for GFD LP addressed the concerns raised and agreed that GFD LP will follow up with these persons to answer other questions they may have.

[10] I am satisfied that the requested extension is appropriate in the circumstances.

[11] GFD LP and Aviva have reached an agreement about issues between them and have asked that this be recorded in my endorsement as follows:

The parties have agreed to the following resolution:

- GFD 1333W agrees to pay any and all additional interest, delayed occupancy fees and other claims and expenses that may be incurred by Aviva under the Tarion Bond and the Master Deposit Insurance Policy as a result of the requested extension; and
- GFD 1333W's liability for additional interest will be calculated on a unit-by-unit basis based on the length of the delayed termination of the agreement of purchase and sale for that unit. For example, if unit #1 is terminated 20 days later than the previously court approved deadline of February 26, 2025, the interest amount payable for those additional 20 days will be paid by GFD 1333W.

[12] Order to issue in form of Order signed by me today.

THIS IS **EXHIBIT “G”** REFERRED TO IN THE AFFIDAVIT
OF MICHAEL YEUNG, SWORN BEFORE ME
THIS 17th DAY OF JUNE, 2025.

A handwritten signature in black ink, appearing to be 'T. Gray', positioned above a horizontal line.

THOMAS GRAY

A Commissioner for taking Affidavits
(or as may be)

Proposed Endorsement Language re Aviva

The parties have agreed to the following resolution:

- GFD 1333W agrees to pay any and all additional interest, delayed occupancy fees and other claims and expenses that may be incurred by Aviva under the Tarion Bond and the Master Deposit Insurance Policy as a result of the requested extension; and
- GFD 1333W's liability for additional interest will be calculated on a unit-by-unit basis based on the length of the delayed termination of the agreement of purchase and sale for that unit. For example, if unit #1 is terminated 20 days later than the previously court approved deadline of February 26, 2025, the interest amount payable for those additional 20 days will be paid by GFD 1333W.

THIS IS **EXHIBIT “H”** REFERRED TO IN THE AFFIDAVIT
OF MICHAEL YEUNG, SWORN BEFORE ME
THIS 17th DAY OF JUNE, 2025.




THOMAS GRAY

A Commissioner for taking Affidavits
(or as may be)




Condominium Form
(Tentative Occupancy Date)

Elevate Condos at 1333 Weber Street
Property 

Statement of Critical Dates
Delayed Occupancy Warranty

This Statement of Critical Dates forms part of the Addendum to which it is attached, which in turn forms part of the agreement of purchase and sale between the Vendor and the Purchaser relating to the Property. **The Vendor must complete all blanks set out below. Both the Vendor and Purchaser must sign this page.**
NOTE TO HOME BUYERS: Please visit Tarion's website: www.tarion.com for important information about all of Tarion's warranties including the Delayed Occupancy Warranty, the Pre-Delivery Inspection and other matters of interest to new home buyers. You can also obtain a copy of the Homeowner Information Package which is strongly recommended as essential reading for all home buyers. The website features a calculator which will assist you in confirming the various Critical Dates related to the occupancy of your home.

VENDOR 1776411 Ontario Ltd., in its capacity as the general partner of 1333 Weber Street Kitchener LP
Full Name(s) _____
PURCHASER 
Full Name(s) _____

1. Critical Dates

The **First Tentative Occupancy Date**, which is the date that the Vendor anticipates the home will be completed and ready to move in, is: the 31st day of August, 2022.

The Vendor can delay Occupancy on one or more occasions by setting a subsequent **Tentative Occupancy Date**, in accordance with section 1 of the Addendum by giving proper written notice as set out in section 1.

By no later than 30 days after the Roof Assembly Date (as defined in section 12), with at least 90 days prior written notice, the Vendor shall set either (i) a **Final Tentative Occupancy Date**; or (ii) a **Firm Occupancy Date**.

For purchase agreements signed after the Roof Assembly Date, the First Tentative Occupancy Date is inapplicable and the Vendor shall instead elect and set either a Final Tentative Occupancy Date or Firm Occupancy Date.
the ____ day of _____, 20____.
Final Tentative Occupancy Date
or
the ____ day of _____, 20____.
Firm Occupancy Date

If the Vendor sets a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date, then the Vendor shall set a **Firm Occupancy Date** that is no later than 120 days after the Final Tentative Occupancy Date, with proper written notice as set out in section 1 below.

If the Vendor cannot provide Occupancy by the Firm Occupancy Date, then the Purchaser is entitled to delayed occupancy compensation (see section 7 of the Addendum) and the Vendor must set a Delayed Occupancy Date which cannot be later than the Outside Occupancy Date.

The **Outside Occupancy Date**, which is the latest date by which the Vendor agrees to provide Occupancy, is: the 31st day of July, 2025.

2. Notice Period for an Occupancy Delay

Changing an Occupancy date requires proper written notice. The Vendor, without the Purchaser's consent, may delay Occupancy one or more times in accordance with section 1 of the Addendum and no later than the Outside Occupancy Date. Notice of a delay beyond the First Tentative Occupancy Date must be given no later than: the 2nd day of June, 2022.
(i.e., at least 90 days before the First Tentative Occupancy Date), or else the First Tentative Occupancy Date automatically becomes the Firm Occupancy Date.

3. Purchaser's Termination Period

If the home is not complete by the Outside Occupancy Date, then the Purchaser can terminate the transaction during a period of 30 days thereafter (the "**Purchaser's Termination Period**"), which period, unless extended by mutual agreement, will end on: the 2nd day of September, 2025.

If the Purchaser terminates the transaction during the Purchaser's Termination Period, then the Purchaser is entitled to delayed occupancy compensation and to a full refund of all monies paid plus interest (see sections 7, 10 and 11 of the Addendum).

Note: Any time a Critical Date is set or changed as permitted in the Addendum, other Critical Dates may change as well. At any given time the parties must refer to: the most recent revised Statement of Critical Dates; or agreement or written notice that sets a Critical Date, and calculate revised Critical Dates using the formulas contained in the Addendum. Critical Dates can also change if there are unavoidable delays (see section 5 of the Addendum).

Jun-06-2020 | 3:25 PM EDT
Acknowledged this ____ day of _____, 20____.
VENDOR: Werner J. Schneider
PURCHASER: 



Condominium Form
(Tentative Occupancy Date)

Addendum to Agreement of Purchase and Sale
Delayed Occupancy Warranty

This addendum, including the accompanying Statement of Critical Dates (the “Addendum”), forms part of the agreement of purchase and sale (the “Purchase Agreement”) between the Vendor and the Purchaser relating to the Property. This Addendum is to be used for a transaction where the home is a condominium unit (that is not a vacant land condominium unit). This Addendum contains important provisions that are part of the delayed occupancy warranty provided by the Vendor in accordance with the *Ontario New Home Warranties Plan Act* (the “ONHWP Act”). If there are any differences between the provisions in the Addendum and the Purchase Agreement, then the Addendum provisions shall prevail. **PRIOR TO SIGNING THE PURCHASE AGREEMENT OR ANY AMENDMENT TO IT, THE PURCHASER SHOULD SEEK ADVICE FROM A LAWYER WITH RESPECT TO THE PURCHASE AGREEMENT OR AMENDING AGREEMENT, THE ADDENDUM AND THE DELAYED OCCUPANCY WARRANTY.**

Tarion recommends that Purchasers register on Tarion’s **MyHome** on-line portal and visit Tarion’s website – **tarion.com**, to better understand their rights and obligations under the statutory warranties.

The Vendor shall complete all blanks set out below.

VENDOR

1776411 Ontario Ltd., in its capacity as the general partner of 1333 Weber Street Kitchener LP

Full Name(s)

47614

Tarion Registration Number

519-591-0389

Phone

519-746-0725

Fax

8-258 Edgewater Crescent

Address

Kitchener

ON

N2A 4M2

City

Province

Postal Code

leuschner.werner@gmail.com

Email*

PURCHASER

Full Name(s)

Address

City

Province

Postal Code

Phone

Fax

Email*

PROPERTY DESCRIPTION

1333 Weber Street East

Municipal Address

Kitchener

ON

N2A 1C2

City

Part of PIN 71410-0535 (LT)

Province

Postal Code

Short Legal Description

INFORMATION REGARDING THE PROPERTY

The Vendor confirms that:

(a) The Vendor has obtained Formal Zoning Approval for the Building.

☒ Yes ☐ No

If no, the Vendor shall give written notice to the Purchaser within 10 days after the date that Formal Zoning Approval for the Building is obtained.

(b) Commencement of Construction: ☐ has occurred; or ☒ is expected to occur by the 30th day of June, 2020.




The Vendor shall give written notice to the Purchaser within 10 days after the actual date of Commencement of Construction.

*Note: Since important notices will be sent to this address, it is essential that you ensure that a reliable email address is provided and that your computer settings permit receipt of notices from the other party.

CONDO TENTATIVE - 2012

Printed on January 1, 2020, 3:53 pm

Page 2 of 12





Condominium Form
(Tentative Occupancy Date)

SETTING AND CHANGING CRITICAL DATES

1. Setting Tentative Occupancy Dates and the Firm Occupancy Date

- (a) **Completing Construction Without Delay:** The Vendor shall take all reasonable steps to complete construction of the Building subject to all prescribed requirements, to provide Occupancy of the home without delay, and, to register without delay the declaration and description in respect of the Building.
- (b) **First Tentative Occupancy Date:** The Vendor shall identify the First Tentative Occupancy Date in the Statement of Critical Dates attached to this Addendum at the time the Purchase Agreement is signed.
- (c) **Subsequent Tentative Occupancy Dates:** The Vendor may, in accordance with this section, extend the First Tentative Occupancy Date on one or more occasions, by setting a subsequent Tentative Occupancy Date. The Vendor shall give written notice of any subsequent Tentative Occupancy Date to the Purchaser at least 90 days before the existing Tentative Occupancy Date (which in this Addendum may include the First Tentative Occupancy Date), or else the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. A subsequent Tentative Occupancy Date can be any Business Day on or before the Outside Occupancy Date.
- (d) **Final Tentative Occupancy Date:** By no later than 30 days after the Roof Assembly Date, the Vendor shall by written notice to the Purchaser set either (i) a Final Tentative Occupancy Date; or (ii) a Firm Occupancy Date. If the Vendor does not do so, the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Vendor shall give written notice of the Final Tentative Occupancy Date or Firm Occupancy Date, as the case may be, to the Purchaser at least 90 days before the existing Tentative Occupancy Date, or else the existing Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Final Tentative Occupancy Date or Firm Occupancy Date, as the case may be, can be any Business Day on or before the Outside Occupancy Date. For new Purchase Agreements signed after the Roof Assembly Date, the Vendor shall insert in the Statement of Critical Dates of the Purchase Agreement either: a Final Tentative Occupancy Date; or a Firm Occupancy Date
- (e) **Firm Occupancy Date:** If the Vendor has set a Final Tentative Occupancy Date but cannot provide Occupancy by the Final Tentative Occupancy Date then the Vendor shall set a Firm Occupancy Date that is no later than 120 days after the Final Tentative Occupancy Date. The Vendor shall give written notice of the Firm Occupancy Date to the Purchaser at least 90 days before the Final Tentative Occupancy Date, or else the Final Tentative Occupancy Date shall for all purposes be the Firm Occupancy Date. The Firm Occupancy Date can be any Business Day on or before the Outside Occupancy Date.
- (f) **Notice:** Any notice given by the Vendor under paragraph (c), (d) or (e) must set out the stipulated Critical Date, as applicable.

2. Changing the Firm Occupancy Date – Three Ways

- (a) The Firm Occupancy Date, once set or deemed to be set in accordance with section 1, can be changed only:
 - (i) by the Vendor setting a Delayed Occupancy Date in accordance with section 3;
 - (ii) by the mutual written agreement of the Vendor and Purchaser in accordance with section 4; or
 - (iii) as the result of an Unavoidable Delay of which proper written notice is given in accordance with section 5.
- (b) If a new Firm Occupancy Date is set in accordance with section 4 or 5, then the new date is the “Firm Occupancy Date” for all purposes in this Addendum.

3. Changing the Firm Occupancy Date – By Setting a Delayed Occupancy Date

- (a) If the Vendor cannot provide Occupancy on the Firm Occupancy Date and sections 4 and 5 do not apply, the Vendor shall select and give written notice to the Purchaser of a Delayed Occupancy Date in accordance with this section, and delayed occupancy compensation is payable in accordance with section 7.
- (b) The Delayed Occupancy Date may be any Business Day after the date the Purchaser receives written notice of the Delayed Occupancy Date but not later than the Outside Occupancy Date.
- (c) The Vendor shall give written notice to the Purchaser of the Delayed Occupancy Date as soon as the Vendor knows that it will be unable to provide Occupancy on the Firm Occupancy Date, and in any event at least 10 days before the Firm Occupancy Date, failing which delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date, in accordance with paragraph 7(c). If notice of a new Delayed Occupancy Date is not given by the Vendor before the Firm Occupancy Date, then the new Delayed Occupancy Date shall be deemed to be the date which is 90 days after the Firm Occupancy Date.
- (d) After the Delayed Occupancy Date is set, if the Vendor cannot provide Occupancy on the Delayed Occupancy Date, the Vendor shall select and give written notice to the Purchaser of a new Delayed Occupancy Date, unless the delay arises due to Unavoidable Delay under section 5 or is mutually agreed upon under section 4, in which case the requirements of those sections must be met. Paragraphs (b) and (c) above apply with respect to the setting of the new Delayed Occupancy Date.
- (e) Nothing in this section affects the right of the Purchaser or Vendor to terminate the Purchase Agreement on the bases set out in section 10.

4. Changing Critical Dates – By Mutual Agreement

- (a) This Addendum sets out a framework for setting, extending and/or accelerating Critical Dates, which cannot be altered contractually except as set out in this section 4. Any amendment not in accordance with this section is voidable at the option of the Purchaser. For greater certainty, this Addendum does not restrict any extensions of the Closing date (i.e., title transfer date) where Occupancy of the home has already been given to the Purchaser.





Condominium Form (Tentative Occupancy Date)

- (b) The Vendor and Purchaser may at any time, after signing the Purchase Agreement, mutually agree in writing to accelerate or extend any of the Critical Dates. Any amendment which accelerates or extends any of the Critical Dates must include the following provisions:
- (i) the Purchaser and Vendor agree that the amendment is entirely voluntary – the Purchaser has no obligation to sign the amendment and each understands that this purchase transaction will still be valid if the Purchaser does not sign this amendment;
 - (ii) the amendment includes a revised Statement of Critical Dates which replaces the previous Statement of Critical Dates;
 - (iii) the Purchaser acknowledges that the amendment may affect delayed occupancy compensation payable; and
 - (iv) if the change involves extending either the Firm Occupancy Date or the Delayed Occupancy Date, then the amending agreement shall:
 - i. disclose to the Purchaser that the signing of the amendment may result in the loss of delayed occupancy compensation as described in section 7;
 - ii. unless there is an express waiver of compensation, describe in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation; and
 - iii. contain a statement by the Purchaser that the Purchaser waives compensation or accepts the compensation referred to in clause ii above, in either case, in full satisfaction of any delayed occupancy compensation payable by the Vendor for the period up to the new Firm Occupancy Date or Delayed Occupancy Date.

If the Purchaser for his or her own purposes requests a change of the Firm Occupancy Date or the Delayed Occupancy Date, then subparagraphs (b)(i), (iii) and (iv) above shall not apply.

- (c) A Vendor is permitted to include a provision in the Purchase Agreement allowing the Vendor a one-time unilateral right to extend a Firm Occupancy Date or Delayed Occupancy Date, as the case may be, for one (1) Business Day to avoid the necessity of tender where a Purchaser is not ready to complete the transaction on the Firm Occupancy Date or Delayed Occupancy Date, as the case may be. Delayed occupancy compensation will not be payable for such period and the Vendor may not impose any penalty or interest charge upon the Purchaser with respect to such extension.
- (d) The Vendor and Purchaser may agree in the Purchase Agreement to any unilateral extension or acceleration rights that are for the benefit of the Purchaser.

5. Extending Dates – Due to Unavoidable Delay

- (a) If Unavoidable Delay occurs, the Vendor may extend Critical Dates by no more than the length of the Unavoidable Delay Period, without the approval of the Purchaser and without the requirement to pay delayed occupancy compensation in connection with the Unavoidable Delay, provided the requirements of this section are met.
- (b) If the Vendor wishes to extend Critical Dates on account of Unavoidable Delay, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, and an estimate of the duration of the delay. Once the Vendor knows or ought reasonably to know that an Unavoidable Delay has commenced, the Vendor shall provide written notice to the Purchaser by the earlier of: 20 days thereafter; and the next Critical Date.
- (c) As soon as reasonably possible, and no later than 20 days after the Vendor knows or ought reasonably to know that an Unavoidable Delay has concluded, the Vendor shall provide written notice to the Purchaser setting out a brief description of the Unavoidable Delay, identifying the date of its conclusion, and setting new Critical Dates. The new Critical Dates are calculated by adding to the then next Critical Date the number of days of the Unavoidable Delay Period (the other Critical Dates changing accordingly), provided that the Firm Occupancy Date or Delayed Occupancy Date, as the case may be, must be at least 10 days after the day of giving notice unless the parties agree otherwise. Either the Vendor or the Purchaser may request in writing an earlier Firm Occupancy Date or Delayed Occupancy Date, and the other party's consent to the earlier date shall not be unreasonably withheld.
- (d) If the Vendor fails to give written notice of the conclusion of the Unavoidable Delay in the manner required by paragraph (c) above, then the notice is ineffective, the existing Critical Dates are unchanged, and any delayed occupancy compensation payable under section 7 is payable from the existing Firm Occupancy Date.
- (e) Any notice setting new Critical Dates given by the Vendor under this section shall include an updated revised Statement of Critical Dates.

EARLY TERMINATION CONDITIONS

6. Early Termination Conditions

- (a) The Vendor and Purchaser may include conditions in the Purchase Agreement that, if not satisfied, give rise to early termination of the Purchase Agreement, but only in the limited way described in this section.
- (b) The Vendor is not permitted to include any conditions in the Purchase Agreement other than: the types of Early Termination Conditions listed in Schedule A; and/or the conditions referred to in paragraphs (i), (j) and (k) below. Any other condition included in a Purchase Agreement for the benefit of the Vendor that is not expressly permitted under Schedule A or paragraphs (i), (j) and (k) below is deemed null and void and is not enforceable by the Vendor, but does not affect the validity of the balance of the Purchase Agreement.





Condominium Form
(Tentative Occupancy Date)

- (c) The Vendor confirms that this Purchase Agreement is subject to Early Termination Conditions that, if not satisfied (or waived, if applicable), may result in the termination of the Purchase Agreement. ☒ Yes ☐ No
- (d) If the answer in (c) above is “Yes”, then the Early Termination Conditions are as follows. The obligation of each of the Purchaser and Vendor to complete this purchase and sale transaction is subject to satisfaction (or waiver, if applicable) of the following conditions and any such conditions set out in an appendix headed “Early Termination Conditions”:

Condition #1 (if applicable)

Description of the Early Termination Condition:

This Agreement is conditional upon the Vendor entering into binding Agreements of Purchase and Sale for the sale of 75% of the Residential Units within the Condominium.

The Approving Authority (as that term is defined in Schedule A) is: _____

The date by which Condition #1 is to be satisfied is the 31st day of December, 20 20.

Condition #2 (if applicable)

Description of the Early Termination Condition:

See Schedule J to the Agreement of Purchase and Sale.

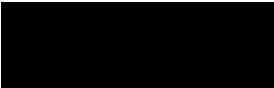
The Approving Authority (as that term is defined in Schedule A) is: _____

The date by which Condition #2 is to be satisfied is the _____ day of _____, 20____.

The date for satisfaction of any Early Termination Condition may be changed by mutual agreement provided in all cases it is set at least 90 days before the First Tentative Occupancy Date, and will be deemed to be 90 days before the First Tentative Occupancy Date if no date is specified or if the date specified is later than 90 days before the First Tentative Occupancy Date. This time limitation does not apply to the condition in subparagraph 1(b)(iv) of Schedule A which must be satisfied or waived by the Vendor within 60 days following the later of: (A) the signing of the Purchase Agreement; and (B) the satisfaction or waiver by the Purchaser of a Purchaser financing condition permitted under paragraph (k) below.

Note: The parties must add additional pages as an appendix to this Addendum if there are additional Early Termination Conditions.

- (e) There are no Early Termination Conditions applicable to this Purchase Agreement other than those identified in subparagraph (d) above and any appendix listing additional Early Termination Conditions.
- (f) The Vendor agrees to take all commercially reasonable steps within its power to satisfy the Early Termination Conditions identified in subparagraph (d) above.
- (g) For conditions under paragraph 1(a) of Schedule A the following applies:
- (i) conditions in paragraph 1(a) of Schedule A may not be waived by either party;
 - (ii) the Vendor shall provide written notice not later than five (5) Business Days after the date specified for satisfaction of a condition that: (A) the condition has been satisfied; or (B) the condition has not been satisfied (together with reasonable details and backup materials) and that as a result the Purchase Agreement is terminated; and
 - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed not satisfied and the Purchase Agreement is terminated.
- (h) For conditions under paragraph 1(b) of Schedule A the following applies:
- (i) conditions in paragraph 1(b) of Schedule A may be waived by the Vendor;
 - (ii) the Vendor shall provide written notice on or before the date specified for satisfaction of the condition that: (A) the condition has been satisfied or waived; or (B) the condition has not been satisfied nor waived, and that as a result the Purchase Agreement is terminated; and
 - (iii) if notice is not provided as required by subparagraph (ii) above then the condition is deemed satisfied or waived and the Purchase Agreement will continue to be binding on both parties.
- (i) The Purchase Agreement may be conditional until Closing (transfer to the Purchaser of title to the home), upon compliance with the subdivision control provisions (section 50) of the *Planning Act* and, if applicable, registration of the declaration and description for the Building under the *Condominium Act, 1998*, which compliance shall be obtained by the Vendor at its sole expense, on or before Closing.
- (j) The Purchaser is cautioned that there may be other conditions in the Purchase Agreement that allow the Vendor to terminate the Purchase Agreement due to the fault of the Purchaser.
- (k) The Purchase Agreement may include any condition that is for the sole benefit of the Purchaser and that is agreed to by the Vendor (e.g., the sale of an existing dwelling, Purchaser financing or a basement walkout). The Purchase Agreement may specify that the Purchaser has a right to terminate the Purchase Agreement if any such condition is not met, and may set out the terms on which termination by the Purchaser may be effected.





**Condominium Form
(Tentative Occupancy Date)**

MAKING A COMPENSATION CLAIM

7. Delayed Occupancy Compensation

- (a) The Vendor warrants to the Purchaser that, if Occupancy is delayed beyond the Firm Occupancy Date (other than by mutual agreement or as a result of Unavoidable Delay as permitted under sections 4 and 5), then the Vendor shall compensate the Purchaser up to a total amount of \$7,500, which amount includes: (i) payment to the Purchaser of a set amount of \$150 a day for living expenses for each day of delay until the Occupancy Date or the date of termination of the Purchase Agreement, as applicable under paragraph (b) below; and (ii) any other expenses (supported by receipts) incurred by the Purchaser due to the delay.
- (b) Delayed occupancy compensation is payable only if: (i) Occupancy and Closing occurs; or (ii) the Purchase Agreement is terminated or deemed to have been terminated under paragraph 10(b) of this Addendum. Delayed occupancy compensation is payable only if the Purchaser's claim is made to Tarion in writing within one (1) year after Occupancy, or after termination of the Purchase Agreement, as the case may be, and otherwise in accordance with this Addendum. Compensation claims are subject to any further conditions set out in the ONHWP Act.
- (c) If the Vendor gives written notice of a Delayed Occupancy Date to the Purchaser less than 10 days before the Firm Occupancy Date, contrary to the requirements of paragraph 3(c), then delayed occupancy compensation is payable from the date that is 10 days before the Firm Occupancy Date.
- (d) Living expenses are direct living costs such as for accommodation and meals. Receipts are not required in support of a claim for living expenses, as a set daily amount of \$150 per day is payable. The Purchaser must provide receipts in support of any claim for other delayed occupancy compensation, such as for moving and storage costs. Submission of false receipts disentitles the Purchaser to any delayed occupancy compensation in connection with a claim.
- (e) If delayed occupancy compensation is payable, the Purchaser may make a claim to the Vendor for that compensation after Occupancy or after termination of the Purchase Agreement, as the case may be, and shall include all receipts (apart from living expenses) which evidence any part of the Purchaser's claim. The Vendor shall assess the Purchaser's claim by determining the amount of delayed occupancy compensation payable based on the rules set out in section 7 and the receipts provided by the Purchaser, and the Vendor shall promptly provide that assessment information to the Purchaser. The Purchaser and the Vendor shall use reasonable efforts to settle the claim and when the claim is settled, the Vendor shall prepare an acknowledgement signed by both parties which:
 - (i) includes the Vendor's assessment of the delayed occupancy compensation payable;
 - (ii) describes in reasonable detail the cash amount, goods, services, or other consideration which the Purchaser accepts as compensation (the "Compensation"), if any; and
 - (iii) contains a statement by the Purchaser that the Purchaser accepts the Compensation in full satisfaction of any delayed occupancy compensation payable by the Vendor.
- (f) If the Vendor and Purchaser cannot agree as contemplated in paragraph 7(e), then to make a claim to Tarion the Purchaser must file a claim with Tarion in writing within one (1) year after Occupancy. A claim may also be made and the same rules apply if the sale transaction is terminated under paragraph 10(b), in which case, the deadline for a claim is one (1) year after termination.
- (g) If delayed occupancy compensation is payable, the Vendor shall either pay the compensation as soon as the proper amount is determined; or pay such amount with interest (at the prescribed rate as specified in subsection 19(1) of O.Reg. 48/01 of the *Condominium Act, 1998*), from the Occupancy Date to the date of Closing, such amount to be an adjustment to the balance due on the day of Closing.

8. Adjustments to Purchase Price

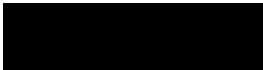
Only the items set out in Schedule B (or an amendment to Schedule B), shall be the subject of adjustment or change to the purchase price or the balance due on Closing. The Vendor agrees that it shall not charge as an adjustment or readjustment to the purchase price of the home, any reimbursement for a sum paid or payable by the Vendor to a third party unless the sum is ultimately paid to the third party either before or after Closing. If the Vendor charges an amount in contravention of the preceding sentence, the Vendor shall forthwith readjust with the Purchaser. This section shall not: restrict or prohibit payments for items disclosed in Part I of Schedule B which have a fixed fee; nor shall it restrict or prohibit the parties from agreeing on how to allocate as between them, any rebates, refunds or incentives provided by the federal government, a provincial or municipal government or an agency of any such government, before or after Closing.

MISCELLANEOUS

9. Ontario Building Code – Conditions of Occupancy

- (a) On or before the Occupancy Date, the Vendor shall deliver to the Purchaser:
 - (i) an Occupancy Permit (as defined in paragraph (d)) for the home; or
 - (ii) if an Occupancy Permit is not required under the Building Code, a signed written confirmation by the Vendor that all conditions of occupancy under the Building Code have been fulfilled and Occupancy is permitted under the Building Code.

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- (b) Notwithstanding the requirements of paragraph (a), to the extent that the Purchaser and the Vendor agree that the Purchaser shall be responsible for one or more prerequisites to obtaining permission for Occupancy under the Building Code, (the “Purchaser Occupancy Obligations”):
 - (i) the Purchaser shall not be entitled to delayed occupancy compensation if the reason for the delay is that the Purchaser Occupancy Obligations have not been completed;
 - (ii) the Vendor shall deliver to the Purchaser, upon fulfilling all prerequisites to obtaining permission for Occupancy under the Building Code (other than the Purchaser Occupancy Obligations), a signed written confirmation that the Vendor has fulfilled such prerequisites; and
 - (iii) if the Purchaser and Vendor have agreed that such prerequisites (other than the Purchaser Occupancy Obligations) are to be fulfilled prior to Occupancy, then the Vendor shall provide the signed written confirmation required by subparagraph (ii) on or before the Occupancy Date.
- (c) If the Vendor cannot satisfy the requirements of paragraph (a) or subparagraph (b)(ii), the Vendor shall set a Delayed Occupancy Date (or new Delayed Occupancy Date) on a date that the Vendor reasonably expects to have satisfied the requirements of paragraph (a) or subparagraph (b)(ii), as the case may be. In setting the Delayed Occupancy Date (or new Delayed Occupancy Date), the Vendor shall comply with the requirements of section 3, and delayed occupancy compensation shall be payable in accordance with section 7. Despite the foregoing, delayed occupancy compensation shall not be payable for a delay under this paragraph (c) if the inability to satisfy the requirements of subparagraph (b)(ii) is because the Purchaser has failed to satisfy the Purchaser Occupancy Obligations.
- (d) For the purposes of this section, an “Occupancy Permit” means any written or electronic document, however styled, whether final, provisional or temporary, provided by the chief building official (as defined in the *Building Code Act*) or a person designated by the chief building official, that evidences that permission to occupy the home under the Building Code has been granted.

10. Termination of the Purchase Agreement

- (a) The Vendor and the Purchaser may terminate the Purchase Agreement by mutual written agreement. Such written mutual agreement may specify how monies paid by the Purchaser, including deposit(s) and monies for upgrades and extras are to be allocated if not repaid in full.
- (b) If for any reason (other than breach of contract by the Purchaser) Occupancy has not been given to the Purchaser by the Outside Occupancy Date, then the Purchaser has 30 days to terminate the Purchase Agreement by written notice to the Vendor. If the Purchaser does not provide written notice of termination within such 30-day period, then the Purchase Agreement shall continue to be binding on both parties and the Delayed Occupancy Date shall be the date set under paragraph 3(c), regardless of whether such date is beyond the Outside Occupancy Date.
- (c) If: calendar dates for the applicable Critical Dates are not inserted in the Statement of Critical Dates; or if any date for Occupancy is expressed in the Purchase Agreement or in any other document to be subject to change depending upon the happening of an event (other than as permitted in this Addendum), then the Purchaser may terminate the Purchase Agreement by written notice to the Vendor.
- (d) The Purchase Agreement may be terminated in accordance with the provisions of section 6.
- (e) Nothing in this Addendum derogates from any right of termination that either the Purchaser or the Vendor may have at law or in equity on the basis of, for example, frustration of contract or fundamental breach of contract.
- (f) Except as permitted in this section, the Purchase Agreement may not be terminated by reason of the Vendor’s delay in providing Occupancy alone.

11. Refund of Monies Paid on Termination

- (a) If the Purchase Agreement is terminated (other than as a result of breach of contract by the Purchaser), then unless there is agreement to the contrary under paragraph 10(a), the Vendor shall refund all monies paid by the Purchaser including deposit(s) and monies for upgrades and extras, within 10 days of such termination, with interest from the date each amount was paid to the Vendor to the date of refund to the Purchaser. The Purchaser cannot be compelled by the Vendor to execute a release of the Vendor as a prerequisite to obtaining the refund of monies payable as a result of termination of the Purchase Agreement under this paragraph, although the Purchaser may be required to sign a written acknowledgement confirming the amount of monies refunded and termination of the purchase transaction. Nothing in this Addendum prevents the Vendor and Purchaser from entering into such other termination agreement and/or release as may be agreed to by the parties.
- (b) The rate of interest payable on the Purchaser’s monies shall be calculated in accordance with the *Condominium Act, 1998*.
- (c) Notwithstanding paragraphs(a) and (b) above, if either party initiates legal proceedings to contest termination of the Purchase Agreement or the refund of monies paid by the Purchaser, and obtains a legal determination, such amounts and interest shall be payable as determined in those proceedings.

12. Definitions

“**Building**” means the condominium building or buildings contemplated by the Purchase Agreement, in which the Property is located or is proposed to be located.

“**Business Day**” means any day other than: Saturday; Sunday; New Year’s Day; Family Day; Good Friday; Easter Monday; Victoria Day; Canada Day; Civic Holiday; Labour Day; Thanksgiving Day; Remembrance Day; Christmas Day; Boxing Day; and any special holiday proclaimed by the Governor General or the Lieutenant Governor; and where New Year’s Day, Canada Day or Remembrance Day falls on a Saturday or Sunday, the following Monday is





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not a Business Day, and where Christmas Day falls on a Saturday or Sunday, the following Monday and Tuesday are not Business Days; and where Christmas Day falls on a Friday, the following Monday is not a Business Day.

“**Closing**” means completion of the sale of the home, including transfer of title to the home to the Purchaser.

“**Commencement of Construction**” means the commencement of construction of foundation components or elements (such as footings, rafts or piles) for the Building.

“**Critical Dates**” means the First Tentative Occupancy Date, any subsequent Tentative Occupancy Date, the Final Tentative Occupancy Date, the Firm Occupancy Date, the Delayed Occupancy Date, the Outside Occupancy Date and the last day of the Purchaser’s Termination Period.

“**Delayed Occupancy Date**” means the date, set in accordance with section 3, on which the Vendor agrees to provide Occupancy, in the event the Vendor cannot provide Occupancy on the Firm Occupancy Date.

“**Early Termination Conditions**” means the types of conditions listed in Schedule A.

“**Final Tentative Occupancy Date**” means the last Tentative Occupancy Date that may be set in accordance with paragraph 1(d).

“**Firm Occupancy Date**” means the firm date on which the Vendor agrees to provide Occupancy as set in accordance with this Addendum.

“**First Tentative Occupancy Date**” means the date on which the Vendor, at the time of signing the Purchase Agreement, anticipates that the home will be complete and ready for Occupancy, as set out in the Statement of Critical Dates.

“**Formal Zoning Approval**” occurs when the zoning by-law required for the Building has been approved by all relevant governmental authorities having jurisdiction, and the period for appealing the approvals has elapsed and/or any appeals have been dismissed or the approval affirmed.

“**Occupancy**” means the right to use or occupy the home in accordance with the Purchase Agreement.

“**Occupancy Date**” means the date the Purchaser is given Occupancy.

“**Outside Occupancy Date**” means the latest date that the Vendor agrees to provide Occupancy to the Purchaser, as confirmed in the Statement of Critical Dates.

“**Property**” or “**home**” means the home being acquired by the Purchaser from the Vendor, and its interest in the related common elements.

“**Purchaser’s Termination Period**” means the 30-day period during which the Purchaser may terminate the Purchase Agreement for delay, in accordance with paragraph 10(b).

“**Roof Assembly Date**” means the date upon which the roof slab, or roof trusses and sheathing, as the case may be, are completed. For single units in a multi-unit block, whether or not vertically stacked, (e.g., townhouses or row houses), the roof refers to the roof of the block of homes unless the unit in question has a roof which is in all respects functionally independent from and not physically connected to any portion of the roof of any other unit(s), in which case the roof refers to the roof of the applicable unit. For multi-story, vertically stacked units, (e.g. typical high rise) roof refers to the roof of the Building.

“**Statement of Critical Dates**” means the Statement of Critical Dates attached to and forming part of this Addendum (in form to be determined by Tarion from time to time), and, if applicable, as amended in accordance with this Addendum.

“**The ONHWP Act**” means the *Ontario New Home Warranties Plan Act* including regulations, as amended from time to time.

“**Unavoidable Delay**” means an event which delays Occupancy which is a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which are beyond the reasonable control of the Vendor and are not caused or contributed to by the fault of the Vendor.

“**Unavoidable Delay Period**” means the number of days between the Purchaser’s receipt of written notice of the commencement of the Unavoidable Delay, as required by paragraph 5(b), and the date on which the Unavoidable Delay concludes.

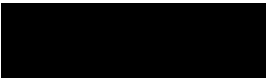
13. Addendum Prevails

The Addendum forms part of the Purchase Agreement. The Vendor and Purchaser agree that they shall not include any provision in the Purchase Agreement or any amendment to the Purchase Agreement or any other document (or indirectly do so through replacement of the Purchase Agreement) that derogates from, conflicts with or is inconsistent with the provisions of this Addendum, except where this Addendum expressly permits the parties to agree or consent to an alternative arrangement. The provisions of this Addendum prevail over any such provision.

14. Time Periods, and How Notice Must Be Sent

- (a) Any written notice required under this Addendum may be given personally or sent by email, fax, courier or registered mail to the Purchaser or the Vendor at the address/contact numbers identified on page 2 or replacement address/contact numbers as provided in paragraph (c) below. Notices may also be sent to the solicitor for each party if necessary contact information is provided, but notices in all events must be sent to the Purchaser and Vendor, as applicable. If email addresses are set out on page 2 of this Addendum, then the parties agree that notices may be sent by email to such addresses, subject to paragraph (c) below.
- (b) Written notice given by one of the means identified in paragraph (a) is deemed to be given and received: on the date of delivery or transmission, if given personally or sent by email or fax (or the next Business Day if the date of delivery or transmission is not a Business Day); on the second Business Day following the date of sending by courier; or on the fifth Business Day following the date of sending, if sent by registered mail. If a postal stoppage or interruption occurs, notices shall not be sent by registered mail, and any notice sent by registered mail within 5

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Business Days prior to the commencement of the postal stoppage or interruption must be re-sent by another means in order to be effective. For purposes of this section 14, Business Day includes Remembrance Day, if it falls on a day other than Saturday or Sunday, and Easter Monday.

- (c) If either party wishes to receive written notice under this Addendum at an address/contact number other than those identified on page 2 of this Addendum, then the party shall send written notice of the change of address, fax number, or email address to the other party in accordance with paragraph (b) above.
- (d) Time periods within which or following which any act is to be done shall be calculated by excluding the day of delivery or transmission and including the day on which the period ends.
- (e) Time periods shall be calculated using calendar days including Business Days but subject to paragraphs (f), (g) and (h) below.
- (f) Where the time for making a claim under this Addendum expires on a day that is not a Business Day, the claim may be made on the next Business Day.
- (g) Prior notice periods that begin on a day that is not a Business Day shall begin on the next earlier Business Day, except that notices may be sent and/or received on Remembrance Day, if it falls on a day other than Saturday or Sunday, or Easter Monday.
- (h) Every Critical Date must occur on a Business Day. If the Vendor sets a Critical Date that occurs on a date other than a Business Day, the Critical Date is deemed to be the next Business Day.
- (i) Words in the singular include the plural and words in the plural include the singular.
- (j) Gender-specific terms include both sexes and include corporations.

15. Disputes Regarding Termination

- (a) The Vendor and Purchaser agree that disputes arising between them relating to termination of the Purchase Agreement under section 11 shall be submitted to arbitration in accordance with the *Arbitration Act, 1991* (Ontario) and subsection 17(4) of the ONHWP Act.
- (b) The parties agree that the arbitrator shall have the power and discretion on motion by the Vendor or Purchaser or any other interested party, or of the arbitrator's own motion, to consolidate multiple arbitration proceedings on the basis that they raise one or more common issues of fact or law that can more efficiently be addressed in a single proceeding. The arbitrator has the power and discretion to prescribe whatever procedures are useful or necessary to adjudicate the common issues in the consolidated proceedings in the most just and expeditious manner possible. The *Arbitration Act, 1991* (Ontario) applies to any consolidation of multiple arbitration proceedings.
- (c) The Vendor shall pay the costs of the arbitration proceedings and the Purchaser's reasonable legal expenses in connection with the proceedings unless the arbitrator for just cause orders otherwise.
- (d) The parties agree to cooperate so that the arbitration proceedings are conducted as expeditiously as possible, and agree that the arbitrator may impose such time limits or other procedural requirements, consistent with the requirements of the *Arbitration Act, 1991* (Ontario), as may be required to complete the proceedings as quickly as reasonably possible.
- (e) The arbitrator may grant any form of relief permitted by the *Arbitration Act, 1991* (Ontario), whether or not the arbitrator concludes that the Purchase Agreement may properly be terminated.

For more information please visit www.tarion.com



Information Sheet for New Home Builders

Strikes – Possible Effects on Construction Schedules for New Homes

NOTE – *This information sheet and attachments are not legal advice, and every vendor should consult their professional advisors, including legal counsel.*

How Unavoidable Delay Provisions May Apply

Strikes by one or more trades involved in new home construction are a real possibility in Spring 2025.

In the event of a strike by one or more trades or suppliers in the new home building industry, new home vendors **may** be able to extend home delivery timelines under the *Unavoidable Delay* provisions of the mandatory supplement to new home purchase agreements called the “Addendum”. (Note: “vendor” is used in this document as that is the term used in the Addendum forms and includes builders of new homes).

The following is a step-by-step explanatory note for vendors of new homes.

Step 1 – Review Your Addendum Form

Every vendor, working with his/her lawyer, should first review the Addendum that applies to each new home being constructed as the rules may be different depending on the applicable version of the Addendum.

In order to unilaterally extend critical dates, the vendor must follow the rules for “*Unavoidable Delay*” as set out in the applicable Addendum.

Step 2 – Determine the potential impact of the strikes on your homes under construction

If one or more strikes do occur, each vendor should consider whether such strikes are likely to affect the construction schedule of any new homes being constructed.

Step 3 – Send Out First Notice

If one or more strikes occur *that affect timing of construction of a new home*, then in order to be able to extend closing or occupancy dates, the vendor must send out **two** notices described below.

The **First Notice** is a written notice to each affected purchaser setting out:

- 1) A brief description of the Unavoidable Delay, namely the initiating event – the strike(s) that will affect the delivery of the home; and
- 2) An estimate of the duration of the total delay (if practicable).

This First Notice should specify the strike(s) in question. If new strikes arise after the initial notice has gone out that could affect a home construction schedule, a further notice or notices should be sent.

The estimate of the total possible delay does not need to be exact nor is the vendor bound by the estimate. It should, if practicable, refer to the anticipated total time period, being the aggregate of both: (i) the period of strike(s); and (ii) vendor's estimate of the additional time needed to re-mobilize – **the Remobilization Period** (as defined below). In some cases, it is not possible to estimate the duration of the total delay as the duration is not known or cannot be assessed at this early stage.

Note: The vendor must provide this written First Notice to the purchaser by either: 1) the next Critical Date; or 2) 20 days after the vendor knows or ought reasonably to know that an Unavoidable Delay event (i.e., strike or strikes) has commenced – whichever is earlier.

A sample First Notice is attached as **Exhibit 1**.

Note: The definition of **Unavoidable Delay** in the Addendum (for the purposes of the second notice, discussed below) has two aspects.

- (a) First, the “event” giving rise to the delay must be an event listed in the Addendum. The event, which is the subject of this document, is a “strike” or strikes. The *Ontario Labour Relations Act*, for example, defines “strike” as follows:

“strike” includes a cessation of work, refusal to work, or to continue to work by employees in combination or in concert or in accordance with a common understanding or a slow-down or other concerted activity on the part of employees designed to restrict or limit output.

- (b) When the strike is over, the vendor needs to quickly determine the total period of delay which has two parts. The total delay period (the **Unavoidable Delay Period**) is equal to:
- 1) the period of the strike(s) itself; **plus**
 - 2) **“any period of delay directly caused by the event [i.e. strike],”** which is beyond the reasonable control of the builder and not caused or contributed to by the fault of the builder. (We will call this the **Remobilization Period**.)

Therefore: take note of the commencement date of the strike, the end of the strike, and length of the strike itself.

After the strike itself, if a home is affected then as a rule of thumb it is reasonable to take 30 days to assess the likely aftereffects. Even if the strike has concluded, the timelines for construction of the home may have been set back by not only the period of the strike but also an additional consequential delay period (the **Remobilization Period**). For example, if there are backlogs of work that must be done then the time to get the trades back to the home in light of the backlog can be included. That combined period of delay: (i) the period of the strike; **plus** (ii) the **Remobilization Period**, constitutes the total delay period – called the **“Unavoidable Delay Period.”**

Step 4 – Monitor the strike and determine if a Remobilization Period applies

Vendors are encouraged to do the following:

- 1) Monitor the *event* – the strike or strikes that will affect the home. If it lasts more than 2-3 weeks, vendors are encouraged to send informational updates to purchasers.
- 2) Once the strike or strikes have concluded, then the vendor must look at the facts in connection with each of their homes and determine whether or not there is any **Remobilization Period**. In other words, in addition to the period of the strike itself, is there any additional *“period of delay directly caused by the [strike] which is beyond the builder’s reasonable control” affecting this home?* For this Advisory, we call this the **“Remobilization Period.”** This is a question which the vendor, its advisors and contractors must determine. It is not always easy to estimate the additional time which is likely to be lost as a result of a strike and which accrues after the strike itself. There may, for example, be backlogs of work to be done by trades. In all events, this additional time following the strike must be estimated on a rational and reasonable basis, and the vendor may be called upon to explain its reasoning for the length of the **Remobilization Period**.
- 3) If a vendor determines that such strike or strikes have concluded and there is no **Remobilization Period**, or it is determined that there is **Remobilization Period**, (e.g., because of a backlog), then the vendor should be sending out the second notice discussed below, outlining the new Critical Dates and enclosing a new Revised Statement of Critical Dates.

Step 5 – Prepare for and then send out Second Notice

When the applicable strike(s) end and the total delay period is known, a second mandatory notice must be sent. The timing for sending the **Second Notice** is not the end of the strike(s) itself.

Rather, the notice is sent when the vendor has determined: 1) the strike(s) is over; and 2) the length of the **Remobilization Period**. Once the vendor can reasonably assess the **Remobilization Period**, the vendor must send out the Second Notice.

In other words, the vendor should: 1) note the length of the strike; 2) determine and write down the justification for any additional delay, i.e., **Remobilization Period** (if possible, the assessment should be done within 30 days after the strike ends); and 3) prepare to send out the Second Notice. But as mentioned, do not send the Second Notice too soon – make sure you have clearly assessed the full effects on timing. The Second Notice to the purchaser must be in writing and include the following:

- A brief description of the Unavoidable Delay event (strike(s));
- The date of the conclusion for the Unavoidable Delay Period (i.e., the number of days of the strike itself plus the **Remobilization Period**);
- The new Critical Dates.

The Second Notice must go out within 20 days after the vendor has determined the expected length of the Remobilization Period (and the period of the strike itself).

Note: The Second Notice is to be accompanied by a new revised Statement of Critical Dates.

A sample Second Notice is attached as **Exhibit 2**.

Note: Failure to send out the First Notice and/or the Second Notice will mean the right to unilaterally extend dates is lost.

Consequences

If the vendor follows the rules set out in the Addendum and summarized above, then the vendor can unilaterally extend Critical Dates for affected homes (for the **Unavoidable Delay Period**) and thus gain relief from the construction delay consequences of a strike.

However, if the vendor fails to give the notices in accordance with the Addendum, the existing Critical Dates remain unchanged and any delay compensation payable in accordance with the Addendum is payable from the existing Firm Closing Date or Firm Occupancy Date.

Special Notes

- The Addendum is part of a contract between vendors and purchasers. Each party should seek legal advice when these issues arise. Vendors and purchasers should also communicate with one another to minimize surprises.
- The *Unavoidable Delay* provisions are not a way to indiscriminately extend timelines. Ultimately, the vendor must be able to show for each affected home:
 - That a strike occurred and how long it lasted.
 - How the strike or strikes affected the construction schedule.
 - What is the period of extra delay, if any, caused by the strike (the **Remobilization Period**).

- Only future Critical Dates can be extended and only by the period equal to: (i) the period of the strike, plus (ii) the reasonable estimate of **Remobilization Period**.

Period of Strike Itself + Remobilization Period = Unavoidable Delay Period

- If a particular strike does not affect the home, then it cannot be included in the calculation for extensions. Only strikes that do affect, and for the period they affect, a home can be counted in arriving at the **Unavoidable Delay Period**).
- The vendor can extend the current and future Critical Dates as originally set out in the Addendum. The vendor cannot, however, reset the original timeline framework in the Addendum. For example, if the upcoming next critical date is the Second Tentative Closing Date or Firm Closing Date, the vendor cannot go back and reset to a First Tentative Closing Date.

Examples

<p><u>Note:</u> This information sheet and attachments are not legal advice and every vendor should consult their professional advisors, including legal counsel.</p>
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First Notice – (s.5(b) Addendum)

UNAVOIDABLE DELAY EVENT HAS OCCURRED

To: _____ (the Purchaser)

From: _____ (the Vendor)

Home: _____

RE: Purchase Agreement dated the _____ day of _____, 20__, including Addendum, and amendments, if any (the “Purchase Agreement”) relating to the Home

The terms of your Purchase Agreement (see the Addendum) permit the Vendor to extend the date of closing and other critical dates in certain circumstances, including where there has been an event and/or loss of construction time which amounts to an **“Unavoidable Delay.”**

PLEASE NOTE THAT:

1. An **“Unavoidable Delay”** event has occurred which will delay completion of your home. The specific “Unavoidable Delay” trigger event is as follows:

[Describe the strike(s) that may adversely affect the completion schedule of the home.]
2. The Strike(s) began on the _____ day of _____, 20____.

[Identify trades involved.]
3. It is expected that the strike(s) will affect the completion schedule of the above-noted home.
4. You should be aware that the delay in completion of your home will include the combination of two (2) periods of time. The total delay will include both:
 - 1) the period of time for the strike(s) itself; but also,
 - 2) any additional period of delay directly caused by the strikes which are beyond the vendor’s reasonable control (the **“Remobilization Period”**).

5. It is difficult at this stage to be certain as to how long the total delays may be and thus how the construction schedule for your Home will be affected. A very rough estimate of the Unavoidable Delay (period of time of the strike plus any consequential delay), is about _____ days. [or a meaningful estimate of the total delay is not possible at this time.]
6. Enclosed is an Information Sheet prepared by Tarion Warranty Corporation with helpful information.

DATED this _____ day of _____, 20_____.

Vendor: _____

Signature: _____

*An “**Unavoidable Delay**” means a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which is beyond the reasonable control of the builder and is not caused or contributed to by the fault of the builder.

Second Notice – (s.5(c) Addendum)

**END OF UNAVOIDABLE DELAY EVENT
NOTICE OF TOTAL UNAVOIDABLE DELAY PERIOD**

To: _____ (the Purchaser)
From: _____ (the Vendor)
Home: _____

RE: Purchase Agreement dated the _____ day of _____, 20____, including Addendum, and amendments, if any (the “Purchase Agreement”) relating to the Home

PLEASE NOTE THAT:

1. The “Unavoidable Delay” initiating event referred to in our recent Notice to you has ended. The “Unavoidable Delay” was made up of:
 - (a) One or more labour strikes by _____ in which started on _____ and ended on _____, (“**Strike Period**”);
plus
 - (b) An additional period of _____ days representing additional lost time caused by the strike(s) (the “**Remobilization Period**”).
2. The total setback in time directly caused by the “Unavoidable Delay” (the **Strike Period** plus the **Remobilization Period**) is: (i) _____ days; plus (ii) _____ days for a total of: _____ days (“**Unavoidable Delay Period**”). Therefore, the date of conclusion of the Unavoidable Delay is _____ day of _____ 202____.
3. Your new Critical Dates taking into account the total Unavoidable Delay Period are as follows:
 - (a) Revised First Tentative Closing Date is: _____;
or
Revised Second Tentative Closing Date is: _____;
or
Revised Firm Closing Date is: _____; and
 - (b) Revised Outside Closing Date is: _____.

DATED this _____ day of _____, 20____.

Vendor: _____ Signature: _____

THIS IS **EXHIBIT “I”** REFERRED TO IN THE AFFIDAVIT
OF MICHAEL YEUNG, SWORN BEFORE ME
THIS 17th DAY OF JUNE, 2025.



THOMAS GRAY

A Commissioner for taking Affidavits
(or as may be)

WEBER YARDS

First Notice – (s.5(b) Addendum) UNAVOIDABLE DELAY EVENT HAS OCCURRED

To: [PURCHASER] (the “Purchaser”)
From: GFD 1333W LIMITED PARTNERSHIP by its general partner GFD 1333W GP INC.
(the “Vendor”)
Property: [UNIT], 1333 Weber St E, Kitchener, ON N2A 1C2 (the “Unit”) in the proposed building
known as *Tower A*

**RE: Purchase Agreement dated [DATE], including Addendum, and amendments, if any (the
“Purchase Agreement”) relating to the Condo**

The terms of your Purchase Agreement (see the Addendum) permit the Vendor to extend the date of closing and other critical dates in certain circumstances, including where there has been an event and/or loss of construction time which amounts to an “**Unavoidable Delay**.”*

PLEASE NOTE THAT:

1. An “**Unavoidable Delay**” event has occurred which may delay completion of your condo unit. The specific “Unavoidable Delay” trigger event is a strike by Residential Roofing Contractors – Local 27 (the “**Strike**”).
2. The Strike began on the 1st of May, 2025.
3. It is expected that the Strike will affect the completion schedule of your Unit.
4. You should be aware that the delay in completion of your Unit will include the combination of two (2) periods of time. The total delay will include both:
 - 1) the period of time for the Strike itself; but also,
 - 2) any additional period of delay caused by the Strike which is beyond the Vendor’s reasonable control (the “**Remobilization Period**”).
5. It is difficult at this stage to be certain if or how long the total delays may be and thus how the construction schedule for your Unit will be affected. A meaningful estimate of the total delay is not possible at this time.
6. Enclosed is an Information Sheet prepared by Tarion Warranty Corporation with helpful information.

DATED [DATE]

GFD 1333W LIMITED PARTNERSHIP by its general partner GFD 1333W GP INC

* An “Unavoidable Delay” means a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which is beyond the reasonable control of the builder and is not caused or contributed to by the fault of the builder.

WEBER YARDS

Second Notice – (s.5(b) Addendum) UNAVOIDABLE DELAY EVENT HAS OCCURRED

To: [PURCHASER] (the “Purchaser”)
From: GFD 1333W LIMITED PARTNERSHIP by its general partner GFD 1333W GP INC.
(the “Vendor”)
Property: [UNIT], 1333 Weber St E, Kitchener, ON N2A 1C2 (the “Unit”) in the proposed building
known as *Tower A*

**RE: Purchase Agreement dated [DATE], including Addendum, and amendments, if any (the
“Purchase Agreement”) relating to the Condo**

The terms of your Purchase Agreement (see the Addendum) permit the Vendor to extend the date of closing and other critical dates in certain circumstances, including where there has been an event and/or loss of construction time which amounts to an “Unavoidable Delay.”*

PLEASE NOTE THAT:

1. An “Unavoidable Delay” event has occurred which may delay completion of your condo unit. The specific “Unavoidable Delay” trigger event is a strike by High-Rise Plumbing – UA Local 46 (the “Plumbing Strike”). The Plumbing Strike began on the 13th of May, 2025.
2. The strike by Residential Roofing Contractors – Local 27 (the “Roofing Strike”) is still ongoing. The Roofing Strike began on the 1st of May, 2025.
3. It is expected that the Plumbing Strike and Roofing Strike will affect the completion schedule of your Unit.
4. You should be aware that the delay in completion of your Unit will include the combination of two (2) periods of time. The total delay will include both:
 - 1) the period of time for the Plumbing Strike and Roofing Strike itself; but also,
 - 2) any additional period of delay caused by the Strike which is beyond the Vendor’s reasonable control (the “Remobilization Period”).
5. It is difficult at this stage to be certain if or how long the total delays may be and thus how the construction schedule for your Unit will be affected. A meaningful estimate of the total delay is not possible at this time.
6. Enclosed is an Information Sheet prepared by Tarion Warranty Corporation with helpful information.

DATED [DATE]

GFD 1333W LIMITED PARTNERSHIP by its general partner GFD 1333W GP INC

* An “Unavoidable Delay” means a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which is beyond the reasonable control of the builder and is not caused or contributed to by the fault of the builder.

WEBER YARDS

Third Notice – (s.5(b) Addendum) UNAVOIDABLE DELAY EVENT HAS OCCURRED

To: [PURCHASER] (the “Purchaser”)
From: GFD 1333W LIMITED PARTNERSHIP by its general partner GFD 1333W GP INC.
(the “Vendor”)
Property: [UNIT], 1333 Weber St E, Kitchener, ON N2A 1C2 (the “Unit”) in the proposed building
known as *Tower A*

**RE: Purchase Agreement dated [DATE], including Addendum, and amendments, if any (the
“Purchase Agreement”) relating to the Condo**

The terms of your Purchase Agreement (see the Addendum) permit the Vendor to extend the date of closing and other critical dates in certain circumstances, including where there has been an event and/or loss of construction time which amounts to an “**Unavoidable Delay**.”*

PLEASE NOTE THAT:

1. An “**Unavoidable Delay**” event has occurred which may delay completion of your condo unit. The specific “Unavoidable Delay” trigger event is the following:
 - 1) a strike by Residential Roofing Contractors – Local 27 (the “**Roofing Strike**”), which began on the 1st of May, 2025 and ended on the 20th of May, 2025; and
 - 2) a strike by High-Rise Plumbing – UA Local 46 (the “**Plumbing Strike**”), which began on the 13th of May, 2025 and ended on the 16th of May, 2025.
2. It is expected that the Plumbing Strike and Roofing Strike will affect the completion schedule of your Unit.
3. You should be aware that the delay in completion of your Unit will include the combination of two (2) periods of time. The total delay will include both:
 - 1) the period of time for the Plumbing Strike and the Roofing Strike itself; but also,
 - 2) any additional period of delay caused by the Strike which is beyond the Vendor’s reasonable control (the “**Remobilization Period**”).
4. Notwithstanding the Plumbing Strike and the Roofing Strike have ended, it is difficult at this stage to be certain how long the total Remobilization Period may be and thus how the construction schedule for your Unit will be affected. A meaningful estimate of the total delay is not possible at this time.
5. Enclosed is an Information Sheet prepared by Tarion Warranty Corporation with helpful information.

DATED [DATE]

GFD 1333W LIMITED PARTNERSHIP by its general partner GFD 1333W GP INC

* An “Unavoidable Delay” means a strike, fire, explosion, flood, act of God, civil insurrection, act of war, act of terrorism or pandemic, plus any period of delay directly caused by the event, which is beyond the reasonable control of the builder and is not caused or contributed to by the fault of the builder.

WEBER YARDS

**Fourth Notice – (s.5(b) Addendum)
END OF UNAVOIDABLE DELAY EVENT
NOTICE OF TOTAL UNAVOIDABLE DELAY PERIOD**

To: [PURCHASER] (the “Purchaser”)

From: GFD 1333W LIMITED PARTNERSHIP by its general partner GFD 1333W GP INC.
(the “Vendor”)

Property: [UNIT], 1333 Weber St E, Kitchener, ON N2A 1C2 (the “Unit”) in the proposed building
known as *Tower A*

**RE: Purchase Agreement dated [DATE], including Addendum, and amendments, if any (the
“Purchase Agreement”) relating to the Condo**

PLEASE NOTE THAT:

1. An “Unavoidable Delay” event referred to in our recent Notices to you has ended. The Unavoidable Delay was made up of the following:
 - (a) a strike by Residential Roofing Contractors – Local 27, which began on the 1st of May, 2025 and ended on the 20th of May, 2025; and a strike by High-Rise Plumbing – UA Local 46, which began on the 13th of May, 2025 and ended on the 16th of May, 2025 (in total, the “Strike Period”);
plus
 - (b) an additional period of 30 days representing additional lost time caused by the strike (the “Remobilization Period”).
2. The total setback in time directly caused by the Unavoidable Delay (the Strike Period plus the Remobilization Period) is: (i) 20 days for the Strike Period; plus (ii) 30 days for the Remobilization Period, for a total of 50 days (the “Unavoidable Delay Period”). Therefore, the date of conclusion of the Unavoidable Delay will be June 20, 2025.
3. Your First Tentative Occupancy Date will not be affected by the Unavoidable Delay.

DATED [DATE]

GFD 1333W LIMITED PARTNERSHIP by its general partner GFD 1333W GP INC.

**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**

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

Applicant

Respondents

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

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

Proceedings commenced in Toronto

**AFFIDAVIT OF MICHAEL YEUNG
(Sworn June 17, 2025)**

BENNETT JONES LLP

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Lawyers for GFD 1333W Limited Partnership

Tab 3

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)	THURSDAY, THE 26 TH
)	
JUSTICE BLACK)	DAY OF JUNE, 2025

GENESIS MORTGAGE INVESTMENT CORP.

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondents

**ORDER
(Second AVO Amendment Order)**

THIS MOTION made by GFD 1333W Limited Partnership (“**GFD LP**”) for an Order, among other things, further amending paragraph 8 of the Approval and Vesting Order granted by this Court in these proceedings on October 8, 2024 (the “**AVO**”) was heard this day via Zoom videoconference.

ON READING the Motion Record of GFD LP, including the affidavits of Michael Yeung sworn June 17, 2025 and the Exhibits thereto, and on hearing the submissions of counsel for GFD LP and such other parties listed on the Participant Information Form, no one else appearing although duly served as appears from the affidavit of service,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated and this Motion is properly returnable today and hereby dispenses with further service or notice thereof.

DEFINITIONS

2. **THIS COURT ORDERS** that capitalized terms used but not otherwise defined herein have the meanings ascribed in the AVO.

AMENDMENT OF AVO

3. **THIS COURT ORDERS** that paragraph 8 of the AVO, as amended by Order dated February 20, 2025, is hereby amended to replace the words “June 30, 2025” with “August 19, 2025”, such that the Assignee shall be required to provide the contemplated notice to the Receiver by no later than August 19, 2025.

MISCELLANEOUS

4. **THIS COURT ORDERS** that this Order is effective as of 12:01 a.m. as of the date that it is made and is enforceable without the need for entry and filing.

5. **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.

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

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

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

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

Proceedings commenced in Toronto

**ORDER
(Second AVO Amendment Order)**

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**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**

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

Applicant

Respondents

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

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

Proceedings commenced in Toronto

**MOTION RECORD
(Returnable June 26, 2025)**

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