

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

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

-and-

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 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 OF KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER
(Returnable October 8, 2024)**

September 27, 2024

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

Eric Golden (LSO #38239M)
(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

TO: 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

**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**

INDEX

TAB		PAGE NO.
1	Notice of Motion returnable October 8, 2024.....	001 – 020
2	Second Report of the Receiver dated September 27, 2024.....	021 – 042
	Appendix A: Appointment Order of Justice Cavanagh and related Endorsement dated October 12, 2023.....	043 – 064
	Appendix B: Endorsement of Justice Osborne dated September 25, 2024.....	065 – 069
	Appendix C: Letter from the Receiver to Condo Unit Purchasers dated October 25, 2023.....	070 – 071
	Appendix D: First Report of the Receiver dated December 4, 2023 (without appendices).....	072 – 088
	Appendix E: Sale Process Approval Order of Justice Cavanagh and related Endorsement dated December 12, 2023.....	089 – 097

Appendix F: Offering Summary prepared by CBRE Group Inc. (“CBRE”).....	098 – 101
Appendix G: CBRE Reporting Letter dated September 10, 2024.....	102 – 121
Appendix H: Agreement of Purchase and Sale between the Receiver and Genesis Mortgage Investment Corporation, Elm Acquisitions Corp. and Dorr Capital Corporation dated March 4, 2024.....	122 – 170
Appendix I: Letters to Condo Purchasers dated September 27, 2024...	171 – 182
Appendix J: Schedule “B” to the Waiver and Eighth Amendment – Tower A Sales Plan.....	183 – 184
Appendix K: Analysis of Registered Lien Claims.....	185 – 194
Appendix L: Listing Agreement between 1776411 Ontario Ltd. and Rego Realty Inc. dated March 22, 2019.....	195 – 207
Appendix M: Statement of Claim – CV-23-00001279-0000 <i>Dean-Lane Contractors Inc. v. 1776411 Ontario Ltd. as General Partners of 1333 Weber Street Kitchener LP, Westmount Guarantee Services Inc., CMLS Financial Ltd., Computershare Trust Company of Canada, Genesis Mortgage Investment Corp. and Corfinancial Corp.</i> issued September 27, 2023.....	208 – 228
Appendix N: Statement of Claim – CV-23-00706796-0000 <i>Corfinancial Corp. v. CMLS Financial Ltd., Computershare Trust Company of Canada, and Genesis Mortgage Investment Corp.</i> issued September 28, 2023.....	229 – 242
Appendix O: Receiver’s Statement of Receipts and Disbursements for the period ending September 12, 2024.....	243 – 244
Appendix P: Fee Affidavit of Mitch Vininsky sworn September 20, 2024.....	245 – 269
Appendix Q: Fee Affidavit of Chad Kopach sworn September 18, 2024.....	270 - 377

TAB 1

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

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

-and-

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 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
(Receiver's Motion for Sale Approval and Vesting Order,
Returnable October 8, 2024 at 11:00 am)**

KSV RESTRUCTURING INC. (“KSV”, or the “**Receiver**”), in its capacity as receiver and manager of the undertaking, assets and properties of the Respondents, 1776411 Ontario Ltd. (“**177 Ontario**”) and 1333 Weber Street Kitchener LP (the “**Partnership**”, and together with 177 Ontario, the “**Debtors**”), acquired for, or used in relation to the business carried on by them (in such capacity, the “**Receiver**”), will make a motion to a Judge of the Commercial List on Tuesday, the 8th day of October, 2024, at 11:00 a.m., at 330 University Avenue in Toronto.

PROPOSED METHOD OF HEARING: The Motion is to be heard by judicial video conference via Zoom at the following co-ordinates:

<https://ca01web.zoom.us/j/64172244590?pwd=OHg5VkFZNIRHb3FPdFcxaVY4dnRRZz09#success>

THE MOTION IS FOR an Order:

1. if necessary, abridging the time for service of the Receiver's Motion Record and related Notice of Motion, validating service of the Motion Record and related Notice of Motion, and dispensing with further service thereof;
2. approving an asset purchase agreement dated March 4, 2024, as amended (the "**Elevate APS**"), in respect of the property municipally known as 1333 Weber Street East, Kitchener (the "**Real Property**"), that the Receiver entered into with Genesis Mortgage Investment Corp. ("**GMIC**"), Elm Acquisitions Corp. ("**Elm Acquisitions**") and Dorr Capital Corporation ("**Dorr**"), as purchasers (collectively, the "**Purchasers**"), subject to Court approval;
3. sealing the summary of offers received in the Sale Process (defined below) and attached as Confidential Appendix "1" to the Second Report of the Receiver dated September 27, 2024 (the "**Second Report**"), until the earlier of (a) 30 days following closing of the transaction contemplated in the Elevate APS (the "**Transaction**"), or (b) until further order of the Court;
4. vesting in the Purchasers under the Elevate APS, or their permitted assignee as they may direct, all right, title and interest of the Debtors in the Real Property, and the remaining property of the Debtors covered by the Elevate APS, free and clear of encumbrances, other than permitted encumbrances;
5. authorizing and directing the Receiver to terminate and disclaim the existing pre-construction agreements of purchase and sale (the "**Pre-construction Unit APSs**") related to Tower B of the four-phase residential condominium project on the Real Property (the "**Project**");

6. authorizing and directing the Receiver to, following closing of the Transaction, and following the results of the Purchasers' post-closing sales plan for Tower A of the Project (as described in the Elevate APS), up to 120 days from the date of the Order, terminate and disclaim the Pre-construction Unit APSs related to Tower A that are not being assumed by the Purchasers;
7. approving a Deposit Return Protocol (as defined below) for deposits paid by the purchasers of the Project's condominium units;
8. if necessary, authorizing and directing the Receiver to terminate and disclaim the listing agreement for the Project between Rego Realty Inc. ("**Rego Realty**") and 177 Ontario, dated March 22, 2019 (the "**Listing Agreement**");
9. declaring null and void, and discharging and deleting from title to the Real Property, the lien of Classic Tile Contractors Limited ("**Classic Tile**") as evidenced by the Claim for Lien in the amount of \$591,923 registered over title to the Real Property on July 21, 2023, as instrument no. WR1521825, and the Certificate of Action registered on September 29, 2023, as instrument no. WR1536918;
10. declaring null and void, and discharging and deleting from title to the Real Property, the lien of 2866791 Ontario Corp o/a HGL Electrical ("**HGL Electrical**") as evidenced by the Claim for Lien in the amount of \$3,123,088 registered over title to the Real Property on August 9, 2023, as instrument no. WR1525921;
11. approving the activities described in the Receiver's Second Report;

12. upon completion of the Transaction, distributing the following amounts to the following construction lien claimants (the “**Lien Claimants**”):
- a. \$508,913.14 in respect of the holdback payable on the construction contracts between the Partnership and Gillam Urban Constructors Inc. (“**Gillam**”), resulting in Gillam’s aggregate lien claims being reduced from \$5,089,130 to \$4,580,216.86, payable as follows:
 - i. \$28,417.63 to Matthews Equipment Limited o/a Herc Rentals (“**Matthews Equipment**”) in respect of the construction contract between Matthews Equipment and Gillam, resulting in Matthews Equipment’s lien claim being reduced to \$0; and,
 - ii. \$480,495.51 to Gillam;
 - b. \$43,231.50 to ABA Architects Inc. (“**ABA Architects**”) in respect of the holdback payable on its contract with the Partnership, resulting in ABA Architects lien claim being reduced to \$389,083.53;
 - c. \$245,111.48 to Aluminum Window Designs Ltd. (“**Aluminum Window**”) in respect of the holdback payable on its contract with the Partnership, resulting in Aluminum Window’s lien claim being reduced to \$1,417,488.52;
 - d. \$549,251.98 to Dean Lane Contractors Inc. (“**Dean Lane**”) in respect of the holdback payable on its contract with the Partnership, resulting in Dean Lane’s lien claim being reduced to \$1,608,163.02;
 - e. \$165,642.13 to Gold Star Drywall Services Inc. (“**Gold Star Drywall**”) in respect of the holdback payable on its contract with the Partnership, resulting in Gold Star Drywall’s lien claim being reduced to \$621,616.87;

- f. \$48,960.02 to Greentech Sealants Inc. (“**Greentech Sealants**”) in respect of the holdback payable on its contract with the Partnership, resulting in Greentech Sealants’ lien claim being reduced to \$171,229.98;
 - g. \$34,495.53 to O’Connor Electric Ltd. (“**O’Connor Electric**”) in respect of the holdback payable on its contract with the Partnership, resulting in O’Connor Electric’s aggregate lien claims being reduced to \$323,014.47;
 - h. \$75,595.93 to Oxford Builders Supplies Inc. (“**Oxford**”) in respect of the holdback payable on its contracts with the Partnership, resulting in Oxford’s aggregate lien claims being reduced to \$680,352.07;
 - i. \$103,811.87 to Pearson Metal Inc. (“**Pearson Metal**”) in respect of the holdback payable on its contract with the Partnership, resulting in Pearson Metal’s lien claim being reduced to \$543,405.13;
 - j. \$936,001.85 to Stubbe’s Precast Inc. (“**Stubbe’s Precast**”) in respect of the holdback payable on its contract with the Partnership, resulting in Stubbe’s Precast’s lien claim being reduced to \$438,125.15; and,
 - k. \$63,919.39 to Troy Life & Fire Safety Ltd. (“**Troy Life**”) in respect of the holdback payable on its contract with the Partnership, resulting in Troy Life’s lien claim being reduced to \$120,795.61;
13. declaring that, following payment of the amounts set out in paragraph 12(a) through (k), above, the Lien Claimants’ priority claims (the “**Priority Claims**”) made pursuant to, among other things, section 78 of the *Construction Act*, R.S.O. 1990, c. C.30 (the “**Construction Act**”), are extinguished;

14. following the distribution to the Lien Claimants, approving distributions from the net proceeds of sale of the Transaction to the first mortgagees over the Real Property, GMIC, CMLS Financial Ltd. (“**CMLS**”) and Computershare Trust Company of Canada (“**Computershare**”, and together with GMIC and CMLS, the “**First Mortgagees**”), up to the balance owing to them under their first mortgage (the “**First Mortgagee Distribution**”);
15. authorizing and directing the Receiver to pay to the Purchasers, or their permitted assignee as they may direct, following closing of the Transaction, any funds that the Receiver may receive from CRA in respect of input tax credits relating to any component of the Purchase Price (as defined in the Elevate APS);
16. amending the appointment order of Justice Cavanagh dated October 12, 2023 (the “**Receivership Order**”) by increasing to \$2,500,000 the amount the Receiver is authorized to borrow under the Receivership Order;
17. approving and accepting the Receiver’s Interim Statement of Receipts and Disbursements for the period from October 12, 2023, to September 12, 2024, as set out at Appendix “O” to the Second Report;
18. approving the fees and disbursements of the Receiver for the period from October 12, 2023, to August 31, 2024, and the fees and disbursements of the Receiver’s counsel, Blaney McMurtry LLP (“**Blaneys**”), for the period from October 12, 2023 to August 31, 2024; and
19. such further and other relief as counsel may advise and this Honourable Court may permit.

THE GROUNDS FOR THE MOTION ARE:

Background

1. by way of the Receivership Order, KSV was appointed receiver and manager of (i) the Real Property, (ii) all of the right, title and interest of the Debtors in the personal property arising from, pertaining to, located on, or used in the operation or maintenance of the Real Property, and all proceeds therefrom, and (iii) all of the Debtors' rights and interests in, to, under and in respect of all material agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder (collectively with (i) and (ii), the "**Property**");
2. prior to the Receivership Order, the Debtors had been in the process of constructing Tower A of the four tower Project, though work on the Project had been stalled since early-August, 2023;
3. Tower A of the Project is a partially-completed 15-story, 177 unit tower. Phases 2 and 3 of the Project (Towers B and C) have not progressed past the below-grade excavation, a partially poured slab, and temporary shoring is currently in place in the excavation pit for Towers B and C (no portion of Tower D has yet been constructed);

Registered Security

4. the construction of Tower A was financed by a syndicate of lenders consisting of GMIC as the junior secured lender, and two senior secured lenders. The loan facilities are secured by a first mortgage in the principal amount of \$82 million, registered on title to the Real Property on August 17, 2021 (the "**First Mortgage**") in the names of GMIC, and the two senior

- secured lenders, CMLS Financial Ltd. (“**CMLS**”) and Computershare Trust Company of Canada (“**Computershare**”, and together with GMIC and CMLS, the “**First Mortgagees**”);
5. as of October 1, 2024, the Partnership owes GMIC approximately \$23,633,462.50, exclusive of legal costs, and CMLS/Computershare approximately \$43,628,487.45. Additionally, \$2.7 million is outstanding in respect of a letter of credit facility provided by CMLS;
 6. Westmount Guarantee Services Inc. (“**Westmount**”) holds a second-ranking mortgage over the Real Property in the principal amount of \$50 million registered on November 24, 2020, as increased pursuant to a notice registered on May 8, 2023. Westmount provides condominium purchaser deposit insurance, and the Receiver understands that approximately \$17 million is presently owing to Westmount, representing deposits released from escrow regarding Towers A and B of the Project;
 7. CORFinancial Corp. (“**COR**”), a financial advisor that had been engaged by the Debtors in or about December, 2022, registered a third mortgage against the Real Property on May 8, 2023, in the principal amount of \$3.5 million. COR’s third mortgage is in connection with a transaction whereby: (i) the Debtors and COR entered into a commitment letter wherein COR agreed to pay certain outstanding construction costs owing by the Debtors to Gillam (the Debtors’ construction manager on the Project), and (ii) COR provided Gillam with a promissory note for approximately \$2.9 million regarding certain of Gillam’s outstanding construction costs;
 8. the Receiver’s understanding is that COR has not paid Gillam under this promissory note;

9. in addition to the three mortgages referenced above, the Lien Claimants, consisting of 15 trade contractors and subcontractors, have registered 22 construction liens against the Real Property totalling \$17,664,878;

The Sale Process

10. pursuant to the Order of Justice Cavanagh dated December 12, 2023 (the “**Sale Process Order**”), the Court approved a sale process for the Project, including the retention of CBRE Limited (“**CBRE**”) as listing agent;
11. CBRE prepared an offering summary, and distributed the offering summary on December 14, 2023, to over 3,000 prospective purchasers, including local and national builders, developers and investors;
12. the acquisition opportunity was also listed on the Multiple Listing Service, and CBRE directly contacted parties that it believed would be interested in the Project;
13. prospective purchasers were provided with a confidentiality agreement (“**CA**”) that they were required to sign to access a virtual data room (the “**VDR**”). The VDR included information provided to the Receiver by a representative of the Partnership, the First Mortgagees and certain parties that had provided construction services to the Partnership. The VDR also included a form of asset purchase agreement (“**Template APS**”);
14. CBRE set January 30, 2024, as the bid deadline (the “**Deadline**”). As of the Deadline, the Receiver received seven offers with a range of values. A summary of all offers (the “**Summary of Offers**”) received in the Sale Process, including those from a second round of bidding, is set out at Confidential Appendix “1” to the Second Report;

15. the First Mortgagees did not support a transaction based on any of the offers in the Summary of Offers, as the values were below the amount owing to the First Mortgagees and, in the view of the First Mortgagees, below the value of the Project. Accordingly, GMIC advised the Receiver that it would be submitting a bid for the Project;

The Elevate APS

16. the Purchasers submitted an agreement of purchase and sale on or about March 4, 2024 (*i.e.* the Elevate APS). The Elevate APS was conditional on diligence;
17. the Purchasers have paid the \$5 million deposit due under the Elevate APS;
18. following several extensions, the Purchasers waived conditions under the Elevate APS on September 23, 2024;

Summary of the Elevate APS

19. the assets being acquired by the Purchasers include all of the Partnership's right, title and interest in the Project and certain contracts and permits specified in the Elevate APS (the **"Purchased Assets"**);
20. the purchase price for the Purchased Assets is the full amount owing under the First Mortgage on the closing date of the Transaction (**"Closing Date"**), including without limitation principal, interest, protective disbursements, legal expenses, and other costs and expenses. The purchase price is to be adjusted on Closing for adjustments standard for a real estate transaction, including property taxes. The Elevate APS also provides that the Purchasers shall be solely responsible for: a) all receivership costs and all construction liens

and all other amounts that have priority to the First Mortgage notwithstanding that such amounts arose prior to 11:59 p.m. on the day prior to the Closing Date, or afterwards (for the Receiver's costs), and b) any and all property taxes that are added to the tax roll on or after the Closing Date, regardless of the period to which such property taxes apply;

21. the Elevate APS provides for the following to be Excluded Assets (among other things):
 - a. in respect of Tower A, any Pre-construction Unit APSs that will be specifically identified by the Purchasers and disclosed to the Receiver pursuant to the Purchasers' post-closing sales plan in respect of Tower A, and any monies paid to the Partnership or on its behalf as a deposit or on account of a purchase of a condominium unit relating to any such Pre-construction Unit APSs; and
 - b. in respect of Tower B, the existing Pre-construction Unit APSs, and any monies paid to the Partnership or on its behalf as a deposit or on account of a purchase of a condominium unit to be constructed in Tower B;
22. The Purchasers intentions with respect to the Pre-Construction Unit APSs are as follows :
 - a. Tower A: for those Pre-construction Unit APSs that the Purchasers do not wish to assume, the Receiver is to seek either a declaration that their Pre-construction Unit APSs for Tower A are terminated or a direction to the Receiver that it disclaim such agreements. The basis for the Purchasers decision whether they will be assuming Pre-construction Unit APSs for Tower A is set out in Schedule "B" to the Waiver and Eighth Amendment to the Agreement of Purchase and Sale dated September 23, 2024. It provides, among other things, that "All existing Tower A purchasers

will be offered to keep their units with a 24% purchase price increase” as the market pricing for these units has changed since the Pre-construction Unit APSs were signed;

- b. Tower B: the Receiver is to seek either a declaration that the Pre-construction Unit APSs for Tower B are terminated following closing of the Transaction, or a direction to the Receiver that it disclaim such agreements; and
 - c. Tower C: the Pre-construction Unit APSs are to be assumed on Closing.
- 23. in the Receiver’s view, the sale process undertaken by the Receiver was commercially reasonable and conducted in accordance with the terms of the Sale Process Order, and as set out in the Receiver’s first report dated December 4, 2023. The listing agent, CBRE, has extensive experience selling commercial properties in and around the Kitchener area, and widely canvassed the market for prospective purchasers;
- 24. the Elevate APS represents the best available offer from the Sale Process, and maximizes recoveries for the Project in the circumstances. The Receiver does not believe that further time spent marketing the Project will result in a superior transaction;
- 25. since the Elevate APS was submitted, no other party has submitted an offer for the Project;
- 26. interest and costs continue to accrue on the balance owing to the First Mortgagees, with interest on the tranche of the senior secured lenders in excess of \$300,000 per month. The senior secured lenders are not prepared to continue to fund a further sale process or incremental construction costs that would result if the sale of the Project does not close before October 31, 2024;

27. as well, if the AVO is not issued shortly after September 25, 2024, such that the Elevate APS cannot close before October 31, 2024, the Purchasers may no longer be in a position to proceed with the Elevate APS on its current terms and conditions, as their window to complete planned winterization and below-grade work (including obtaining permits and other required authorizations for this work) further to its development plans for the Project prior to the arrival of winter conditions will have been missed;
28. the Receiver will be seeking Court approval of a deposit return protocol (the “**Deposit Return Protocol**”) that will allow Condo Purchasers (defined below) whose Pre-Construction Unit APSs are terminated to make claims for the return of the deposits that they paid pursuant to the Pre-Construction Unit APSs. The Deposit Return Protocol, which will be filed with the Court prior to the return of the within motion, and will be posted on the Receiver’s website, will set out in detail the steps that Condo Purchasers will have to take in order to claim the return of their deposits if their Pre-Construction Unit APSs are terminated;

Disclaimer of Rego Realty Listing Agreement

29. Rego Realty entered into the Listing Agreement with 177 Ontario, as its exclusive broker for the sale of units for the Project;
30. the condo purchasers under the Pre-construction Unit APSs (the “**Condo Purchasers**”) were not parties to the Listing Agreement;
31. any claim that arises from the disclaimer of the Listing Agreement will be an unsecured claim against 177 Ontario, ranking subordinate to the security of the secured creditors.

Construction Liens

32. 15 lien claimants (the “**Lien Claimants**”) have registered 22 liens on title to the Real Property total more than \$17.75 million. Following the issuance of the Sale Process Order, the Receiver requested that the Lien Claimants provide documentation to prove lienability, *quantum* and timeliness of their respective liens, as well as to establish any priority claims over the First Mortgage pursuant to section 78 of the *Construction Act*;
33. the Receiver’s analysis of the documents produced by the Lien Claimants is that the liens of Classic Tile and HGL Electrical are not valid, and should be discharged. In both cases, the entirety of these Lien Claimants’ liens is in respect of services and materials not supplied to the Real Property. The Receiver’s position is that the relevant caselaw interpreting the *Construction Act* confirms that Classic Tile and HGL Electrical cannot maintain a lien in the circumstances;
34. one of the Lien Claimants, Matthews Equipment, is a subcontractor of Gillam. Accordingly, Matthews Equipment is entitled to be paid in full on its claim for the balance of its lien out of the holdback that is otherwise payable to Gillam;
35. the Receiver’s analysis in respect of each individual Lien Claimants’ lien(s) is set out in the below chart:

No.	Lien Claimant	Registered Lien Amount(s)	Receiver's Analysis: Max Holdback/Priority Claim (inclusive of tax)
1.	Classic Tile	\$591,923	\$0
2.	HGL Electrical	\$3,123,088	\$0
3.	ABA Architects	\$432,315	\$43,231.50
4.	Aluminum Window	\$1,662,600	\$245,111.48
5.	Conestoga Roofing	\$311,562	\$60,787.01
6.	Dean Lane	\$2,157,415	\$549,251.98
7.	Gillam	\$5,089,130	\$508,913.14
8.	Matthews Equipment	\$85,018.08	\$0 (\$26,417.63 paid out of Gillam holdback)
9.	Gold Star Drywall	\$787,259	\$165,642.13
10.	Greentech Sealants	\$220,190	\$48,960.02
11.	O'Connor Electric	\$357,510	\$34,495.53
12.	Oxford	\$755,948	\$75,595.93
13.	Pearson Metals	\$647,217	\$103,811.87
14.	Stubbe's Precast	\$1,374,127	\$936,001.85
15.	Troy Life	\$184,715	\$63,919.39
	TOTAL	\$17,780,017	\$2,835,721.83

36. the Receiver proposes a distribution to each of the Lien Claimants of the amount set out in the above chart under the "Receiver's Analysis: Max Holdback/Priority Claim" column, with a corresponding dollar for dollar reduction in the amount of each lien claim;

Proposed Distribution to First Mortgagees

37. the First Mortgagees have requested that the Receiver seek this Court's approval to make a partial distribution to them from the net proceeds of the Transaction in satisfaction of the indebtedness owing to the First Mortgagees under their First Mortgage;
38. the Receiver has obtained an independent opinion from its counsel, Blaneys, with respect to the validity and enforceability of the First Mortgage over the Real Property. This opinion confirms that the First Mortgage is in first priority, and valid and enforceable against third parties in accordance with its terms;
39. the Receiver has not obtained an opinion with respect to the security that ranks subordinate to the First Mortgage;

Increase in Borrowing Limit

40. the Receiver's borrowing limit pursuant to paragraph 21 of the Receivership Order, as increased by paragraph 7 of the Sale Process Order, is currently \$2 million. The Receiver currently has \$105,487 in its account and accrued expenses of approximately \$330,000, with expenses continuing to accrue;
41. the Receiver seeks to increase the borrowing limit to \$2.5 million in order to allow for additional costs and contingencies;

Receipts and Disbursements, Payment of Professional Fees

42. the Interim Statement of Receipts and Disbursements of the Receiver attached as Appendix “O” to the Second Report is a fair and accurate representation of the funds received and disbursed directly by the Receiver since the Receivership Order herein. It sets out actual receipts over disbursements of approximately \$105,487;
43. the Receiver has retained Blaneys as its counsel for legal matters that have arisen in respect of the Receivership;
44. the fees and disbursements of the Receiver and of Blaneys that are sought to be approved on this motion are fair and reasonable in the circumstances;

Sealing Order

45. Confidential Appendix “1” to the Second Report includes information regarding offer details resulting from the Sale Process (the “**Confidential Information**”). If made public at this stage, and the Transaction is terminated for any reason and another sale process is required, future bidders would have access to the Confidential Information, which could prejudice the Partnership’s stakeholders and negatively impact recoveries;
46. the salutary effects of sealing the Confidential Information outweighs the deleterious effects of doing so;
47. sections 1(2) and 78 of the *Construction Act*;
48. section 249 of the *Bankruptcy and Insolvency Act*,
49. Rules 2.03, 3.02, 37 and 41.05 of the *Rules of Civil Procedure*; and,

50. such further and other grounds as counsel may advise and this Honourable Court may permit.

**THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED ON THE HEARING
OF THE MOTION:**

1. the First Report of the Receiver dated December 3, 2024;
2. the Second Report of the Receiver dated September 27, 2024; and
3. such further and other evidence as counsel may advise and this Honourable Court may permit.

September 27, 2024

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

Eric Golden (LSO #38239M)
Tel: (416) 593-3927
egolden@blaney.com

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

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

TO: SERVICE LIST

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

and

1776411 ONTARIO LTD. et al.
Respondents

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Approval and Vesting Order)**

BLANEY McMURTRY LLP

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

Eric Golden (LSO #38239M)
(416) 593-3927 (Tel)
egolden@blaney.com

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

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

TAB 2



**Second Report to Court of
KSV Restructuring Inc.
as Receiver and Manager of 1776411 Ontario
Ltd. and 1333 Weber Street Kitchener LP**

September 27, 2024

Contents	Page
1.0 Introduction.....	1
1.1 Purposes of this Second Report.....	2
1.2 Restrictions	3
2.0 Background	4
2.1 Secured Creditors	4
2.2 Status of the Project.....	5
3.0 Sale Process	6
3.1 The Transaction	8
3.2 Recommendation	9
3.3 Registrations on Title	10
3.4 Deposit Return Protocol - Condo Purchaser Deposits	11
3.5 Lien Analysis.....	11
3.6 Proposed Distributions on the Project	14
3.7 Rego Realty	14
4.0 Sealing	15
5.0 Litigation and Stay Order	15
5.1 Dean-Lane	15
5.2 COR Claim.....	16
6.0 Borrowing Limit.....	17
7.0 Receiver's Activities.....	17
8.0 Fee Approval	18
9.0 Conclusion.....	18

Appendices

Appendix	Tab
Receivership Order and Endorsement dated October 12, 2023	A
Endorsement of Justice Osborne dated September 25, 2024	B
Condo Purchaser Letter	C
First Report (without appendices).....	D
Sale Process Order and Endorsement dated December 12, 2023	E
Offering Summary	F
CBRE marketing report	G
Elevate APS.....	H
Condo Purchaser Letters dated September 27, 2024.....	I
Schedule “B” to the Waiver and Eighth Amendment dated September 23, 2024.....	J
Lien analysis	K
Rego Brokerage Agreement.....	L
Dean-Lane Claim.....	M
COR Claim.....	N
Statement of Receipts and Disbursements	O
KSV Fee Affidavit	P
Blaney Fee Affidavit.....	Q

Confidential Appendix	Tab
Offer Summary	1



**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**

**SECOND REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER**

SEPTEMBER 27, 2024

1.0 Introduction

1. On October 12, 2023, the Ontario Superior Court of Justice (Commercial List) (the “Court”) issued an order (the “Receivership Order”) appointing KSV Restructuring Inc. (“KSV”) as the receiver and manager (the “Receiver”), without security, of all of the property, assets and undertaking (the “Property”) of 1333 Weber Street Kitchener LP (“1333 Weber LP”) and its general partner, 1776411 Ontario Limited (“177 Ontario”, and with 1333 Weber LP, the “Partnership”). The principal asset of the Partnership is the real property located at 1333 Weber Street East, City of Kitchener (the “Real Property”) and the phased four-tower residential condominium project on the Real Property (the “Project”).
2. A copy of the Receivership Order and the related Endorsement of Justice Cavanagh is provided in Appendix “A”.
3. The application to appoint KSV as Receiver was made by Genesis Mortgage Investment Corp. (“GMIC”), a secured creditor of the Partnership. GMIC is the second largest secured creditor of the Partnership, as more fully described below.
4. A principal purpose of this receivership proceeding was to provide the stability and supervision required to preserve the value of the Project, with a view to effect the sale of the Project either on a completed or an “as is” basis.
5. This second report (the “Second Report”) is filed by KSV in its capacity as Receiver.

1. The purposes of this Second Report are to:
 - a) provide background information about this proceeding;
 - b) summarize the results of the sale process for the Project (the “Sale Process”);
 - c) summarize a recommended sale (the “Transaction”) by the Receiver to GMIC, Elm Acquisitions Corp. (“Elm Acquisitions”) and Dorr Capital Corporation (“Dorr”), or one or more of their designees or nominees as purchasers (collectively, the “Purchasers”) for the Project pursuant to an agreement of purchase and sale dated March 4, 2024, as amended (the “Elevate APS”);
 - d) provide the rationale for sealing the Offer Summary, as defined in Section 3 below;
 - e) provide an opinion on the security granted by the Partnership in favour of GMIC, CMLS Financial Ltd. (“CMLS”) and Computershare Trust Company of Canada (“Computershare”, and together with GMIC and CMLS, the “First Mortgagees”);
 - f) summarize: i) the Receiver’s views regarding various lien claims registered on title to the Real Property; and ii) a Statement of Claim issued against the First Mortgagees by a corporation that has registered a third mortgage over the Real Property, and a Statement of Claim issued against the Partnership and its registered mortgagees by a construction lien claimant;
 - g) set out the basis for an increase in the Receiver’s borrowing limit from \$2 million to \$2.5 million;
 - h) summarize the Receiver’s activities since the date of its First Report to Court dated December 4, 2023 (the “First Report”);
 - i) summarize the fees of the Receiver and Blaney McMurtry LLP (“Blaney”), the Receiver’s counsel, from the commencement of this mandate to August 31, 2024;
 - j) recommend that this Court issue the following Orders:
 - i. an Approval and Vesting Order (the “AVO”):
 - approving the Elevate APS and authorizing the Receiver to complete the Transaction;
 - vesting the Property (as defined in the AVO) in the Purchasers or their nominee, free and clear of encumbrances other than the Permitted Encumbrances (as defined in the AVO), upon execution and delivery of a certificate by the Receiver confirming completion of the Transaction;
 - declaring that the existing pre-construction agreements of purchase and sale related to the Project (the “Pre-construction Unit APSs”) not being assumed by the Purchasers are terminated or directing the Receiver to repudiate such agreements, forthwith following closing of the Transaction;

ii. an Ancillary Order (the “Ancillary Order”):

027

- sealing the confidential appendix to this Second Report;
 - authorizing the Receiver to repudiate the Rego Brokerage Agreement (as defined below);
 - approving a Deposit Return Protocol (as defined below) for the pre-construction deposits paid by the purchasers of the Project’s condominium units (the “Condo Purchaser Deposits”);
 - declaring the liens of Classic Tile and of HGL Electric to be invalid, and declaring the lien of Pearson Metal to be reduced by \$486,382.16 (all as defined below);
 - approving distributions totalling \$2,835,721.83 to or on behalf of 13 lien claimants on the basis set out in Section 3.5 of this Second Report, in full and final satisfaction of their priority claims that rank in priority to the First Mortgagees;
 - approving a distribution to the First Mortgagees up to the balance owing to them by the Partnership;
 - increasing the Receiver’s borrowing limit to \$2.5 million;
 - approving this Second Report and the Receiver’s activities, as set out in this Second Report; and
 - approving the fees of the Receiver and Blaney as set out in Section 8 of this Second Report.
2. On September 25, 2024, Justice Osborne issued an Endorsement scheduling a virtual hearing for October 8, 2024 at 11:00 am of the AVO motion and the remainder of the relief set out above. The Endorsement of Justice Osborne made September 25, 2024 is provided as Appendix “B”.

1.2 Restrictions

1. In preparing this Second Report, the Receiver has relied upon: (i) discussions with the Partnership’s legal counsel; (ii) discussions with various stakeholders in these proceedings, including the First Mortgagees and certain parties involved in construction activities at the Real Property (as well as their legal representatives); and (iii) the Receivership Application materials and other documentation provided by the First Mortgagees, (collectively, the “Information”).
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook. Accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information is required to perform its own diligence.

2.0 Background

028

1. The Partnership intended to develop the Project, which was marketed as “Elevate”. The first phase of the four-phase project is a 177-unit residential building (“Tower A”) that had been estimated to be 80% complete at the time the Receivership Order was granted; however, that estimate appears to have been optimistic based on reviews completed by a cost consultant engaged by the Receiver and parties who participated in the Sale Process. The second and third phases of the site consist of a large open pit with a partially completed foundation and underground parking area (“Tower B” and “Tower C”, respectively, and collectively “Towers B and C”). The fourth phase is currently raw land (“Tower D”).
2. The Receiver understands that all 177 units of Tower A and 325 units of Towers B and C have been sold pursuant to Pre-construction APSs. Pursuant to a letter dated October 25, 2023 (the “Condo Purchaser Letter”), the Receiver advised the condominium unit purchasers (the “Condo Purchasers”) of the receivership proceeding and the status of their condominium transactions. The Condo Purchasers have followed up regularly with the Receiver regarding, among other things, the status of their Pre-construction Unit APSs, their deposits and the continued development of the Project. A copy of the Condo Purchaser Letter is provided as Appendix “C”.
3. The Receiver understands that as of the date of the Receivership Order, the Partnership had no employees.
4. As of the date of the Receivership Order, the Partnership had under \$300 in its bank accounts. Accordingly, all funding in respect of this mandate has been by one of the First Mortgagees pursuant to Receiver Certificates.
5. Background information regarding the Partnership, and the reasons for which GMIC sought the appointment of the Receiver, is set out in the affidavit of Michael Yeung, an officer of GMIC, sworn on October 2, 2023 (the “Yeung Affidavit”), in support of GMIC’s Notice of Application herein issued September 26, 2023. A copy of the Yeung Affidavit and other Court materials filed to-date in these proceedings are available on the Receiver’s website at: <https://www.ksvadvisory.com/experience/case/Elev8>.

2.1 Secured Creditors

1. The following summarizes the creditors with registrations against the Real Property and their outstanding balances (if known) as of the date of the Receivership Order:
 - a) GMIC is a junior secured lender in a syndicate of lenders consisting of itself and two senior secured lenders (the “Senior Secured Lenders”). The loan facilities are secured by a first mortgage in the principal amount of \$82 million granted by 177 Ontario and registered against title to the Real Property on August 17, 2021, as Instrument No. WR1367209, in favour of GMIC, and in favour of CMLS and Computershare which hold title to the mortgage for the two senior secured lenders (the “First Mortgage”).
 - b) The Partnership also granted the First Mortgagees additional security in the form of a general assignment of rents and leases and a general security agreement dated August 17, 2021, and August 13, 2021, respectively.

As discussed further below, the Partnership is projected to owe CMLS/Computershare approximately \$43.6 million as of October 1, 2024, with interest and costs continuing to accrue, and approximately \$23.6 million as of October 1, 2024 to GMIC (exclusive of costs and with interest continuing to accrue). 029

- c) Westmount Guarantee Services Inc. (“Westmount”), which provides condominium purchaser deposit insurance, registered a charge against the Real Property securing \$50 million in connection with deposits paid by the Condo Purchasers (the “Westmount Mortgage”). The Receiver understands that approximately \$17 million is presently owing to Westmount, representing the deposits released from escrow regarding phases one and two of the Project (Towers A and B). The Westmount Mortgage is the second ranking mortgage over the Real Property;
 - d) CORFinancial Corp. (“COR”), a financial advisor that had been engaged by the Partnership in or about December, 2022, registered a charge against the Real Property on May 8, 2023 in the principal amount of \$3.5 million in connection with a transaction whereby: (i) the Partnership and COR entered into a Commitment Letter wherein COR agreed to pay certain outstanding construction costs owing by the Partnership to the Partnership’s construction manager on the Project, Gillam Urban Contractor Inc. (“Gillam”), and (ii) COR provided Gillam with a promissory note for approximately \$2.9 million regarding certain of Gillam’s outstanding construction costs (the “COR Mortgage”). While COR received a fee of \$300,000 in respect of the Commitment Letter (paid by CMLS), the Receiver understands that COR did not advance any funds to Gillam related to this transaction; and
 - e) In addition to the three mortgages over the Real Property, 15 suppliers and trade contractors have registered 22 separate construction liens against the Real Property totalling approximately \$17.7 million.
2. The Receiver’s views on the priority of these charges are summarized below in Section 3.4.

2.2 Status of the Project

- 1. As mentioned above, the Elevate development is partially complete. Construction activity at the Project stalled in early August, 2023, when the Receiver understands that the trade contractors abandoned the site due to liquidity challenges experienced by the Partnership. Work stopped without, among other things: installing a roof on top of Tower A or on the fifth-floor podium of Tower A; completing the installation of windows in certain of the upper floors of Tower A; sealing the building envelope of Tower A for winterization purposes; grading the site to limit erosion; and securing the site to prevent vandalism and theft.
- 2. As discussed in the First Report, a copy of which is provided, without appendices, as Appendix “D”, upon its appointment, the Receiver and Blaney corresponded with representatives of the Partnership and the First Mortgagees to obtain architectural drawings, engineering reports, cost consultant progress reports and other available documentation to identify potential steps to secure the Project, stabilize it and implement protective measures to winterize the site.

3. Following the Receiver's receipt and review of this information and documentation, the Receiver retained Elm Developments Corp. ("Elm"), a construction manager and an affiliate of Elm Acquisitions (one of the Purchasers), to implement and oversee a winterization and stabilization plan to, among things: 930
- I. close in the existing Tower A structure to protect it from the elements using plywood, tarps, Blueskin, foam and other materials;
 - II. install safety railings, where required, to secure the balcony doors and review other safety hazards;
 - III. install temporary roofing on the high-rise section and at the fifth-floor podium of Tower A;
 - IV. review and repair the existing plumbing, electrical work, drywall and boarding work on the third and fourth floors;
 - V. attend to all aspects of the grading and drainage management of exposed soils, protect and insulate the exposed footing and exposed parking garage, and protect the partially poured raft slab in the exposed excavation pit (a raft slab is a reinforced concrete slab on ground that is strengthened with integral concrete beam in both directions);
 - VI. caulk the windows to limit water infiltration;
 - VII. install weep holes in the existing hollow-core concrete slabs to mitigate damage resulting from water infiltration; and
 - VIII. mitigate erosion of the portion of the excavation pit not protected by shoring.
4. In addition to the above, the Receiver retained Finnegan-Marshall Inc. to: a) oversee the activities performed by Elm and its subtrades; b) review Elm's invoices before the Receiver processed them; and c) estimate the cost to complete Tower A, and retained ABA Architects Inc. (the Project architect) to ensure that the stabilization work performed by Elm and its subtrades was done in accordance with the Project drawings. The Receiver also arranged for on-site nightly security and 24/7 remote video monitoring.

3.0 Sale Process

1. Pursuant to an Order dated December 12, 2023 (the "Sale Process Order"), the Court approved a sale process for the Project, including the retention of CBRE Limited ("CBRE") as listing agent. A copy of the Sale Process Order and the related Endorsement is provided as Appendix "E"
2. The Project was marketed for sale by CBRE in accordance with the Sale Process Order. CBRE prepared an offering summary (the "Offering Summary"), a copy of which is provided as Appendix "F". CBRE distributed the Offering Summary on December 14, 2023, to an extensive list of over 3,000 prospective purchasers, including local and national builders, developers and investors.
3. The acquisition opportunity was also listed on the Multiple Listing Service, and CBRE directly contacted parties that it believed would be interested in the opportunity.

4. Attached to the Offering Summary was the form of confidentiality agreement (“CA”) that interested parties were required to sign to access a virtual data room (the “VDR”). The VDR included information provided to the Receiver by a representative of the Partnership, the First Mortgagees and certain parties that had provided construction services to the Partnership. The VDR also included a form of asset purchase agreement (the “Template APS”).
5. The Receiver recommended that prospective purchasers submit offers in the form of the Template APS, together with a blacklined version of their offer. The form of Template APS allowed the prospective purchasers the opportunity to either assume or exclude existing Pre-construction Unit APSs.
6. Based on market feedback, CBRE set January 30, 2024, as the bid deadline (the “Deadline”).
7. As of the Deadline:
 - 37 interested parties signed CAs and were given access to the VDR;
 - 9 interested parties attended site tours; and,
 - 7 interested parties submitted an offer for the Project.
8. CBRE’s marketing report regarding its listing of the Project is provided as Appendix “G” and a summary of the offers (the “Offer Summary”), including those from a second round of bidding, is provided as Confidential Appendix “1”.
9. The Receiver reviewed the offers with CBRE and the First Mortgagees. Following their review of the offers, the First Mortgagees advised the Receiver that they did not support a transaction based on any of the offers as the values were below the amount owing to the First Mortgagees and, in the view of the First Mortgagees, below the value of the Project. Accordingly, GMIC, being one of the First Mortgagees, advised the Receiver that it would be submitting a bid for the Project.
10. GMIC discussed its interest in the Project with builders and developers which ultimately led to the Purchasers submitting an agreement of purchase and sale on or about March 4, 2024, which is described below. The Elevate APS was conditional on diligence. Following several extensions, the condition was waived on September 23, 2024 and certain amendments were made, including as to the treatment of the Pre-construction Unit APSs.
11. Since the Elevate APS was submitted, no other party has submitted an offer for the Project. One party who was purportedly associated with one of the Partnership’s principals, and more recently is purportedly associated with the Partnership’s former construction manager, expressed an intention to submit an offer but has not done so as at the date of this Second Report. This party has also not signed a CA, and as a result not been given access to the VDR, so the extent of its diligence, if any, is unknown.

3.1 The Transaction

032

1. A copy of the Elevate APS, including amendments and extensions, is provided at Appendix “H”. A summary of the Elevate APS is as follows¹:
 - a) Purchasers: GMIC, Elm Acquisitions and Dorr, each of which is arm’s length to the Partnership.
 - b) Property: All of the Partnership’s right, title and interest in the Project and certain contracts and permits specified in the Elevate APS.
 - c) Purchase price: The full amount owing under the First Mortgage Charge on the closing date of the Transaction (“Closing Date”), including without limitation, principal, interest, protective disbursements, legal expenses, and other costs and expenses. The purchase price is to be adjusted on Closing for adjustments standard for a real estate transaction, including property taxes. The Elevate APS provides that the Purchasers shall be solely responsible for: a) all receivership costs and all construction liens and all other amounts that have priority to the First Mortgage Charge notwithstanding that such amounts arose prior to 11:59 p.m. on the day prior to the Closing Date (plus the Receiver’s costs after that date) and b) any and all property Taxes that are added to the tax roll on or after the Closing Date, regardless of the period to which such property Taxes apply.
 - d) Deposit: \$5 million, which has been paid.
 - e) Pre-construction Unit APSs: The Elevate APS provides for the following to be Excluded Assets:
 - i. Tower A: any Pre-construction Unit APSs specifically identified by the Purchasers and disclosed to the Receiver within the 4-month period following Closing, and any monies paid to the Partnership or on its behalf as a deposit or on account of a purchase of a condominium unit relating to any such Pre-construction APSs;
 - ii. Tower B: the existing Pre-construction APSs, and any monies paid to the Partnership or on its behalf as a deposit or on account of a purchase of a condominium unit to be constructed in Tower B.

When it serves its motion record for the AVO, the Receiver will be including by email the letters, copies of which are provided as Appendix “I”, to each of the Condo Purchasers where the Receiver advises them of, among other things, the Purchasers’ intentions with respect to the Pre-Construction Unit APSs:

- Tower A: the Receiver will be seeking Court approval of the Transaction and, for those Pre-construction APSs that the Purchasers do not wish to assume, either a declaration that their Pre-construction APSs are terminated or a direction to the Receiver that it repudiate such agreements. The basis for the Purchasers’ decision to assume Pre-construction APSs for Tower A is set out in Schedule “B” to the Waiver and Eighth Amendment to the Agreement of Purchase and Sale dated

¹ Capitalized terms not otherwise defined are defined in the Elevate APS.

September 23, 2024 which is provided as Appendix "J". It provides, among other things, that "All existing Tower A purchasers will be offered to keep their units with a 24% purchase price increase" as the market pricing for these units has changed since the Pre-construction APSs were signed;

- Tower B that it would be seeking Court approval of the Transaction and either a declaration that their Pre-construction APSs are terminated following closing of the Transaction or a direction to the Receiver that it repudiate such agreements; and
 - Tower C that their Pre-construction APSs are to be assumed on Closing.
- f) Excluded Assets: Other than the Pre-construction Unit APSs described above, the Excluded Assets include:
- i. cash or cash equivalents;
 - ii. accounts receivable;
 - iii. the benefit of any refundable Taxes payable or paid by any of the two partners in the Partnership or paid by the Receiver in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of any of the Partnership or the Receiver to any refund, rebate, or credit of Taxes for the period prior to the Closing Date. This does not include input tax credits relating to any component of the Purchase Price paid on Closing, as the Receiver is required to hold any such amount in trust for the Purchaser, endorse such amount (without recourse) in favour of the Purchaser and pay any such amount to the Purchasers' counsel; and
 - iv. all Contracts identified by the Purchasers and disclosed to the Receiver prior to the Due Diligence Date.
- g) Closing date: On or before October 30, 2024, or such earlier date as the Receiver and the Purchasers agree.
- h) Material condition: the Receiver shall have obtained the AVO and the AVO shall not be stayed.

3.2 Recommendation

1. The Receiver recommends that the Court approve the Transaction for the following reasons:
 - a) in the Receiver's view, the sale process undertaken by the Receiver was commercially reasonable and conducted in accordance with the terms of the Sale Process Order and as set out in the First Report;
 - b) the Receiver and CBRE are of the view the Transaction is the best available in the circumstances;

- c) CBRE has extensive experience selling commercial properties in and around the Kitchener area and widely canvassed the market for prospective purchasers;
- d) the Elevate APS maximizes recoveries for the Project in the circumstances;
- e) the Receiver does not believe that further time spent marketing the Project will result in a superior transaction;
- f) interest and costs continue to accrue on the balance owing to the First Mortgagees, with interest on the first tranche in excess of \$300,000 per month. The First Mortgagees have advised the Receiver that they are not prepared to continue to fund a further sale process or incremental construction costs that would result if the Project is not sold before the winter months;
- g) the Receiver has been advised by Elm Acquisitions (a party related to Elm Acquisitions is intended to be the construction manager following closing of the Transaction) that if the Elevate APS does not close in early October, 2024, the Purchasers' window to complete planned winterization and below-grade work (including obtaining permits and other required authorizations for this work) will have been missed, and the Purchasers may no longer be in a position to proceed with the Elevate APS on its current terms and conditions. Accordingly, there is urgency to complete this Transaction; and
- h) the transaction is unconditional except for Court approval.

3.3 Registrations on Title

1. As set out above, the Real Property is subject to the following charges/instruments registered against title (excluding the super-priority Court-ordered charges granted by the Receivership Order):
 - a) the First Mortgage;
 - b) the second ranking Westmount Mortgage;
 - c) the COR Mortgage registered in third place behind the First Mortgage and the Westmount Mortgage; and
 - d) 22 construction liens in favour of 15 parties in the aggregate amount of approximately \$17.78 million.
2. Blaney provided an opinion that, subject to the standard assumptions and qualifications contained therein, the real property and personal property security granted by the Partnership to the First Mortgagees is valid and enforceable².

² A copy of this opinion can be provided to the Court on request.

3.4 Deposit Return Protocol - Condo Purchaser Deposits

035

1. At the AVO hearing on October 8, 2024, the Receiver will be seeking Court approval of a protocol (the "Deposit Return Protocol") that will allow Condo Purchasers whose Pre-Construction Unit APSs are terminated to make claims for the return of the deposits that they paid pursuant to the Pre-Construction Unit APSs.
2. The Deposit Return Protocol will be filed with the Court prior to the return of the Receiver's motion and be posted on the Receiver's website. The Deposit Return Protocol will set out in detail the steps that Condo Purchasers will have to take in order to claim the return of their deposits if their Pre-Construction Unit APSs are terminated and will be substantially the same as other deposit return protocols used in similar situations.

3.5 Lien Analysis

1. As set out in the chart below, there are fifteen lien claimants (the "Lien Claimants").
2. Blaney reviewed the Claims for Lien, Statements of Claim and Certificates of Action filed by certain of the Lien Claimants, and contracts, invoices and other materials provided by the Lien Claimants. Blaney concluded that, pursuant to section 78 of the *Construction Act*, R.S.O. 1990, c. C.30 (the "*Construction Act*"), thirteen of the fifteen Lien Claimants in the chart below have priority over the First Mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner of the Real Property under the *Construction Act*. The Receiver's analysis in respect of each individual valid Lien Claimant's lien(s) is provided at Appendix "K":

No.	Lien Claimant	Registered Lien Amount(s)	Receiver's Analysis: Max Holdback / Priority Claim (inclusive of tax)
1.	Classic Tile	\$591,923	\$0
2.	HGL Electrical	\$3,123,088	\$0
3.	ABA Architects	\$432,315	\$43,231.50
4.	Aluminum Window	\$1,662,600	\$245,111.48
5.	Conestoga Roofing	\$311,562	\$60,787.01
6.	Dean Lane	\$2,157,415	\$549,251.98
7.	Gillam	\$5,089,130	\$508,913.14
8.	Matthews Equipment	\$85,018.08	\$0 (\$26,417.63 paid out of Gillam holdback)
9.	Gold Star Drywall	\$787,259	\$165,642.13
10.	Greentech Sealants	\$220,190	\$48,960.02
11.	O'Connor Electric	\$357,510	\$34,495.53
12.	Oxford	\$755,948	\$75,595.93
13.	Pearson Metals	\$647,217	\$103,811.87
14.	Stubbe's Precast	\$1,374,127	\$936,001.85
15.	Troy Life	\$184,715	\$63,919.39
	TOTAL	\$17,780,017	\$2,835,721.83

3. Based on the material produced to the Receiver to date by the Lien Claimants, the Lien Claimants' priority claims vis-à-vis the First Mortgage is limited to the deficiency in the holdback that was required to be maintained by the Partnership. The Receiver has not been advised as to any other basis for any of the Lien Claimants' priority claims.
4. The Receiver's analysis of the lien claims is based on the information and documentation that has been provided to it. Accordingly, the Receiver's analysis provided at Appendix "K" sets out the maximum holdback that, in the Receiver's opinion, can be claimed by each of the lien claimants
5. Save and except for one Lien Claimant (Matthews Equipment), each one of the Lien Claimants had its own contract(s) with the owner of the Real Property, meaning there is a separate holdback calculation applicable to each of the Lien Claimants' claims. Regarding timing for registration of the liens, with the exception of Matthews Equipment, the Lien Claimants each had (per section 31(2) of the *Construction Act*) 60 days to register (preserve) their respective claims for lien from the earlier of the date on which a copy of the certificate or declaration of the substantial performance of the contract was published (which is not relevant to the liens on this Project, as there have been no certificates published), and the date the contract was completed, abandoned or terminated. There is no evidence of any contract being completed, abandoned or terminated more than 60 days from the date each respective lien was registered.
6. The Lien Claimants each also had a further 90 days from the date they could have preserved their lien in order to perfect pursuant to section 36(2) of the *Construction Act*. However, perfection is not an issue for any of the Lien Claimants, as Stubbe's Precast Inc. ("Stubbe's Precast"), one of the Lien Claimants, perfected its lien on September 7, 2023, and is therefore available to shelter all of the other preserved liens pursuant to section 36(4) of the *Construction Act*.
7. Each individual Lien Claimant's lien (or liens, where a lien claimant has registered more than one) is discussed separately in Appendix "K".

3.5.1 Invalid Liens

Classic Tile Contractors Limited ("Classic Tile")

1. The Receiver's position is that this lien is invalid.
2. Classic Tile registered its claim for lien in the amount of \$591,923 on July 21, 2023, as instrument no. WR1521825 (the "Classic Tile Claim for Lien"). Classic Tile registered a Certificate of Action on September 29, 2023, as instrument no. WR1536918.
3. The Partnership retained Classic Tile pursuant to a CCDC 17 contract dated April 28, 2021 (the "Classic Tile Contract"). The Classic Tile Contract was to supply flooring at Tower A. The total contract price was \$1,115,310.00, (all amounts inclusive of HST, unless otherwise indicated). By way of change order dated October 6, 2022, the contract price was increased by \$56,712.44.

- 037
4. Classic Tile initially produced an invoice dated April 26, 2023, in the amount of \$505,320.11 (exclusive of holdback). In its invoice, Classic Tile indicates it completed 50% of its work, and calculates its holdback as \$49,687.33, exclusive of tax. With tax added in, the holdback is \$56,146.68.
 5. Following the Receiver's inquiry into the quantum of its invoices, Classic Tile provided an unsigned storage agreement that purports to have been negotiated between the Partnership, Gillam as "Contractor" and Classic Tile as "Subcontractor". This does not accord with the existing contractual relationship under the Classic Tile Contract, in which Classic Tile was the contractor. The storage agreement is not signed and Classic Tile's productions include a bill of sale that properly refers to Classic Tile as the contractor.
 6. In any event, Classic Tile's lien fails, as it did not supply lienable services or material to the Project. In fact, the material that purports to be the subject of Classic Tile's lien remains in storage at its facility at 1126 Northside Road, Burlington.
 7. Classic Tile's "supply" to an offsite storage facility does not satisfy the test for supply under s.1(2) of the *Construction Act*, which states that materials are supplied to an improvement when they are: (a) placed on the land on which the improvement is being made; (b) placed upon land designated by the owner or an agent of the owner that is in the immediate vicinity of the premises, but placing materials on the land so designated does not, of itself, make that land subject to a lien; or (c) in any event, incorporated into or used in making or facilitating directly the making of the improvement.
 8. The relevant caselaw interpreting s.1(2) of the *Construction Act*, including [*Melloul-Blamey v Schleiss Development*](#), (2001) 15 C.L.R. (3d) 10 (Ont. S.C.J. – Justice Scott), and [*1508270 Ontario Ltd. v. Laudervest Developments*](#) [2007] O.J. No. 5434 (Ont. S.C.J. – Master Albert) (collectively, the "Supply Caselaw"), confirms that material that is stored at a suppliers' warehouse, even if done at the direction of the owner, does not entitle the supplier to a lien for the material.

2866791 Ontario Corp o/a HGL Electrical ("HGL Electrical")

1. The Receiver's position is that this lien is invalid.
2. HGL Electrical registered its claim for lien in the amount of \$3,123,088 on August 9, 2023, as instrument no. WR1525921 (the "HGL Electrical Claim for Lien"). The lien was not perfected, though it is sheltering under the Certificate of Action issued and registered by Stubbe's.
3. The Partnership retained HGL Electrical pursuant to two CCDC 17 contracts to supply electrical services and material to Towers B and C. HGL Electrical was not retained to supply the electrical scope of work to Tower A.
4. HGL Electrical has produced three invoices for the HGL Electrical Tower B Contract totaling \$1,786,598.23, inclusive of tax but exclusive of holdback. Based on the holdback amounts in each invoice, the holdback claim in respect of the HGL Electrical Tower B Contract is \$175,673.37, plus tax, for a total of \$198,510.91.

5. HGL Electrical has also produced three invoices for the HGL Electrical Tower C Contract totaling \$1,335,353.22, inclusive of tax but exclusive of holdback. Based on the holdback amounts in each invoice, the holdback claim in respect of the HGL Electrical Tower C Contract is \$131,303.17, plus tax, for a total of \$148,372.58. ⁰³⁸
6. Accordingly, the total holdback claim that HGL Electrical could advance is \$346,883.49, inclusive of tax.
7. Based on its billings to date, HGL's position is that it has performed approximately 55% of each of the HGL Electrical Tower B Contract and the HGL Electrical Tower C Contract. This does not accord with the status of the Tower B and Tower C (which have not progressed beyond the excavation stage). HGL Electrical's counsel has confirmed that the invoicing is not in respect of services and materials supplied, but rather is in respect of up-front payments to subtrades and materials suppliers. HGL Electrical has provided no evidence of material supplied to site, nor of the services that are purportedly included in its invoicing.
8. Based on the Supply Caselaw referenced above, HGL Electrical cannot maintain a lien for the work set out in its invoices.

3.5.2 Valid Liens (Including Partially Valid)

1. As set out above, the Receiver's views on these valid (and partially valid) liens to support the amounts set out in the table in Section 3.5 are summarized in Appendix "K".

3.6 Proposed Distributions on the Project

1. Upon closing of the Transaction, the Receiver recommends that it be authorized and directed to make the following distributions from the Transaction sale proceeds:
 - a) Up to \$2,835,722 to the thirteen Lien Claimants; and
 - b) Up to the balance owing to the First Mortgagees.
2. The Receiver is not aware of any other secured creditors or any other claims that rank, or may rank, in priority to the claims of the First Mortgagees, other than:
 - a) property taxes, which will be satisfied on closing of the Transaction;
 - b) a commission of \$250,000 plus HST payable to CBRE pursuant to its listing agreement; and
 - c) the Receiver's Charge, for which the Receiver will retain a reserve for its present and future fees and expenses, and those of Blaney.

3.7 Rego Realty

1. The Receiver understands that 177 Ontario had an exclusive listing arrangement with Rego Realty Inc. ("Rego") pursuant to an agreement dated March 22, 2019 (the "Rego Brokerage Agreement"). The Condo Purchasers are not parties to the Rego Brokerage Agreement. A copy of the Rego Brokerage Agreement is provided as Appendix "L".

2. The Purchasers have advised the Receiver that they do not intend to assume the Rego Brokerage Agreement. Accordingly, on closing of the Transaction, the Receiver recommends that the Rego Brokerage Agreement be disclaimed. Any fees or commissions Rego and any co-operating brokers may be owed in respect of Pre-construction Unit APSs represent an unsecured claim against 177 Ontario and Rego (and any co-operating brokers) has no recourse against the Purchasers or Condo Purchasers.

4.0 Sealing

1. The Receiver is recommending that the Offer Summary be sealed. If the Transaction is terminated for any reason, another sale process could be required. If the Offer Summary is not sealed, future bidders would have access to offer details, which could prejudice the Partnership's stakeholders and negatively impact recoveries. The Receiver proposes that the Offer Summary be sealed until the earlier of: (a) 30 days following closing of the Transaction; and (b) further order of the Court.
2. The Receiver believes that no party will be prejudiced if Confidential Appendix "1" is sealed.
3. The salutary effects of sealing such information from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Receiver is of the view that the sealing of Confidential Appendix "1" is consistent with the decision in [*Sherman Estate v. Donovan, 2021 SCC 25*](#). Accordingly, the Receiver believes the proposed sealing order is appropriate in the circumstances.

5.0 Litigation and Stay Order

1. The plaintiffs in two separate actions commenced prior to the date of the Receivership Order initially took the position that their actions were not subject to the stay of proceedings provision in the Receivership Order, or in the alternative that they should not be subject to the stay and that lift stay motions should be scheduled, if required. The first action names the Partnership, the First Mortgagees, Westmount and COR as defendants (among others). The second action, issued the day after the first, is related to the first action, and while it does not include the Partnership as a defendant, it names all the First Mortgagees as defendants.
2. The actions are described further below. The plaintiffs in these actions, Dean Lane and COR, sought to schedule a lift stay motion for their proceedings. In the Endorsement related to the Sale Process Order (Appendix "E"), Justice Kavanagh adjourned that scheduling request to a Chambers attendance on February 15, 2024. The day before that rescheduled attendance was returnable, COR agreed to cancel it and re-schedule it for mutually convenient date for the relevant stakeholders after the Receiver advised of the asset purchase agreement being put forward for the AVO. In the interim, Dean Lane and COR have taken no steps to move their litigation forward.

5.1 Dean-Lane

1. As noted above under section 3.4, Dean-Lane issued a Statement of Claim to perfect its lien. This Statement of Claim was issued September 27, 2023, bearing Kitchener court file no. CV-23-00001279-0000 (the "Dean-Lane Claim"). A copy of the Dean-Lane Claim is attached at Appendix "M".

2. Among other things, the Dean-Lane Claim makes typical claims in support of the Dean Lane Claim for Lien.
3. The Dean-Lane Claim further seeks damages as against the Partnership in respect of a “Loss of Profit Claim” in the amount of \$3,006,160, which appears to be calculated as the profit that Dean-Lane would have realized on its work had the Partnership completed the Project. In addition, the Dean-Lane Claim seeks \$636,585 against the Partnership in respect of “Supplier Equipment Costs”, which appear to be costs of equipment ordered by Dean-Lane, but not yet supplied to the Project.
4. Neither the work under the loss of profit claim, nor the equipment under the supplier equipment costs claim were actually supplied to the Project, and thus not capable of being the basis for a lien over the Real Property. In fact, Dean Lane has not registered a lien in respect of these claims.
5. The Dean-Lane Claim also makes a claim against CMLS in the amount of \$2,157,416 for breach of a purported agreement dated May 5, 2023, among Dean-Lane, CMLS and the Partnership (the “May 5 Agreement”), pursuant to which it is alleged that, among other things, Dean-Lane agreed to defer payment of approximately \$1,000,000 that was owing to it by the Partnership at that time. This \$2,157,416 is the same amount of the Dean Lane claim for lien set out and analyzed in Section 3.4 above.
6. Finally, the Dean-Lane Claim also makes a claim against COR in the amount of \$1,050,000 for breach of the “CorFinancial Undertaking” whereby Dean-Lane alleges that COR undertook to pay \$1,000,000 to Dean-Lane if certain payments were not made to Dean-Lane by the Partnership by May 26, 2023, and a further \$50,000 “Developer Accommodation Fee”.

5.2 COR Claim

1. On September 28, 2023, being the day after the Dean-Lane Claim was issued, COR issued a separate claim against the First Mortgagees bearing Toronto court file no. CV-23-00706796-0000 (the “COR Claim”). A copy of the COR Claim is attached at Appendix “N”.
2. In the COR Claim, COR seeks general damages of \$1,000,000, and special and aggravated damages of \$100,000. The COR Claim appears to arise out of the same set of facts alleged by Dean-Lane. Among other things, the COR Claim references the May 5 Agreement, which is the basis for Dean-Lane’s claim against CMLS for \$2,157,416, and an undertaking from COR to Dean-Lane whereby COR agreed to pay \$1,000,000 to Dean-Lane if not paid by May 28, 2023, along with a \$50,000 “accommodation fee”.
3. It is the Receiver’s view that neither the Dean Lane Claim nor the COR Claim has any impact on the AVO being sought, or the closing of the Transaction. Once the stay of proceedings is lifted (following the discharge of the Receiver, or prior to then if an Order lifting the stay is granted), those two claims can proceed based on scheduling that the parties agree or as the Court directs.

6.0 Borrowing Limit

041

1. As part of the Sale Process Order dated December 12, 2023, the Court increased the Receiver's borrowing limit pursuant to paragraph 21 of the Receivership Order from \$500,000 to \$2 million.
2. As reflected in the Receiver's Statement of Receipts and Disbursements as of September 12, 2024 attached as Appendix "O", the Receiver has borrowed up to the present limit in order to fund the expenses associated with the Project, such as the stabilization, winterization and security measures referenced in Section 2, insurance, utilities, advisors and professional costs.
3. The Receiver currently has \$105,401 in its account and accrued expenses of approximately \$330,000. As expenses continue to be incurred, the Receiver recommends that the borrowing limit be increased to \$2.5 million to allow for additional costs and contingencies.

7.0 Receiver's Activities

1. In addition to the activities described above, the Receiver's activities since the date of its First Report have included, among other things, the following:
 - a) corresponding with the Partnership's counsel regarding the Receiver's information requests;
 - b) corresponding with the Partnership's insurance agents and certain of its insurers to renew and/or extend coverage;
 - c) dealing with security incidents at the Project and continuing to arrange for remote monitoring and nightly guard services;
 - d) reviewing various liens registered against the Real Property;
 - e) corresponding with Elm and several other contractors regarding the ongoing activities at the Project;
 - f) corresponding with Tarion regarding its interest in the Project;
 - g) corresponding with representatives of Westmount and its counsel;
 - h) responding to inquiries from Condo Purchasers regarding their deposits and the status of the Project;
 - i) corresponding with Canada Revenue Agency regarding the Partnership's HST returns filed by the Receiver;
 - j) responding to inquiries from the Partnership's creditors;
 - k) attending regular status update calls with the First Mortgagees; and
 - l) preparing an Interim Report of the Receiver pursuant to Subsection 246(2) of the BIA; and
 - m) preparing this Second Report.

8.0 Fee Approval

042

1. The fees of the Receiver and Blaney from commencement of this mandate to August 31, 2024 total \$298,176 and \$280,185, respectively, excluding disbursements and HST. Fee affidavits and accompanying invoices for the Receiver and Blaney are provided as Appendices "P" and "Q", respectively.
2. The activities of the Receiver are detailed in the Receiver's invoices, in this Second Report and in the First Report.
3. The average hourly rate for the Receiver and Blaney for the referenced billing period was \$620 and \$679, respectively.
4. The Receiver is of the view that the hourly rates charged by Blaney are consistent with rates charged by law firms practising in restructuring and insolvency in the downtown Toronto market, and that the fees charged are reasonable and appropriate in the circumstances.

9.0 Conclusion

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

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

APPENDIX “A”

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

GENESIS MORTGAGE INVESTMENT CORP.

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondents

**ORDER
(Appointing Receiver)**

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

045

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

SERVICE

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

APPOINTMENT

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

RECEIVER'S POWERS

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

046

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

047

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

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

048

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

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

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

049

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

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

DUTY TO PROVIDE ACCESS AND CO-OPERATION TO THE RECEIVER

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

050

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

051

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

11. THIS COURT ORDERS that all Persons having oral or written agreements with the Debtor or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Receiver, and that the Receiver shall be entitled to the continued use of the Debtor's current telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Receiver in accordance with normal payment practices of the Debtor or such other practices as may be agreed upon by the supplier or service provider and the Receiver, or as may be ordered by this Court.
12. THIS COURT ORDERS that in the event that an account for the supply of goods and/or services is transferred from the Debtor to the Receiver, or is otherwise established in the Receiver's name, no Person, including but not limited to a utility service provider, shall

052

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

053

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

FUNDING OF THE RECEIVERSHIP

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

055

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

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

SERVICE AND NOTICE

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

056

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

CRITICAL PAYMENTS

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

DEPOSITS

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

GENERAL

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

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

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

057

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

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



Digitally signed by
Mr. Justice Cavanagh

SCHEDULE "A"

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

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

Address: 1333 WEBER STREET EAST KITCHENER

SCHEDULE "B"

RECEIVER CERTIFICATE

CERTIFICATE NO. _____

AMOUNT \$ _____

1. THIS IS TO CERTIFY that KSV Restructuring Inc., the receiver and manager (the "**Receiver**") of the Property (as defined in the Order (as defined below)) of 1776411 Ontario Inc. and 1333 Weber Street Kitchener LP appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the 12th day of October, 2023 (the "**Order**") made in an application having Court file number CV-23-00706813-00CL, has received as such Receiver from the holder of this certificate (the "**Lender**") the principal sum of \$[●], being part of the total principal sum of \$500,000 which the Receiver is authorized to borrow under and pursuant to the Order.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded [daily][monthly not in advance on the _____ day of each month] after the date hereof at a notional rate per annum equal to the rate of _____ per cent above the prime commercial lending rate of Bank of _____ from time to time.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Receiver pursuant to the Order or to any further order of the Court, a charge upon the whole of the Property, in priority to the security interests of any other person, but subject to the priority of the charges set out in the Order and in the *Bankruptcy and Insolvency Act*, and the right of the Receiver to indemnify itself out of such Property in respect of its remuneration and expenses.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate shall be issued by the

060

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

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

DATED the ____ day of _____, 20__.

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

Per: _____

Name:

Title:

IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE *BANKRUPTCY AND INSOLVENCY ACT*, R.S.C. 1985, c. B-3, AS AMENDED, ~~001~~
SECTION 101 OF THE *COURTS OF JUSTICE ACT*, R.S.O. 1990, c. C.43, AS AMENDED

**GENESIS MORTGAGE INVESTMENT
CORP.**

and

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Applicant

Respondents

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

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

Proceedings commenced in Toronto

**ORDER
(October 12, 2023)**

BENNETT JONES LLP

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

Sean Zweig (LSO# 57307I)

Tel: (416) 777-6254

Email: zweigs@bennettjones.com

Thomas Gray (LSO#: 82473H)

Tel: (416) 777-7924

Email: grayt@bennettjones.com

Milan Singh-Cheema (LSO# 88258Q)

Tel: (416) 777-5521

Email: singhcheemam@bennettjones.com

Lawyers for the Applicant



SUPERIOR COURT OF JUSTICE

COUNSEL SLIPCOURT FILE NO.: CV-23-00706813-00CLDATE: October 12th, 2023REGISTRAR: SARAH HAWLEY

3 – 11:30

NO. ON LIST: AM

TITLE OF PROCEEDING:

GENESIS MORTGAGE INVESTMENT CORPORATION v.
1776411 ONTARIO LTD. et al

BEFORE JUSTICE: JUSTICE CAVANAGH**PARTICIPANT INFORMATION****For Plaintiff, Applicant, Moving Party, Crown:**

Name of Person Appearing	Name of Party	Contact Info
SEAN ZWEIG	Counsel (Genesis Mortgage Investment Corporation)	zweigs@bennettjones.com
MILAN SINGH-CHEEMA	Counsel (Genesis Mortgage Investment Corporation)	singhcheemam@bennettjones.com

For Defendant, Respondent, Responding Party, Defence:

Name of Person Appearing	Name of Party	Contact Info
GRAHAM PHOENIX	Counsel (1776411 ONTARIO LTD.)	gphoenix@LN.law

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
MARIA RUBERTO	Counsel (Multiple)	mroberto@pallettvalo.com
KELSY GILL	Counsel (Conestoga Roofing & Sheet Metal Ltd.)	kmg@giffenlawyers.com
RAPHAEL FERNANDES	Classic Tile Contractors Limited	rfernandes@carltonlaw.ca

S.MITRA	Counsel Senior Lenders	smitra@airdberlis.com
ANDREW GURLESKY	Gillam Urban Constructors Inc.	agurlesky@constructlegal.ca
DEREK KETELAARS	CorFinancial Corp.	DKETELAARS@GEYLAW.COM
ERIC GOLDEN	Counsel KSV Restructuring	egolden@blaney.com
MITCH VINISKY	Counsel KSV Restructuring	mvinisky@blaney.com
J. MACLELLAN	Aviva/Westmount	n/a
EMILY DURST	Counsel ABA Architects Inc.	edurst@millerthomson.com

ENDORSEMENT OF JUSTICE:

Genesis Mortgage Investment Corporation (“GMIC”) seeks an order pursuant to subsection 243 (1) of the bankruptcy and insolvency Act and section 101 of the Courts of Justice Act appointing KSV Restructuring Inc. as receiver and manager (the “Receiver”) of certain real and personal property of the Respondents. The application is not opposed.

1776411 Ontario Ltd. (“177”) is the general partner of 1333 Weber Street Kitchener LP (together, the “Debtor”). The Debtor is the developer of a phased four-tower residential condominium development known as “Elevated Condominiums” (the “Project”), which is under construction on the real property legally described in Schedule “A” to the proposed receivership order (the “Real Property”). The real property is owned by 177 and consists of the lands located at 1333 Weber Street East, Kitchener, Ontario. The first phase of the four-phase Project is a 15-story, 177-unit residential development condominium tower (“Phase I”), which is approximately 80% complete.

GMIC is the junior secured lender in a syndicate of secured lenders consisting of itself and two senior secured lenders. As of September 13, 2023, there was approximately \$42,055,404.91 outstanding in respect of the Senior Secured Loan Facility (as defined in the materials), and approximately \$19,598,404.91 outstanding in respect of the Junior Secure Loan Facility (as defined in the materials). In addition, \$2,698,140.29 is outstanding in respect of a letter of credit facility provided by the Senior lenders.

GMIC has the contractual right to appoint a receiver pursuant to the security documents. The senior lenders do not oppose the relief sought.

I have reviewed the application materials and I am satisfied that the requested receivership order should be made. The evidence shows that, at present, the Project is stalled. Trade contractors have left the site. It is unclear if the site is secured. While Phase I of the project is approximately 80% complete, the roof is not watertight, which could lead to significant damage to the Project with winter fast approaching. Insurance for the Project continues to be in place but has not been paid since February 2023. In the circumstances, I am satisfied that is just and convenient to appoint the Receiver.

The evidence shows that an action was commenced by Corfinancial Corp. as plaintiff against CMLS Financial Ltd., Computershare Trust Company of Canada, and GMIC by statement of claim issued on September 28, 2023.

GMIC contends that the action would be stayed under the language in the Model Order given that it is in respect of the Debtor and/or the Property. Counsel for Corfinancial does not agree. Corfinancial does not consent to the addition of language to clarify that the action is stayed.

Counsel will confer about how the action should be treated during the receivership. If necessary, a motion will be brought to determine this issue. Counsel will arrange for a scheduling appointment, if necessary, for approval of a timetable for this motion and to obtain a hearing date. 064

Order to issue in form of Order signed by me.



Digitally signed by
Mr. Justice
Cavanagh

APPENDIX “B”



**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

ENDORSEMENT

**COURT FILE
NO.:**

CV-23-00706813-00CL

DATE: September 25, 2024

NO. ON LIST: 2

**TITLE OF
PROCEEDING:**

**GENESIS MORTGAGE INVESTMENT CORPORATION v 1776411
ONTARIO LTD et al**

**BEFORE
JUSTICE: OSBORNE**

PARTICIPANT INFORMATION

For the Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig	Counsel for Applicant Genesis Mortgage	zweids@bennettjones.com

For the Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
Thomas Gertner	Counsel for the Respondent, CMLS	thomas.gertner@gowlingwlg.com
Kelsey Gill	Counsel for the Lien Claimant, Conestoga Roofing	Kmg@giffenlawyers.com
Denise Bambrough	Counsel for the Second Mortgagee, Westmount	dbambrough@blg.com
Derek Ketelaars	Counsel for CorFinancial Corp. Third Mortgagee and Agent for Counsel to Claimant	derek@sclawpartners.com
Sanjeev Mitra	Counsel for Creditor, RBC	smitra@airdberlis.com

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Eric Golden	Counsel for Receiver, KSV Restructuring, Moving Party	egolden@blaney.com
Mitch Vininsky	Receiver	mvininsky@ksvadvisory.com

ENDORSEMENT OF JUSTICE OSBORNE:


[1] The Receiver moves for an order:

- a. approving an asset purchase agreement in respect of the property at 1333 Weber Street East, Kitchener, Ontario that the Receiver has entered into with Genesis Mortgage Investment Corp., Elm Acquisitions Corp., and Dorr Capital Corporation, as Purchasers;
- b. sealing the summary of offers received in the Sale Process, attached as Confidential Appendix “1” to the Second Report of the Receiver until the earlier of 30 days following closing of the Transaction or further order of the Court;
- c. vesting all right, title and interest of the Debtors in the Property in the Purchasers;
- d. authorizing and directing the Receiver to terminate and disclaim the existing pre-construction agreements of purchase and sale related to Tower B of the four-phase residential condominium project on the Property;
- e. authorizing and directing the Receiver, following the closing of the Transaction and also following the results of the Purchasers’ post-closing sales plan for Tower A of the Project, up to 120 days from the date of the order, to terminate and disclaim the pre-construction unit agreements of purchase and sale related to Tower A that are not being assumed by the Purchasers;
- f. if necessary, authorizing and directing the Receiver to terminate and disclaim the listing agreement for the Project between Rego Realty Inc. and 177 Ontario, dated March 22, 2019;
- g. declaring null and void and discharging and deleting from title to the Property two liens, one of Classic Tile Contractors Limited in the amount of \$591,923; and the second of 2866791 Ontario Corp., operating as HGL Electrical in the amount of \$3,123,088;
- h. approving the activities described in the Receiver’s Second Report;
- i. upon completion of the Transaction, making certain distributions to the construction Lien Claimants as set out in the Notice of Motion and extinguishing the Priority Claims made pursuant to section 78 of the *Construction Act* thereafter;
- j. approving distributions to the first mortgagees up to the balance owing to them;
- k. authorizing and directing the Receiver to pay to the Purchasers following the closing of the Transaction any funds that the Receiver may receive from the Canada Revenue Agency in respect of input tax credits relating to any component of the Purchase Price;
- l. amending the order of Cavanagh, J. dated October 12, 2023 to increase the maximum borrowing amount for the Receiver to \$2,500,000;
- m. approving and accepting the Receiver’s Interim Statement of Receipts and Disbursements for the period October 12, 2023 to September 11, 2024; and

- n. approving the fees and disbursements of the Receiver and its counsel from October 12, 2023 to August 31, 2024. ⁰⁶⁸

- [2] Defined terms in this Endorsement have the meaning given to them in the Notice of Motion, unless otherwise stated.
- [3] The Project is not complete. Tower A is partially complete, and Towers B and C are at the foundation stage. There are approximately 500 purchasers who have entered into agreements of purchase and sale in respect of condominium units in all three Towers.
- [4] The Applicant in this proceeding is the junior secured creditor among three First Mortgagees who together hold the first mortgage. Over \$67 million is owing under the first mortgage of which approximate \$23 million is owed to the Applicant.
- [5] Westmount Guarantee Services Inc. provides access deposit insurance protection above the primary deposit insurance protection of \$20,000 per deposit offered by Tarion Warranty Corporation. Westmount is the second mortgagee on the Property, which is owed approximately \$17 million for deposits that have been released for construction.
- [6] The Purchase Price under the Purchaser Group APA would pay out in full the First Mortgage as well as all priority payables, including a priority lien holdback amount of approximately \$2.9 million, municipal property taxes of approximate \$227,000 and broker commission on the proposed Transaction. It is not expected that proceeds would be sufficient to pay out all mortgages.
- [7] The Transaction contemplates the Purchaser Group assuming agreements of purchase and sale with purchasers of condominium units for Tower C and has proposed a plan in respect of the agreements for Tower A.
- [8] It is anticipated that Tarion and Westmount will seek, as part of the Receiver's motion, a Deposit Return Protocol regarding refunds of deposits paid by purchasers of condominium units. They are working on that now.
- [9] Mr. Ketelaars advises that two claimants with outstanding claims that were stayed by the receivership order intend to assert those claims, and in addition, claim a priority in entitlement to net proceeds arising from the Transaction, ranking ahead of other claimants, including but not limited to the First Mortgagees. He submitted that the distribution motion can and should be heard after the sale approval motion.
- [10] In my view, the two must be heard together. The agreement of purchase and sale is scheduled to close on October 30. Genesis is both one of the First Mortgagees and also part of the Purchaser Group. The agreement of purchase and sale is akin, in some respects, to a credit bid in that part of the proposed purchase price, if the Transaction is approved, will extinguish the existing Genesis 1st Mortgage (i.e., no cash will actually flow but a proportion of the purchase price from Genesis will be satisfied by the extinguishment of its existing mortgage debt).
- [11] Accordingly, the Receiver's motion for sale approval and authorization to make distributions and other relief as set out in the Notice of Motion and summarized above, together with the motions of claimants seeking a priority distribution will all be heard on **October 8, 2024 commencing at 11 AM and continuing as necessary for two hours via Zoom**. It is appropriate that this matter be heard via Zoom to maximize accessibility for a number of affected purchasers who reside outside the Toronto area, in respect of this Kitchener Property. All counsel have confirmed their availability for that date.

[12] The Receiver will serve its materials, including an explanatory cover letter to assist purchasers, some of whom are not (yet) represented, by the end of day, September 27. The claimants will serve their materials no later than the end of day on Monday, September 30. ⁰⁶⁹

A handwritten signature in cursive script, appearing to read "Osborne, J.", written in black ink.

OSBORNE, J.

DATE: 25 SEPTEMBER, 2024

APPENDIX “C”



ksv restructuring inc.
220 Bay Street, Suite 1300
Toronto, Ontario, M5J 2W4
T +1 416 932 6266
F +1 416 932 6266
info@ksvadvisory.com
ksvadvisory.com

October 25, 2023

To: Condo unit purchasers (“Condo Buyers”) of the 1333 Weber Street Project known as “Elevate”

Re: Update No. 1 to Condo Buyers

Pursuant to an order (the “Receivership Order”) issued by the Ontario Superior Court of Justice on October 12, 2023, KSV Restructuring Inc. was appointed receiver and manager (the “Receiver”) of the property, assets and undertaking of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (together, the “Partnership”), including the real property located at 1333 Weber Street, Kitchener (the “Real Property”).

Copies of the Receivership Order and other materials filed in the receivership proceeding can be found on the Receiver’s case website at <https://www.ksvadvisory.com/experience/case/1776411ontario>.

Project Status

The purpose of this notice is to provide Condo Buyers with information regarding the Partnership and the condominium project it was marketing under the name “Elevate”.

The Receiver understands that construction of the first phase of the four-phase project is approximately 80% complete, while construction on the remaining phases is early stage. The Receiver is currently reviewing the status of the project and discussing next steps with the lenders that have advanced over \$60 million to date. At present, no action has been taken by the Receiver with respect to the project completion or any purchase agreements between the Partnership and the Condo Buyers.

Deposits

As no action has been taken by the Receiver with respect to any purchase agreements between the Partnership and the Condo Buyers, the purchase agreements remain in full force and effect. In the event that the purchase agreements are terminated by the Receiver, you will be notified of the termination and you will be provided with detailed information regarding the steps that you may take in order to recover your deposits, which would include information regarding the deposit protection provided by Tarion Warranty Corporation of up to \$20,000 and excess condominium deposit insurance provided to the Partnership by Westmount Guarantee Services Inc. There are no steps that you need to take in this regard at this time.

* * *

The Receiver will provide further updates as soon as possible.

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

Yours truly,

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
AND NOT IN ITS PERSONAL CAPACITY**

APPENDIX “D”



**First Report to Court of
KSV Restructuring Inc.
as Receiver and Manager of 1776411 Ontario
Ltd. and 1333 Weber Street Kitchener LP**

December 4, 2023

Contents

	Page
1.0 Introduction.....	1
1.1 Purposes of this Report.....	2
1.2 Restrictions	2
2.0 Background	2
2.1 Secured Creditors	3
2.2 Status of the Project.....	4
3.0 Sale Process	5
3.1 Realtor Selection Process	7
3.2 Process Description	7
3.3 Sale Process Recommendation	10
3.4 Sealing Order.....	11
4.0 Borrowing Limit.....	11
5.0 Litigation and Stay Motion.....	11
5.1 Dean-Lane Contractors Inc.	11
5.2 CORFinancial Claim.....	12
5.3 Stay of Proceedings	13
6.0 Receiver's Activities.....	13
7.0 Conclusion.....	14

Appendices

Appendix	Tab
Receivership Order and Endorsement dated October 12, 2023	A
Purchaser Letter	B
Realtor RFP Process Materials	C
Dean-Lane Claim.....	D
COR Claim.....	E

Confidential Appendix

	Tab
Summary of Realtor Proposals.....	1



**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**

**FIRST REPORT OF
KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER**

DECEMBER 4, 2023

1.0 Introduction

1. On October 12, 2023, the Ontario Superior Court of Justice (Commercial List) (the "Court") issued an order (the "Receivership Order") appointing KSV Restructuring Inc. ("KSV") as the receiver and manager (the "Receiver"), without security, of all of the property, assets and undertaking (the "Property") of 1333 Weber Street Kitchener LP ("1333 Weber LP") and its general partner, 1776411 Ontario Limited ("177" and with 1333 Weber LP, the "Partnership"). The principal asset of the Partnership is real property located at 1333 Weber Street East, City of Kitchener (the "Real Property") and the phased four-tower residential condominium project on the Real Property (the "Project").
2. A copy of the Receivership Order and the Endorsement of Justice Cavanagh is provided in Appendix "A".
3. The application to appoint KSV as Receiver was made by Genesis Mortgage Investment Corp. ("GMIC"), a secured creditor of the Partnership. GMIC is the second largest creditor of the Partnership, as more fully described below.
4. A principal purpose of this receivership proceeding is to provide the stability and supervision required to preserve the value of the Project, with a view to effect the sale of the Project either on a completed or an "as is" basis.
5. This first report (the "Report") is filed by KSV in its capacity as Receiver.

1. The purposes of this Report are to:
 - a) provide background information about this proceeding;
 - b) summarize the proposed sale process for the Project (the “Sale Process”);
 - c) set out the basis for an increase in the Receiver’s borrowing limit from \$500,000 to \$2 million;
 - d) summarize the Receiver’s views regarding certain litigation commenced against the Partnership and its lenders by the third mortgagee over the Real Property and by a construction lien claimant, and the applicability of the stay of proceedings pursuant to the Receivership Order;
 - e) summarize the Receiver’s activities since the date of its appointment;
 - f) recommend that this Court issue an Order:
 - i. approving the Sale Process;
 - ii. increasing the Receiver’s borrowing limit to \$2 million; and
 - iii. approving this Report and the Receiver’s activities as set out in this Report.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon: (i) discussions with the Partnership’s legal counsel; (ii) discussions with various stakeholders in these proceedings, including those involved in construction activities at the Real Property (including their legal representatives); and (iii) the Receivership Application materials and other documentation provided by the First Mortgagees, as defined below (collectively, the “Information”).
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook. Accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information is required to perform its own diligence.

2.0 Background

1. The Partnership intended to develop the Project, which was marketed as “Elevate”. The first phase of the four-phase project is a 177-unit residential building which is estimated to be 80% complete (“Tower A”), although that estimate is being reviewed by a cost consultant engaged by the Receiver. The second and third phases of the site consist of a large open pit with a partially completed foundation and underground parking area (“Towers B and C”). The fourth phase is currently raw land.

2. The Receiver understands that all 177 units of Tower A and 325 units of Towers B and C have been sold pursuant to agreements of purchase and sale. Pursuant to a letter dated October 25, 2023 (the "Condo Purchaser Letter"), the Receiver advised the condominium unit purchasers (the "Condo Purchasers") of the receivership proceeding and the status of their condominium transactions. A copy of the Condo Purchaser Letter is provided as Appendix "B".
3. The Receiver understands that as of the date of the Receivership Order, the Partnership had no employees.
4. As of the date of the Receivership Order, the Partnership had under \$300 in its bank accounts.
5. Background information regarding the Partnership and the reasons that GMIC sought the appointment of the Receiver is provided in the affidavit of Michael Yeung, an officer of GMIC, sworn on October 2, 2023 (the "Yeung Affidavit"). A copy of the Yeung Affidavit and other Court materials filed to-date in these proceedings are available on the Receiver's website at: <https://www.ksvadvisory.com/experience/case/Elev8>.

2.1 Secured Creditors

1. The following summarizes the creditors with registrations against the Real Property and their outstanding balances (if known) as of the date of the Receivership Order:
 - a) GMIC is a junior secured lender in a syndicate of lenders consisting of itself and two senior secured lenders. The loan facilities are secured by charges registered on title to the Real Property in the names of GMIC, CMLS Financial Ltd. ("CMLS") and Computershare Trust Company of Canada ("Computershare", and together with GMIC and CMLS, the "First Mortgagees"). The Partnership also granted the First Mortgagees additional security in the form of a general assignment of rents and leases and a general security agreement dated August 17, 2021 and August 13, 2021, respectively.

Based on the Court materials filed by GMIC, as of September 13, 2023, the Partnership owed GMIC approximately \$19.6 million and CMLS/Computershare approximately \$44.7 million, with interest and costs continuing to accrue. Additionally, \$2.7 million is outstanding in respect of a letter of credit facility provided by CMLS/Computershare;

- b) Westmount Guarantee Services Inc. ("Westmount"), which provides condominium purchaser deposit insurance, registered a charge against the Real Property securing \$50 million in connection with deposits paid by the Condo Purchasers. The Receiver understands that approximately \$17 million is presently owing to Westmount, representing the deposits released from escrow regarding phases one and two of the Project. The Westmount mortgage is the second ranking mortgage over the Real Property;

- c) CORFinancial Corp. ("COR"), a financial advisor that had been engaged by the Partnership in or about December, 2022, registered a charge against the Real Property on May 8, 2023 in the principal amount of \$3.5 million in connection with a transaction whereby: (i) the Partnership and COR entered into a Commitment Letter wherein COR agreed to pay certain outstanding construction costs owing by the Partnership to the Partnership's construction manager on the Project, Gillam Urban Contractor Inc. ("Gillam"), and (ii) COR provided Gillam with a promissory note for approximately \$2.9 million regarding certain of Gillam's outstanding construction costs. While COR received a fee of \$300,000 in respect of the Commitment Letter (paid by CMLS), the Receiver understands that COR did not advance any funds to Gillam related to this transaction; and
- d) In addition to the three mortgages over the Real Property, to date, 15 suppliers have registered 22 separate construction liens against the Real Property totalling approximately \$17,664,878.

2.2 Status of the Project

1. As referenced above, the Elevate development is partially complete. Construction activity at the Project has not advanced since early August, 2023, when the Receiver understands that the trade contractors abandoned the site due to liquidity challenges experienced by the Partnership. Work stopped without, among other things: installing a roof on top of Tower A or on the fifth-floor podium of Tower A; completing the installation of windows in certain of the upper floors of Tower A; and sealing the building envelope of Tower A for winterization purposes.
2. Upon its appointment, the Receiver and Blaney McMurtry LLP ("Blaney"), the Receiver's counsel, corresponded with representatives of the Partnership and the First Mortgagees to obtain architectural drawings, engineering reports, cost consultant progress reports and other available documentation to identify potential steps to secure the Project, stabilize it and implement protective measures to winterize the site.
3. The purpose of the winterization and stabilization is, among things, to:
 - a) limit water from seeping through exposed elevator shafts and higher-level floors where no windows have been installed;
 - b) prevent erosion via a water mitigation strategy that was not implemented prior to the Receivership Order;
 - c) protect exposed elements that were not designed to be exposed to winter conditions, including concrete slabs;
 - d) protect the existing excavation from the effects of frost; and
 - e) repair and, if necessary, reinforce the existing shoring.
4. Security monitoring had also been discontinued prior to the receivership and there have been minor instances of theft and vandalism, such as small power tools and copper wiring being targeted. To attempt to prevent any such further incidents, the Receiver has arranged for on-site security at night and 24/7 remote video monitoring.

5. The Receiver and Blaney attended on numerous calls with certain of the trades, including the former construction manager (Gillam), the shoring engineer and one of the cost consultants. Following those discussions and review of Gillam's proposal to stabilize and winterize the Project, as well as discussions with the First Mortgagees, the Receiver sought a proposal from, and then engaged, a different construction manager, Elm Developments Corp. ("Elm"), to prioritize and address numerous site deficiencies, including to:
- a) close in the existing structure to protect it from the elements using plywood, tarps, Blueskin, foam and other materials;
 - b) install safety railing, where required, to secure the balcony doors and review other safety hazards;
 - c) install temporary roofing on the high-rise section and at the fifth-floor podium of Tower A;
 - d) review and repair the existing plumbing, electrical works, drywall and boarding works on the third and fourth floors;
 - e) attend to all aspects of the grading and drainage management of exposed soils, protect and insulate the exposed footing and exposed parking garage, and protect the partially poured raft slab in the exposed excavation pit; and
 - f) mitigate erosion of the portion of the excavation pit not currently protected by shoring.
6. The Receiver and Elm executed a standard-form Canadian Construction Documents Committee contract dated November 23, 2023, with supplementary conditions. Elm commenced the activities described above immediately thereafter.
7. Prior to the retainer of Elm, the Receiver identified an urgent issue with the hollow-core slabs installed throughout Tower A. As Tower A is not heated and with freezing temperatures imminent, it was recommended that "weep holes" be installed in the hollow-core slabs to drain any buildup of water that would damage the concrete if it froze and then thawed. The Receiver retained a contractor directly to drill the weep holes, which work is scheduled to be completed by December 4, 2023.

3.0 Sale Process

1. Since the date of its appointment, the Receiver has been familiarizing itself with the status of the Project with the objective of maximizing recoveries for all stakeholders in these proceedings. In this regard, the Receiver has consulted with:
 - parties who have expressed an interest in acquiring the Project;
 - project consultants, including the project architect, engineers and Gillam;
 - a former appraiser and cost consultant;
 - realtors;
 - the Partnership's legal counsel;

- the First Mortgagees and their legal counsel; and
 - Elm.
2. In addition to the above, the Receiver also reviewed a proposal from COR regarding the completion, over approximately 1 year, of Tower A, to be funded by a first-ranking Court-approved construction facility from a lender to be identified.
 3. The Receiver has retained Finnegan-Marshall Inc. (“Finnegan-Marshall”), a real estate and development cost consulting firm, to assist the Receiver in considering options to maximize value for the Project. In that regard, the Receiver and Finnegan-Marshall have assembled information on the Project to understand its status and estimate the cost to complete the first two phases.
 4. The Receiver is of the view that it is appropriate at this time to commence the Sale Process for the following reasons:
 - a) *Stage of Development:* As discussed above, the first phase of the Project is partially complete and two of the three remaining phases are in early-stage construction. There are numerous complexities associated with a resumption and completion of construction for Tower A, including: i) whether the trade contractors, who have registered liens, resume activities or alternate contractors are engaged with no warranties associated with the work that has been completed to-date; ii) time and weather-related delays – Finnegan-Marshall estimates that at least a year is required to completion; iii) whether the work to date can be warranted in the event new trades are brought in to complete it; and (iv) if the existing trade contractors are willing to complete their work, whether they would be willing to warranty same given the time that has elapsed;
 - b) *Funding:* The Partnership has not had the liquidity to advance the Project for several months. Completion of Tower A is estimated to require at least \$30 million in construction financing. A construction lender would require that any advances rank in priority to existing registrations. At this stage, the First Mortgagees do not support such an amount ranking ahead of them;
 - c) *Professional Fees:* The professional costs of a receivership to advance the Project will materially erode the recoveries associated with the Project as ongoing supervision and oversight will be required to monitor progress, at least over the estimated 12 months while Tower A is completed; and
 - d) *First Mortgagee Position:* The First Mortgagees have advised the Receiver that they support the commencement of a sale process for the Project in the near term to determine the value of the Project on an “as is” basis and without the attendant costs, uncertainties and risks associated with further construction (other than the stabilization and winterization steps set out above). The First Mortgagees and the subordinate ranking creditors will then have an opportunity to compare the recoveries in that scenario to the potential recoveries in a build-out scenario.

3.1 Realtor Selection Process

081

1. On October 30, 2023, the Receiver invited five national real estate brokerages to submit proposals to list the Real Property for sale (the “RFP Process”). The RFP Process set out the Receiver’s criteria for the selection of the successful realtor or realtors. The Receiver requested that proposals be submitted by 5 pm on November 13, 2023. A copy of the RFP Process materials is provided as Appendix “C”.
2. Three of the five realtors submitted a proposal (the “Realtor Proposals”). Attached as Confidential Appendix “1” is a schedule comparing the key terms of each proposal submitted in the RFP Process. The schedule includes the indicative range of values provided by the Realtors for the Real Property, as well as each broker’s proposed commission structure.
3. On November 20, 2023, the Receiver and representatives of the First Mortgagees met with two of the realtors to review their proposals and understand their approach to market the Real Property for sale.
4. In consultation with the First Mortgagees, the Receiver selected CBRE Limited (“CBRE”) to market the Real Property. This decision was based on, among other things, CBRE’s knowledge of the Real Property, its familiarity with the Kitchener market, its proposed marketing process and the experience of its team.

3.2 Process Description

1. The recommended Sale Process is set out in the table below. The timeline is based on KSV’s significant experience selling real estate in court-supervised proceedings and reflects guidance from CBRE. The timelines in this process assume a Sale Process commencement date of December 14, 2023 for the Real Property. If the Sale Process does not commence by that date, then it would need to be deferred until January 8, 2024 due to the holiday season.
2. To the extent that the Sale Process commences earlier or later than the date contemplated below, the bid deadline will be correspondingly adjusted.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Prepare marketing materials	<ul style="list-style-type: none">➤ CBRE and the Receiver to:<ul style="list-style-type: none">○ prepare an offering summary;○ populate a virtual data room; and○ prepare a confidentiality agreement (“CA”).	

Summary of Sale Process			082
Milestone	Description of Activities	Timeline	
Prospect Identification	<ul style="list-style-type: none"> ➤ CBRE to develop a master prospect list. ➤ CBRE will qualify and prioritize prospects. ➤ CBRE will have pre-marketing discussions with targeted prospects. ➤ CBRE to engage in discussions with municipality and certain trades, including the architect, engineers and Elm. ➤ CBRE to consult with the Receiver regarding the above and will be required to provide scheduled updates. 	In process	
<i>Phase 2 – Marketing and Diligence</i>			
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ offering summary and marketing materials printed, including detailed marketing brochure; ○ publication of the acquisition opportunity in such journals, publications and online as CBRE and the Receiver believe appropriate to maximize interest in this opportunity; ○ post “for sale” signage at the Real Property, to the extent applicable; ○ telephone and email canvass of prospects; ○ posting of the acquisition opportunity on MLS on an unpriced basis; and ○ meet with and interview prospective bidders. ➤ Receiver and its legal counsel to prepare a Vendor’s form of Purchase and Sale Agreement (the “PSA”). ➤ CBRE to provide detailed information to qualified prospects which execute the CA, including access to the data room and other information that becomes available to the Receiver, including any reports associated with the Real Property. ➤ CBRE and Receiver to facilitate all diligence by interested parties. 	December 14, 2023 to Bid Deadline (see Stage 3)	
Stage 2 – Bid Deadline	<ul style="list-style-type: none"> ➤ Prospective purchasers to submit PSA, with any changes to the PSA blacklined 	To be determined based on market feedback, but estimated to be January 30, 2024	

Summary of Sale Process			083
Milestone	Description of Activities	Timeline	
<i>Phase 3 – Offer Review and Negotiations</i>			
Short-listing of Offers	<ul style="list-style-type: none"> ➤ Short listing bidders. ➤ Further bidding - Interested bidders may be asked to improve their offers. The Receiver may invite certain parties to participate in as many rounds of bidding as is required to maximize the consideration and minimize closing risk. The Receiver may also seek to clarify terms of the offers submitted and to negotiate such terms. ➤ The Receiver will be at liberty to consult with the First Mortgagees regarding the offers received, subject to any confidentiality safeguards that the Receiver believes appropriate. 	5-10 days from Bid Deadline	
Selection of Successful Bid	<ul style="list-style-type: none"> ➤ Select successful bidder and finalize definitive documents. The Receiver will select the successful bidder, having regards to, among other things: <ul style="list-style-type: none"> o total consideration (cash and assumed liabilities); o form of consideration being offered, including the value of any carried interest; o third-party approvals required, if any; o conditions, if any; and o other factors affecting the speed and certainty of closing and the value of the offers. 	30 to 60 days from Bid Deadline (will be shortened, where possible)	
Sale Approval Motion and Closing	<ul style="list-style-type: none"> ➤ Upon execution of definitive transaction documents, the Receiver will seek Court approval of the successful offer, on not less than 7 calendar days' notice to the service list and registered secured creditors. 	45-75 days from Bid Deadline	
Closing	<ul style="list-style-type: none"> ➤ As soon as possible following Court approval, including any appeals therefrom. 	ASAP	

3. Additional terms of the Sale Process include:

- a) the Real Property will be marketed and sold on an “as-is, where-is” basis, with standard representations and warranties for a receivership transaction;
- b) to the extent permitted by law, all of the right, title and interest of the Partnership in the Real Property will be sold free and clear of all pledges, liens, security interests, encumbrances and claims, pursuant to an approval and vesting order to be sought by the Receiver;
- c) the Receiver will consider whether retaining a carried interest in the Real Property can enhance recoveries for stakeholders;
- d) the Receiver will have the right to reject any and all offers, including the highest and best offers;

- e) the Receiver will have the right to reject all purchase agreements associated with the Real Property;
- f) if, in the Receiver's sole discretion, it will assist to maximize recoveries, the Receiver will have the right to: (i) waive strict compliance with the terms of the Sale Process, including any of the deadlines in the table above; and (ii) modify and adopt such other procedures that will better promote the sale of the Real Property or increase the aggregate recoveries from the sale for stakeholders;
- g) any material modifications to, or the termination of, the Sale Process shall require Court approval; however, the Receiver shall have the discretion to adjust any timeline in the Sale Process to the extent it feels necessary to maximize value; and
- h) any transaction by the Receiver for the Real Property shall be subject to Court approval.

3.3 Sale Process Recommendation

1. The Receiver recommends that the Court issue an order approving the Sale Process for the following reasons:
 - a) the Sale Process is reasonable and appropriate at this time based on the issues identified above, including: (i) the stage of the Project; (ii) the lack of funding to advance the Project; (iii) the cost and complexities associated with the Receiver dealing with all construction and selling activities, including projected professional costs; and (iv) feedback from the First Mortgagees;
 - b) the Sale Process is a fair, open and transparent process developed with input from the Realtors, and is intended to canvass the market broadly on an efficient basis to obtain the highest and best price;
 - c) the Sale Process is flexible and provides the Receiver with the timelines, procedures and flexibility that it believes are necessary to maximize value;
 - d) the Sale Process, as detailed in Section 3.2.2, includes procedures commonly used to sell real estate development projects;
 - e) the Receiver intends to retain CBRE, a leading and well recognized brokerage, with the experience and expertise to market the Real Property for sale, including knowledge of the Kitchener market. CBRE also presented a competitive fee for this mandate;
 - f) the PSA will include a provision that allows the Receiver to retain a carried interest in the Project, if justified by the economics; and
 - g) there will be no delay in commencing the Sale Process as the marketing materials are being prepared and the prospect list and diligence information is being assembled.

3.4 Sealing Order

085

1. The Receiver is proposing to seal the summary of realtor proposals attached at Confidential Appendix “1” until further Order of the Court or closing of any transaction for the Project (whichever is earlier). If not sealed, prospective purchasers of the Project would have access to the indications of value provided by the Realtors in the RFP Process, which may affect realizations. The Receiver believes that no party will be prejudiced if Confidential Appendix “1” is sealed.
2. The salutary effects of sealing such information from the public record until further Order of the Court greatly outweigh the deleterious effects of not doing so under the circumstances. Accordingly, the Receiver believes the proposed sealing order is reasonable and appropriate in the circumstances.

4.0 Borrowing Limit

1. The Receiver’s borrowing limit pursuant to paragraph 21 of the Receivership Order is presently \$500,000.
2. As there were nominal funds in the Partnership’s accounts and no source of capital, the Receiver is required to borrow funds for the expenses associated with the Project, including the stabilization, winterization and security measures referenced in Section 2.2, insurance, utilities, advisors and professional costs. The expenses associated with these matters will exceed \$1 million and will increase monthly until a transaction for the Project is completed. Accordingly, in order to avoid a further motion solely to deal with funding, the Receiver recommends that the borrowing limit be increased to \$2 million to allow for additional costs and contingencies.

5.0 Litigation and Stay Motion

1. The plaintiffs in two separate actions commenced prior to the date of the Receivership Order are taking the position that their actions are not subject to the stay of proceedings provision in the Receivership Order, or in the alternative that they should not be subject to the stay, and wish to schedule motions to lift the stay, if required. The first action includes the Partnership and CMLS as a defendant (among others). The second action, issued the day after the first, is related to the first action, and while it does not include the Partnership as a defendant, it names all the First Mortgagees as defendants.
2. The actions are described further below.

5.1 Dean-Lane Contractors Inc.

1. As set out Section 2 of this Report, 15 suppliers to the Project have registered 22 separate claims for lien on title to the Real Property. As of the date of this Report, certificates of action (which evidence the commencement of an action to enforce a claim for lien) have been registered on title in respect of 19 of the 22 claims for lien in order to perfect the lien claims under the *Construction Act*.
2. Pursuant to paragraph 9 of the Receivership Order, the actions underlying the certificates of action are stayed.

3. Included in the group of 19 certificates of action is one registered by Dean-Lane Contractors Inc. ("Dean-Lane") as instrument no. WR1535931 on September 27, 2023, which purports to perfect Dean-Lane's claim for lien in the amount of \$2,157,416 registered as instrument no. WR1518912. 086
4. The underlying statement of claim issued by Dean-Lane to perfect its lien is dated September 27, 2023, bearing Kitchener court file no. CV-23-00001279-0000 (the "Dean-Lane Claim"). A copy of the Dean-Lane Claim is attached at Appendix "D".
5. Among other things, the Dean-Lane Claim makes typical claims for a lien action, including alleging: a) breach of contract on the part of the Partnership, resulting in the sum of \$2,157,416 remaining outstanding to it; and (b) entitlement to a lien upon the interest of the Partnership and the mortgagees, including a claim for priority over the mortgages.
6. The Dean-Lane Claim further seeks damages as against the Partnership in respect of a "Loss of Profit Claim" in the amount of \$3,006,160, which appears to be calculated as the profit that Dean-Lane would have realized on its work had the Partnership completed the Project. In addition, the Dean-Lane Claim seeks \$636,585.50 in respect of "Supplier Equipment Costs", which appear to be costs of equipment ordered by Dean-Lane, but not yet supplied to the Project (and thus not capable of being the basis for a lien over the Property).
7. However, the Dean-Lane Claim also makes a claim against CMLS in the amount of \$2,157,416 for breach of a purported agreement dated May 5, 2023, among Dean-Lane, CMLS and the Partnership (the "May 5 Agreement"), pursuant to which it is alleged that, among other things, Dean-Lane agreed to defer payment of approximately \$1,000,000 that was owing to it at that time.
8. Finally, the Dean-Lane Claim also makes a claim against COR in the amount of \$1,050,000 for breach of the "CorFinancial Undertaking" whereby Dean-Lane alleges that COR undertook to pay \$1,000,000 to Dean-Lane if certain payments were not made to Dean-Lane by the Partnership by May 26, 2023, and a further \$50,000 "Developer Accommodation Fee".

5.2 CORFinancial Claim

1. On September 28, 2023, being the day after the Dean-Lane Claim was issued, COR issued a separate claim against the First Mortgagees bearing Toronto court file no. CV-23-00706796-0000 (the "COR Claim"). A copy of the COR Claim is attached at Appendix "E".
2. In the COR Claim, COR seeks general damages of \$1,000,000, and special and aggravated damages of \$100,000. The COR Claim appears to arise out of the same set of facts alleged by Dean-Lane. Among other things, the COR Claim references the May 5 Agreement, which is the basis for Dean-Lane's claim against CMLS for \$2,157,416, and an undertaking from COR to Dean-Lane whereby COR agreed to pay \$1,000,000 to Dean-Lane if not paid by May 28, 2023, along with a \$50,000 "accommodation fee".

1. The Receiver has advised Dean-Lane and COR that, in its view, both claims are stayed pursuant to the Receivership Order, and ought to remain stayed at this time. Specifically, the Dean-Lane Claim is stayed as it relates to the Property and includes the Partnership as a defendant. The COR Claim is derivative of the Dean-Lane Claim and intimately relates to the Dean-Lane Claim. If the stay with respect to the Dean-Lane Claim is not lifted, there is no need for the COR Claim to proceed at this time. If either claim proceeds against the First Mortgagees, the Partnership, and by default the Receiver, would be required to provide information and to respond. In addition, the Receiver has been advised by certain of the First Mortgagees that they expect to third party the Partnership into the COR Claim if it proceeds.
2. In the Receiver's view, none of the parties are prejudiced by the actions being stayed at this time and pending completion of the Sale Process when there will be visibility regarding stakeholder recoveries.
3. The Receiver understands that Dean-Lane and/or COR will be serving materials related to the applicability of the stay. The Receiver may provide additional comments on the issues in a supplementary report following its review of such materials.

6.0 Receiver's Activities

1. In addition to the activities described above, the Receiver's activities since the date of its appointment have included, among other things, the following:
 - a) corresponding with the Partnership's counsel regarding the Receiver's information requests;
 - b) corresponding with the Partnership's insurance agents and certain of its insurers to confirm coverage and balances due;
 - c) dealing with security incidents at the Project and arranging for remote monitoring and nightly guard services;
 - d) reviewing various liens registered against the Real Property;
 - e) corresponding with several of the contractors that had previously been involved with the Project, including the engineering firm, shoring engineer, and the pre-cast concrete supplier;
 - f) corresponding with Tarion regarding its interest in the Project;
 - g) corresponding with representatives of Westmount and its counsel;
 - h) responding to inquiries from condominium unit purchasers regarding their deposits and the status of the Project;
 - i) responding to inquiries from the Partnership's creditors;
 - j) setting up new accounts for utilities and other services;
 - k) attending regular status update calls with the First Mortgagees; and
 - l) preparing this Report.

7.0 Conclusion

088

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

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS RECEIVER OF
1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
AND NOT IN ITS PERSONAL OR IN ANY OTHER CAPACITY**

APPENDIX “E”

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

THE HONOURABLE)	TUESDAY, THE 12 th
)	
JUSTICE CAVANAGH)	DAY OF DECEMBER, 2023

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

-and-

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 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 ORDER
(Sale Process)**

THIS MOTION by KSV Restructuring Inc. in its capacity as receiver and manager of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (the “**Receiver**”) for an Order (i) approving of the activities and proposed activities described in the Receiver’s first report dated December 4, 2023 (the “**First Report**”), (ii) approving the proposed marketing and sale process for the property municipally known as 1333 Weber Street East in Kitchener, Ontario (the “**Real**

091

Property”), as described in the First Report, (iii) amending the appointment order of Justice Cavanagh dated October 12, 2023 (the “**Receivership Order**”) by increasing to \$2,000,000 the amount the Receiver is authorized to borrow, and (iv) sealing the summary of realtor proposals attached as Confidential Appendix “1” to the First Report pending completion of a sale of the Real Property, or until further Order of this Court (whichever is earlier), was heard this day via Zoom videoconference.

ON READING the First Report, and the appendices thereto, and upon hearing submissions of counsel for the Receiver, the Applicant, Computershare Trust Company of Canada, CMLS Financial Ltd., CorFinancial Corp., Westmount Guarantee Services Inc., and the Respondents, no one else appearing, although duly served as set out in the affidavits of service of Chad Kopach sworn December 6, 2023, filed.

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Receiver’s Notice of Motion dated December 4, 2023 (the “**NOM**”), and related motion material filed in support of that NOM (the “**Motion Material**”) be and is hereby abridged, that service of the NOM and Motion Material is hereby validated, and that further service thereof is hereby dispensed with.

REPORT APPROVAL

2. **THIS COURT ORDERS** that the First Report, and the actions of the Receiver described therein, be and are hereby approved.

SALE PROCESS APPROVAL

3. **THIS COURT ORDERS** that the marketing and sale process set out in paragraphs 3.2.1 through 3.2.3, inclusive, of the First Report (the “**Sale Process**”) be and is hereby approved. The Receiver is hereby authorized to carry out the Sale Process and to take such steps as it considers necessary or desirable in carrying out its obligations thereunder, including authorizing the Receiver to enter into a realtor listing agreement as set out in the First Report, all subject to prior approval of this Court being obtained before completion of any sale transaction under the Sale Process.
4. **THIS COURT ORDERS** that the Receiver and its affiliates, partners, directors, officers, employees, legal advisors, representatives, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities of any nature or kind to any person in connection with or as a result of the Receiver performing its duties under the Sale Process, except to the extent such losses, claims, damages or liabilities arise or result from the gross negligence or wilful misconduct of the Receiver, as determined by this Court in a final order that is not subject to appeal or other review.
5. **THIS COURT ORDERS** that the Receiver may apply to the Court for directions with respect to the Sale Process at any time on at least seven (7) days’ notice to the service list established in this proceeding or such other notice as directed or permitted by the Court.

PIPEDA

6. **THIS COURT ORDERS** that, pursuant to clause 7(3)(c) of the *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 and any similar legislation in any other applicable jurisdictions the Receiver is hereby authorized and permitted to disclose and provide to its agents and any potential purchasers in the Sale Process personal information of identifiable individuals, but only to the extent required to negotiate or attempt to complete a transaction pursuant to the Sale Process (a “**Transaction**”). Each person to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation for the purpose of effecting a Transaction, and, if it does not complete a Transaction, shall return all such information to the Receiver or, in the alternative, destroy all such information and provide confirmation of its destruction to the Receiver. Any purchaser under a Transaction shall maintain and protect the privacy of such information and, upon closing of a Transaction, shall be entitled to use the personal information provided to it in a manner that is in all material respects identical to the prior use of such information by the Respondents, and shall return all other personal information to the Receiver, or ensure that all other personal information is destroyed and provide confirmation of its destruction to the Receiver.

BORROWING INCREASE

7. **THIS COURT ORDERS** that paragraph 21 of the Appointment Order be and same is hereby amended to increase the amount the Receiver is authorized to borrow to \$2,000,000.

SEALING ORDER

8. **THIS COURT ORDERS** that Confidential Appendix “1” to the First Report, being the Receiver’s summary of proposals received from realtors to list the Real Property for sale (the “**Confidential Appendix**”), shall be sealed, kept confidential and not form part of the public record, but rather shall be placed, separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order.
9. **THIS COURT ORDERS** that the Confidential Appendix shall remain under seal and kept confidential until the completion of a sale of the Real Property, or until further Order of the Court.



Digitally signed
by Mr. Justice
Cavanagh

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

and

1776411 ONTARIO LTD. et al.
Respondents

	<p>ONTARIO SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)</p> <p>Proceeding commenced at Toronto</p>
	<p>APPROVAL ORDER (Sale Process)</p>
	<p>BLANEY McMURTRY LLP Barristers & Solicitors 2 Queen Street East, Suite 1500 Toronto ON M5C 3G5</p> <p>Eric Golden (LSO #38239M) (416) 593-3927 (Tel) egolden@blaney.com</p> <p>Chad Kopach (LSO #48084G) (416) 593-2985 (Tel) ckopach@blaney.com</p> <p>Lawyers for KSV Restructuring Inc. in its capacity as Court-appointed Receiver</p>



096

SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

COUNSEL/ENDORSEMENT SLIP

COURT FILE NO.: CV-23-00706813-00CL

DATE: December 12, 2023

NO. ON LIST: 5

TITLE OF PROCEEDING: GENESIS MORTGAGE INVESTMENT CORPORATION v. 1776411
ONTARIO LTD. et al
BEFORE: JUSTICE CAVANGH

PARTICIPANT INFORMATION

For Plaintiff, Applicant, Moving Party:

Name of Person Appearing	Name of Party	Contact Info
Sean Zweig		zweigs@bennettjones.com
Milan Singh-Cheema		singhcheemam@bennettjones.com

For Defendant, Respondent, Responding Party:

Name of Person Appearing	Name of Party	Contact Info
James MacLellan		jmaclellan@blg.com
Marco Romeo		marco.romeo@gowlingwlg.com
Raphael Fernandes		rfernandes@carltonlaw.ca
Rapti Ratnayake		rratnayake@constructlegal.ca

For Other, Self-Represented:

Name of Person Appearing	Name of Party	Contact Info
Eric Golden		egolden@blaney.com
Anthony Gabriele		gabriele@paveylaw.com
Derek Ketelaars	Creditor	dketelaars@gcylaw.com
S. Mitra	Creditor	smitra@airdberlis.com
Mitch Vininsky		mvininsky@ksvadvisory.com
Kelsy Gill		kmg@giffenlawyers.com
Adam Slavens		aslavens@torys.com

ENDORSEMENT OF JUSTICE CAVANAGH:

[1] The Receiver moves for an order (a) approving the activities and proposed activities described in the Receiver's first report dated December 4, 2023; (b) approving the proposed marketing and sale process for the property municipally known as 1333 Weber Street, Kitchener, Ontario; (c) amending the appointment order dated October 12, 2023 by increasing to \$2 million the amount the Receiver is authorized to borrow; and (d) the sealing the summary of realtor proposals attached as Confidential Appendix "1" to the First Report pending completion of a sale of the real property or until further Order of this Court.

[2] I have reviewed the First Report. I am satisfied that the requested order should be made. Order to issue in form of Order signed by me today.

[3] At the hearing today, counsel representing two creditors, CorFinancial Corp. and, as agent, Dean-Lane Contracting Inc., sought to schedule two motions relating to the stay of proceedings provided for in paragraph 9 of the appointment order dated October 12, 2023.

[4] This scheduling appointment is adjourned to February 15, 2024 at 9:30 a.m. By this time, more information will be known about the sale process, and this information may inform the issues to be determined on the proposed motions and the time needed for the hearing.



Digitally signed
by Mr. Justice
Cavanagh

APPENDIX “F”

1332

WEBER
STREET EAST

KITCHENER, ONTARIO

099

CBRE | **LAND
SERVICES
GROUP**

Conceptual Rendering

PARTIALLY COMPLETED 4-TOWER, 623 UNIT DEVELOPMENT OPPORTUNITY IN KITCHENER

EXECUTIVE

summary

CBRE's Land Services Group, on behalf of KSV Restructuring Inc. as the court-appointed receiver, is pleased to offer for sale a unique development opportunity at 1333 Weber Street E (known as the "Site" or "Property") in the City of Kitchener. This 3.6-acre site represents an unmatched development opportunity to acquire an approved multi-tower project, with significant work completed. Building A (Phase 1) is nearing completion, as construction of the super structure has reached roof level with the mechanical penthouse partially completed, while excavation, shoring, and partial foundation/slab construction has been completed for Buildings B and C (Phase 2 and 3)¹.

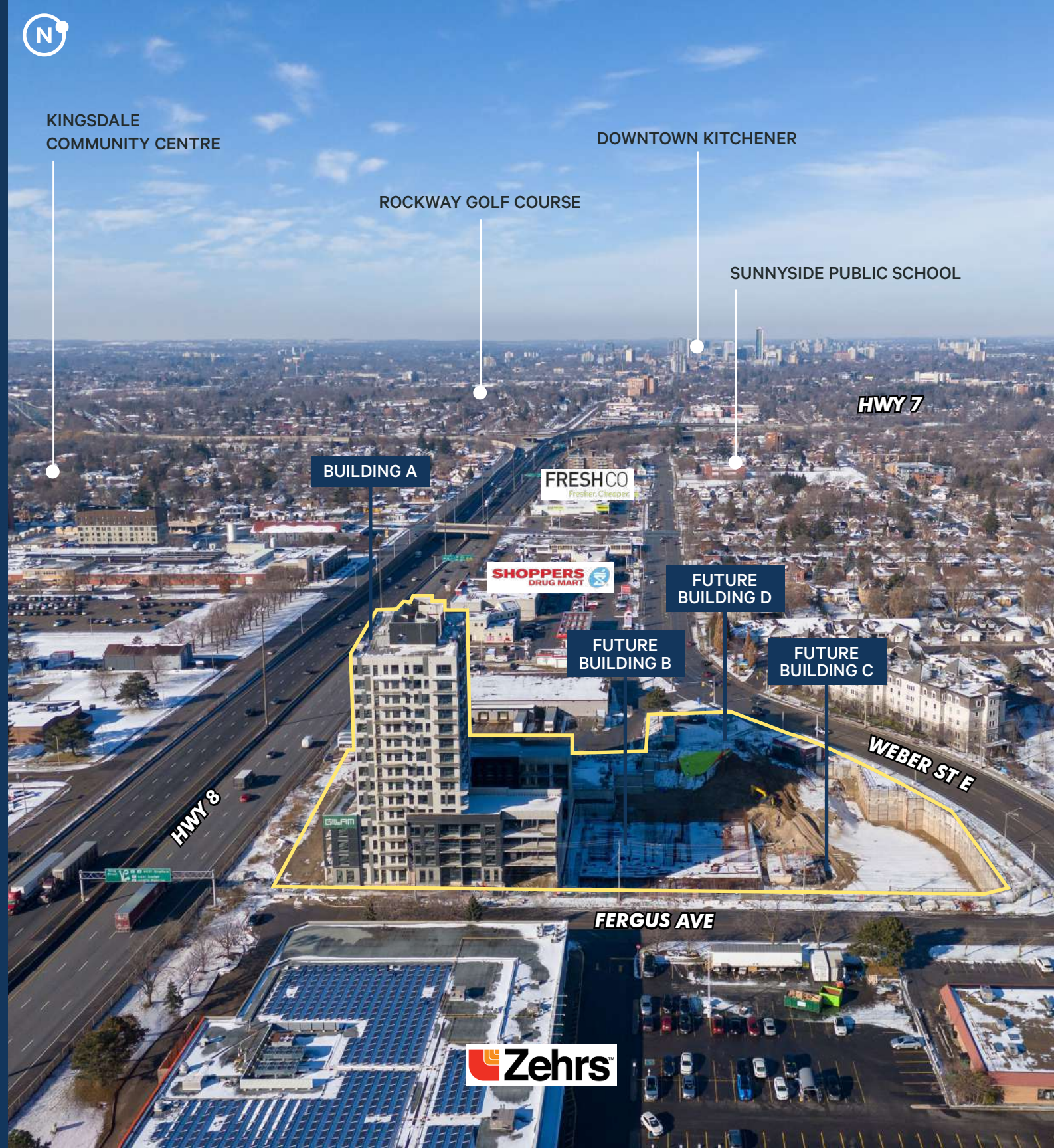
The entire Site was originally rezoned in 2016 and received Site Plan Approval in December 2019 to allow for a total GFA of 611,694 sq. ft. and 623 residential units to be built. Building A, which is nearly complete, is a 15-storey building with a total of 177 residential dwelling units and a total GFA of 178,626 sq. ft. Similarly, Building B is approved for a 15-storey tower with 193 residential units in total. Building C and D are both 12-storeys in height and each provide commercial space at grade along Weber Street and contain 159 residential units and 94 residential units respectively. Buildings A, B and C will be connected by a 4-storey podium, providing rooftop amenity space for all future residents to utilize.

The Kitchener-Waterloo area has evolved into a coveted residential location with a surge in high-rise developments. In the last 5 years, the market has delivered over 4,500 condominium and purpose built rental units along the spine of the Light Rail Transit (LRT) line. The core-area high-rise development market has experienced significant condominium absorption with comparable active new construction projects achieving \$900 on average. There is also strong demand for rental product, with average rental rates of approximately \$3.00 per sq. ft. in Kitchener and Waterloo. With the ability to deliver the project in the immediate term, the Property is ideally positioned to allow developers and multi-residential operators to capitalize on these favourable market fundamentals (RealNet and Urbanation, 2023).

The Site is well located in the City of Kitchener and benefits from various transit options, including both the LRT and Bus Rapid Transit (BRT) lines that disperse at Fairview Park Mall which is less than a 5-minute drive from the Site, as well as direct access off of Highway 8 allowing for efficient commuting throughout the region. In addition, Kitchener is home to a number of prominent universities and colleges, and is a destination for start-ups and head offices of top tech and insurance companies in the Province, including Google, Manulife Financial and Sunlife Financial. Grocery, pharmacy, retail, fitness and restaurant amenities are effectively at the doorstep to the Site.

The offering represents an unsurpassed opportunity for a multi-tower development that is well positioned within Kitchener and is partially constructed with the remaining buildings ready for permits, providing a significant benefit to any purchaser looking to develop in the near term.

¹Please refer to the Construction Cost Report completed by Finnegan Marshall Inc. in December 2023 for more information.



100

INVESTMENT

HIGHLIGHTS



SUBSTANTIAL WORK
COMPLETED TO DATE



STRONG DEMAND FOR
HOUSING



IDEAL DEMOGRAPHIC
PROFILE



WELL LOCATED WITH
HIGHWAY AND TRANSIT
ACCESSIBILITY



101

HWY 8

FERGUS AVE

WEBER ST E

OFFERING

process

CBRE's Land Services Group has been retained as the exclusive advisor to seek offers for the disposition of the Property. Interested purchasers will be required to execute and submit a Confidentiality Agreement ("CA") prior to receiving the Confidential Information Memorandum ("CIM") and additional due diligence materials. For more information on the offering process please refer to the CIM.

Confidentiality Agreement

Potential purchasers that require access to the data room must complete a CA and return it to: **LSGGTA@CBRE.COM**

OFFER SUBMISSION DATE: TO BE ANNOUNCED
MLS: COMING SOON

LAND SERVICES GROUP:

Mike Czystochowski**
Vice Chairman
+1 416 495 6257
mike.czystochowski@cbre.com

Lauren White*
Executive Vice President
+1 416 495 6223
lauren.white@cbre.com

Emelie Rowe*
Sales Associate
+1 416 495 6306
emelie.rowe@cbre.com

Evan Stewart
Sales Representative
+1 416 495 6205
evan.stewart@cbre.com

CBRE

**LAND
SERVICES
GROUP**

SOUTHERN ONTARIO INVESTMENT TEAM:

Martin Cote*
Vice President
+1 519 340 2317
martin.cote@cbre.com

Joe Benninger*, CCIM
Vice President
+1 519 340 2323
joe.benninger@cbre.com

CLICK TO SIGN CA

CBRE Limited
2005 Sheppard Ave E Suite 800, Toronto, ON
M2J 5B4

*Sales Representative **Broker
www.cbre.ca/mclsg

APPENDIX “G”

SEPTEMBER 10, 2024

103

Reporting Letter

PREPARED BY
CBRE'S LAND SERVICES GROUP
AND SOUTHERN ONTARIO
INVESTMENT TEAM

1333 WEBER STREET EAST
KITCHENER

PREPARED FOR
MR. MITCH VININSKY & MR. BEN LUDER, KSV



Listing Details

This reporting letter is current to September 10, 2024 and provides an overview of CBRE's marketing activity in the promotion of the Site located at 1333 Weber Street East (referred to as the "Property", "Building" or "Site") in Kitchener, ON. **104**

The Property was officially launched on **Thursday, December, 14th, 2023.**

Marketing Details

MARKETING & DATA ROOM

LAND SERVICES GROUP EMAIL BLAST	<p>The Land Services Group (LSG) sent a Property specific email campaign to a list of 1,253 contacts weekly and the Southern Ontario Investment Team sent a Property specific email campaign to a list of 1,928 contacts weekly throughout the entire marketing process.</p> <p>Since the Site was listed on MLS and we were co-operating, the Site was also included in the Tuesday Availability which was emailed to LSG's complete list of 1,254 contacts weekly as well as the Wednesday Broker Availability which was emailed to a list of 548 external brokers verified by LSG.</p>
CAMPAIGN LOGIC VIEWS	<p>From LSG's interactive email campaign, a total of 153 unique contacts clicked to view the marketing materials, with a total of 7,806 views.</p> <p>From the Southern Ontario Investment Team's interactive email campaign, a total of 315 unique contacts clicked to view the marketing materials, with a total of 4,824 views.</p>
BROCHURE MAILING	<p>9in x 9in printed brochures were printed and mailed out the week of January 1, 2024 with a personalized letter and a Confidentiality Agreement to a select group of top purchasers in our collective database.</p>
NOVAE RES URBIS	<p>A half paged, coloured ad appeared on Wednesday, December 20, 2023 in the GTA edition of Novae Res Urbis. NRU is a planning and development journal, which is heavily subscribed to within the GTA and GGH development communities. A second ad announcing the offer submission date appeared on Wednesday, January 4, 2024.</p>
INSOLVENCY INSIDER	<p>An advertisement was featured in the Insolvency Insider email newsletter on January 12, 2024.</p>
DRONE VIDEO	<p>A custom drone video was curated for the Property and was linked to all electronic marketing materials. A link to the drone video can be found here.</p>
SIGNAGE	<p>Two 8x8 signs were installed on Thursday, December 21, 2023. The final sign facing Highway 8 required an MTO Permit and was installed on February 15, 2024.</p>
LINKEDIN	<p>The Property was posted and promoted on Mike Czystochowski's LinkedIn page which has over 14,517 industry contacts, and on Lauren White's LinkedIn Page with over 1,379 industry contacts. Another post was promoted on both of their pages announcing the offer submission date on Wednesday, January 30, 2024.</p>
MLS	<p>The Property was uploaded to both the Toronto and Kitchener MLS boards on Friday, December 15, 2023. The MLS number can be found here: X7358780 (Toronto board) and 40523106 (Kitchener board).</p>
DATA ROOM	<p>A data room was created and approved with all pertinent information and documents on the Site. Qualified purchasers that submitted an executed Confidentiality Agreement were added to the data room.</p>
WEBSITE	<p>The Property was promoted in our Available Properties section on the Land Services Group website: https://www.cbre.ca/people/mike-czystochowski#available-properties</p>

TOURS	Our team conducted 9 tours of the Property with interested and qualified groups. Please see page 8 for a list.
OFFER SUBMISSION DATE	<p>The first round offer submission date was Tuesday, January 30, 2024 by 3pm (EST) 105</p> <p>The second round offer submission date was Tuesday, February, 6, 2024 by 3pm (EST).</p>
CA COUNT	37 Confidentiality Agreements were submitted in total throughout the entire marketing process. The CA breakdown is on the following page.
OFFER SUMMARY	We received 7 offers in total for the Round 1 offer submission date on Tuesday, January 30, 2024. The groups were asked to resubmit their best and final offers on February 6, 2024. We received 5 offers for Round 2, including two firm bids. Please see pages 9 through 12 for a summary of all offers received for each round.

Confidentiality Agreements Received

106

The following inquiries are a result of the launched marketing program. Each of these individuals have requested further information.

	LAST NAME	FIRST NAME	COMPANY	PRINCIPAL	CA	DATE
1	Lorimer	Steve	Fram Building Group	PRIN	X	14-Dec-23
2	Bhangale	Pritam	Dorr Capital	PRIN	X	14-Dec-23
3	Turk	Oren	Pinemount	PRIN	X	14-Dec-23
4	O'Brien	Carrie	Drewlo Holdings Inc	PRIN	X	14-Dec-23
5	Litt	Stephen	Vive Development	PRIN	X	14-Dec-23
6	Lebelle	Paul	MCommercial Mortgage	PRIN	X	14-Dec-23
7	Zendel	Adam	Royal Indevco Properties	PRIN	X	15-Dec-23
8	Tolfo	Jim	Private Captial	PRIN	X	15-Dec-23
9	Levy	Bryan	DBS Developments	PRIN	X	15-Dec-23
10	McCarthy	Aidan	Forestgate Group	PRIN	X	15-Dec-23
11	Greenberg	Bruce	Starwood Group	PRIN	X	15-Dec-23
12	Zehr	Zac	Zehr Goup	PRIN	X	18-Dec-23
13	Fraser	Philip	Killam Apartment REIT	PRIN	X	18-Dec-23
14	Greenwood	Lee	Canadian Commercial	PRIN	X	19-Dec-23
15	Bostajian	Paul	Lotco Ltd	PRIN	X	19-Dec-23
16	Sangha	Gagandeep	Sangha Property Holding	PRIN	X	19-Dec-23
17	Brown	Kirk	Aviva Canada	PRIN	X	19-Dec-23
18	Stirple	Mark	Downing Street	PRIN	X	21-Dec-23
19	Aghar	Peter	Crux Acquisition Corporation	PRIN	X	21-Dec-23
20	Fang	Leslie	Bentall Green Oak	PRIN	X	21-Dec-23
21	Beheshti	Arzhang	Harlo Capital	PRIN	X	21-Dec-23
22	Gillam	Marcus	Gillam Communities	PRIN	X	27-Dec-23
23	Savic	Nemo	Savic Holding Inc	PRIN	X	28-Dec-23
24	Sukhdev	Toor	Mango Hotels	PRIN	X	03-Jan-24
25	Gulamani	Alnoor	Bayview Investments	PRIN	X	04-Jan-24
26	Bowers	Eric	Boardwalk REIT Properties	PRIN	X	04-Jan-24
27	Strmota	Alexia	Treasure Hill	PRIN	X	09-Jan-24
28	Sarkaria	Gagan	Vantage Capital	PRIN	X	10-Jan-24
29	Strzelecki	Pawal	Solowave Investments	PRIN	X	15-Jan-24
30	Johnson	Erin	ChoiceREIT	PRIN	X	16-Jan-24
31	Way	Al	Kingsley Developments	PRIN	X	16-Jan-24
32	Smith	Andrew	Andrin Homes	PRIN	X	17-Jan-24
33	Bagnara	Antonio	Avila Investments	PRIN	X	22-Jan-24
34	Cumming	Bradley	Starlight Investments	PRIN	X	23-Jan-24
35	Carapella	Adam	Tricar	PRIN	X	23-Jan-24
36	Schembri	Gordon	Schembri PM	PRIN	X	24-Jan-24
37	Corneli	Luc	McCOR Management	PRIN	X	24-Jan-24

Call Log

The following is a log of discussions with interested proponents, including groups that signed a CA and those that didn't. This is a log of all groups that we were in direct conversations with throughout the process.

107

COMPANY	COMMENTS
1 Starwood Group	Interested - has reached out with several questions.
2 Treasure Hill/Forestgate Group	Met with on December 18 - potentially for their partner Forestgate.
3 Decade Capital	Spoke to Mike on Dec 18th, initially interested but likely not for them.
4 Grandview/Bost Group	Interested in site and could re-stabilize. Need to be at price that is commensurate with complexity of re-starting. Would do rental. Call 01/11 - indicated they were out...too much complexity to restart and a lot of scale. Have four buildings ongoing. Had valued around \$30M.
5 Urban Legends/Van Mar	Pass on site. Only do condo at this point and not confident in ability to quickly re-sell the project a viable numbers.
6 Zehr Group	Initial interest - reviewing information. f/u 01/11.
7 Stubbes	Only works with non union shops, on site once a month to check weep holes. Discussion internally if they would consider bidding on the site. Call 01/16 discussed internally, too much scale for them at this time.
8 Cantiro	Discussed site - too much scale for them at this time.
9 Centrecourt	Reached out to discuss site - would be interested to be a work-out partner with current lender(s).
10 Sangha Property Holding	Initial interest - reviewing information. Call on 01/15 - looking to potentially put equity into project with someone like Savic. f/u 01/23.
11 Lexington Park	Discussed site - not a priority as they have a significant pipeline to work though in KW.
12 Vive Development	Initial interest - reviewing information. f/u 01/11 - confirmed they intend to bid.
13 Drewlo	Initial interest - reviewing information. f/u 01/11. f/u 01/16. f/u with AD on 01/22.
14 Dorr Capital	Initial interest - reviewing information. Was considering bid with Westmount - no additional response.
15 Mcommercial Mortgage	Initial interest - reviewing information. Call 01/23 - indicated he had introduced to Lanterra. No ongoing interest.
16 Killam	Initial interest -reviewing information. Call on 01/08. Interested in understanding the opportunity. Indicated market is somewhat challenging but will review and may look to arrange tour. f/u 01/16. Call on 01/22 - confirmed out.
17 Crux Acquisitions	Initial interest - reviewing information.
18 Pinemount	Initial interest - reviewing information. Call on 01/18. Reviewed site - too much scale.
19 Royal Indevco Properties	Initial interest - reviewing information.
20 Sax Electrical	Initial interest - reviewing information.
21 DBS Developments	Initial interest - reviewing information. f/u 01/23
22 Fram Building Group	Initial interest - reviewing information. Frank will call with questions.
23 Canadian Commercial	Initial interest - reviewing information. f/u 01/16. Not enough bandwidth at this time.
24 Aviva Canada	Initial interest - reviewing information.
25 Downing Street	Initial interest - reviewing information. Analyst is actively looking at it. Seem very interested. f/u 01/16. Call on 01/18 - continuing to evaluate, intend to meet internally shortly to confirm if they will pursue (need execution partner - perhaps JD Development).
26 HIP	Discussed opportunity - indicated not for them.

27	Concert	Sent direct email 01/08. Reviewed initial info and indicated not transit-oriented enough for them.	
28	Boardwalk REIT Properties	Initial interest - reviewing information. f/u 01/23.	
29	Gillam Communities	Initial interest - reviewing information.	108
30	Harlo Capital	Initial interest - reviewing information. Just starting to underwrite. Call on 01/17 - discussed site background. They would do condo but require construction/development partner. Indicated we could make some introductions. Encouraged touring the site. Will follow up after looking at numbers more closely. f/u 01/23. Confirmed they are out - too far from transit and not enough upside potential in their view.	
31	Mango Hotels	Initial interest - reviewing information. f/u 01/23.	
32	Savic Homes	Toured site/building on January 5, 2024. f/u 01/11. Call on 01/18 - indicating they will submit.	
33	DOV/Lindvest	Sent direct email 01/08. f/u 01/11. Limited appetite for more 5k multi units in pipeline.	
34	Auburn	Sent direct email 01/08. f/u 01/11. Unresponsive.	
35	Branthaven Homes	Sent direct email 01/08. Call on 01/15 - haven't reviewed it yet. Will add to list - MC to follow up in a week. f/u 01/22.	
36	Fusion Homes	Left message 1/08. Not likely a good fit, but will discuss.	
37	Equiton	Direct call/email 01/08. f/u call 01/15. Unresponsive.	
38	Spotlight Development	Sent direct email 01/09. f/u 01/17. Unresponsive.	
39	Build Now Waterloo Region	Not a good fit - only working with City or Regional surplus lands.	
40	LJM	Sent direct email 01/08. Initial discussion - will take a look in more detail and advise if interested. f/u 01/18 - indicated they are still reviewing.	
41	Distrikt Capital	Direct call 01/09. f/u email on 01/17. Unresponsive.	
42	Minto	Left message - 01/08. Out - not the right profile of deal they are looking for now. Focused on low rise in early 2024.	
43	Scott Reid	Sent direct email 01/08. f/u call 01/11. Unresponsive	
44	Kaneff	Direct call/email - 01/08. Out - focused on IPP rather than multi sites right now.	
45	Maxwell	Left message 01/08. Initial call - indicated deal scale was too big for them, and likely too complicated for any affordable housing dollars in motion within the Region.	
46	RBJ Schlegel	Sent direct email 01/09. f/u 01/15.	
47	TAS	Sent direct email 01/09. Responded indicating only looking at Toronto.	
48	JD Developments	Left message 01/08. f/u 01/15. f/u email 01/17. Unresponsive.	
49	Starlight	Sent direct email 01/08. Indicated they would review. f/u 01/16 - limited appetite for new acquisitions right now.	
50	Coletara Developments	Sent direct email 01/09. f/u 01/17. Call on 01/19 - interested in opportunity, would be discounting significantly to offset challenges/risks. Follow up after bid date.	
51	Skyline REIT/SkyDev	Sent direct email 01/09. f/u 01/16 - left message. Unresponsive.	
52	IN8	Indicated they were not interested.	
53	Tricar	Working on arranging a tour week of January 22. Call on 01/16 - some team on vacation, plan to review this week.	
54	Forum Equity	Direct email 1/09, f/u 01/11. Unresponsive.	
55	Decade Homes	Spoke to Mike Siskind Dec 18th. Not for them.	
56	Schembri	Meeting arranged for 01/12. Discussed site. f/u 01/22.	
57	Core Developments	Sent direct email 01/09. f/u 01/15. Unresponsive.	

58	Centurion	Will have a look, but generally pens down until Q3. Indicating they will pass.
60	Momentum Developments	Reached out 01/15. Out - no bandwidth at this time.
61	Bayview Investments	Initial interest - reviewing information. f/u 01/16. Unresponsive. 109
62	Northwest Value Partners	Call 01/11 to discuss site. Some interest, but may not be a strategic fit.
63	Whitney RE (Michael Lambert)	Initial interest - reviewing information. Toured building on 01/16. f/u call on 01/18 to request feedback.
64	Hazelview	Left message 01/08. 11/12 - good initial discussion. Will give additional consideration.
65	Kingsley Development	Initial discussion 01/16. Will review. Sent info.
66	ChoiceREIT	Spoke to Aaron and Anton Jan 20; own plaza across the street; reviewing the information in the data room
67	Fernbrook Capital	Direct email 01/17.
68	Starlight	Sent direct email 01/08. Indicated they would review. f/u 01/16 - limited appetite for new acquisitions right now.
69	Southside Group	01/17 Call placed got VM. F/u required. f/u 01/23
70	York Developments	0/12 Initial interest. CA sent for execution. f/u call 01/23.
71	Elite Developments	In Dubai - back on the 24th. f/u email. 01/17.
72	Andrin	Call 01-19 - actively looking at materials, interested. Reminded of bid date - trying to arrange tour week of Jan 22.
73	Averton	Call on 01/17 - will look at in more detail. Might be tight on time.
74	Lennard Realty	Phone call enquiry, called back to discuss site. He will discuss with client and get back. f/u 01/23.
75	Melrose	Direct email 01/17. f/u 01/23.
76	Cogir	Sent direct email 01/15. f/u 01/23.
77	Medallion	Left message 01/15. f/u email 01/23
78	Colliers International	Initial enquiry - no additional engagement.

Tours

The following is a log of tours with interested proponents.

110

	COMPANY	DATES
1	Bost Group/Lotco Ltd.	Monday, December 18 at 3pm.
2	Vive Development	Tuesday, December 19 at 12:15pm.
3	Zehr Group	Wednesday, January 3 at 1pm.
4	Drewlo Holdings Inc.	Thursday, January 4 at 3:30 pm.
5	Savic Homes	Friday, January 5 at 10am.
6	Whitney Real Estate/Solowave	Tuesday, January 16 at 2:00pm.
7	Schembri Property Management	Monday, January 29 at 11:00am.
8	Avila Investments	Monday, January 29 at 10:00am.
9	Starlight Investments	Tuesday, January 30 at 10:00am.

Data Room Activity

The following data room activities are of qualified purchasers that have submitted a Confidentiality Agreement.

	COMPANY	COMMENTS
1	Dorr Capital	Downloaded the entire folder on December 18, 2023.
2	Drewlo Holdings	Downloaded the entire folder on December 18, 2023.
3	Private Capital	Downloaded the entire folder on December 19, 2023.
4	Forestgate Group	Downloaded the entire folder on December 19, 2023.
5	MCommercial Mortgage	Downloaded the entire folder on December, 20, 2023.
6	Fram Building Group	Downloaded the entire folder on December, 20, 2023.
7	Downing Street	Downloaded the entire folder on December, 21, 2023.
8	Vive Development	Downloaded the entire folder on December, 21, 2023 & January 21 & 23, 2024.
9	Forestgate Group	Downloaded the entire folder on December, 22, 2023.
10	Savic Holding	Downloaded the entire folder on December, 29, 2023.
11	Aviva Canada	Downloaded the entire folder on December, 29, 2023.
12	Crux Acquisition Corporation	Downloaded the entire folder on January, 2, 2024.
13	Gillam Communities	Downloaded the entire folder on January, 2, 2024.
14	Starwood Group	Downloaded the entire folder on January, 2, 2024.
15	Drewlo Holdings	Downloaded the entire folder on January, 2, 2024.
16	Bentall Green Oak	Downloaded the entire folder on January, 3, 2024.
17	Forestgate Group	Downloaded the entire folder on January 4 & 8, 2024.
18	Boardwalk REIT Properties	Downloaded the entire folder on January 5, 2024.
19	Killam Apartment REIT	Downloaded the entire folder on January 8, 2024.
20	Vive Development	Downloaded the entire folder on January 8, 2024.
21	Harlo Capital	Downloaded the entire folder on January 10 & 16, 2024.
22	Whitney Commercial Real Estate	Downloaded the entire folder on January 15, 2024.
23	Forestgate Group	Downloaded the entire folder on January 17, 2024.
24	Choice REIT Properties	Downloaded the entire folder on January 19, 2024.
25	Royal Indevco Properties	Downloaded the entire folder on January 19, 2024.
26	Avila Investments	Downloaded the entire folder on January 22 & 23, 2024.
27	Tricar	Downloaded the entire folder on January 23, 2024.

Conclusion

We remain committed to bringing this project to a successful conclusion in as short a time as possible.

If you have any questions or concerns, please do not hesitate to call.

Yours truly,

CBRE's Land Services Group & Southern Ontario Investment Team

CBRE'S LAND SERVICES GROUP



Mike Czestochowski**

Vice Chairman

+1 416 495 6257

mike.czestochowski@cbre.com



Lauren White*

Executive Vice President

+1 416 495 6223

lauren.white@cbre.com



Emelie Rowe*

Sales Associate

+1 416 495 6306

emelie.rowe@cbre.com



Evan Stewart*

Sales Associate

+1 416 495 6205

evan.stewart@cbre.com

SOUTHERN ONTARIO INVESTMENT TEAM



Martin Cote*

Vice President

+1 519 340 2317

martin.cote@cbre.com



Joe Benninger*, CCIM

Vice President

+1 519 340 2323

joe.benninger@cbre.com

*Sales Representative, **Broker

CBRE | LAND
SERVICES
GROUP

Appendix

MARKETING MATERIALS



PROPERTY SPECIFIC

1,253 RECIPIENTS
7,806 VIEWS

1333² WEBER STREET EAST
KITCHENER, ONTARIO



PARTIALLY COMPLETED 4-TOWER, 623 UNIT DEVELOPMENT OPPORTUNITY IN KITCHENER

CBRE's Land Services Group, on behalf of KSV Restructuring Inc., is pleased to offer for sale a unique development opportunity at 1333 Weber Street E in the City of Kitchener. This 36-acre site represents an unmatched development opportunity to acquire an approved multi-tower project, with significant work completed. Building A (Phase 1) is nearing completion, as construction of the super structure has reached roof level with the mechanical penthouse partially completed, while excavation, shoring, and partial foundation/slab construction has been completed for Buildings B and C (Phase 2 and 3).

The entire site was originally rezoned in 2016 and received Site Plan Approval in December 2019 to allow for a total GFA of 611,694 sq. ft. and 623 residential units to be built. Building A, which is nearly complete, is a 15-storey building with a total of 177 residential dwelling units and a total GFA of 178,626 sq. ft. Similarly, Building B is approved for a 15-storey tower with 193 residential units in total. Building C and D are both 12-storeys in height and each provide commercial space at grade along Weber Street and contain 159 residential units and 94 residential units respectively.

The offering represents an unsurpassed opportunity for a multi-tower development that is well positioned within Kitchener and is partially constructed with the remaining buildings ready for permits, providing a significant benefit to any purchaser looking to develop in the near term.

Please refer to the Construction Cost Report completed by Finnegan Marshall Inc. in December 2023 for more information.



PLEASE REACH OUT TO ONE OF THE ADVISORS TO COORDINATE A TOUR OF THE SITE

OFFER SUBMISSION DATE
TO BE ANNOUNCED

All offers to be submitted to Mike Czeszchowski | mike.czeszchowski@cbre.com,
Lauren White | lauren.white@cbre.com and Martin Cote | martin.cote@cbre.com


WEEKLY AVAILABILITY

1,251 RECIPIENTS
2,394 VIEWS

Available Properties

CBRE

OFFERS DUE: TUESDAY, JANUARY 30TH, 2024 BY 3PM (EST)



CLICK TO WATCH VIDEO

Featured
PROPERTY

CBRE | LAND SERVICES GROUP

1555 Weber Street East, Kitchener, ON


OFFER SUBMISSION DATE: Tuesday, January 30th, 2024 by 3PM (EST)

Partially Completed 4-Tower, 623 Unit Development Opportunity in Kitchener
MLS: X7358780

VIEW BROCHURE

DRONE VIDEO

TENDERS



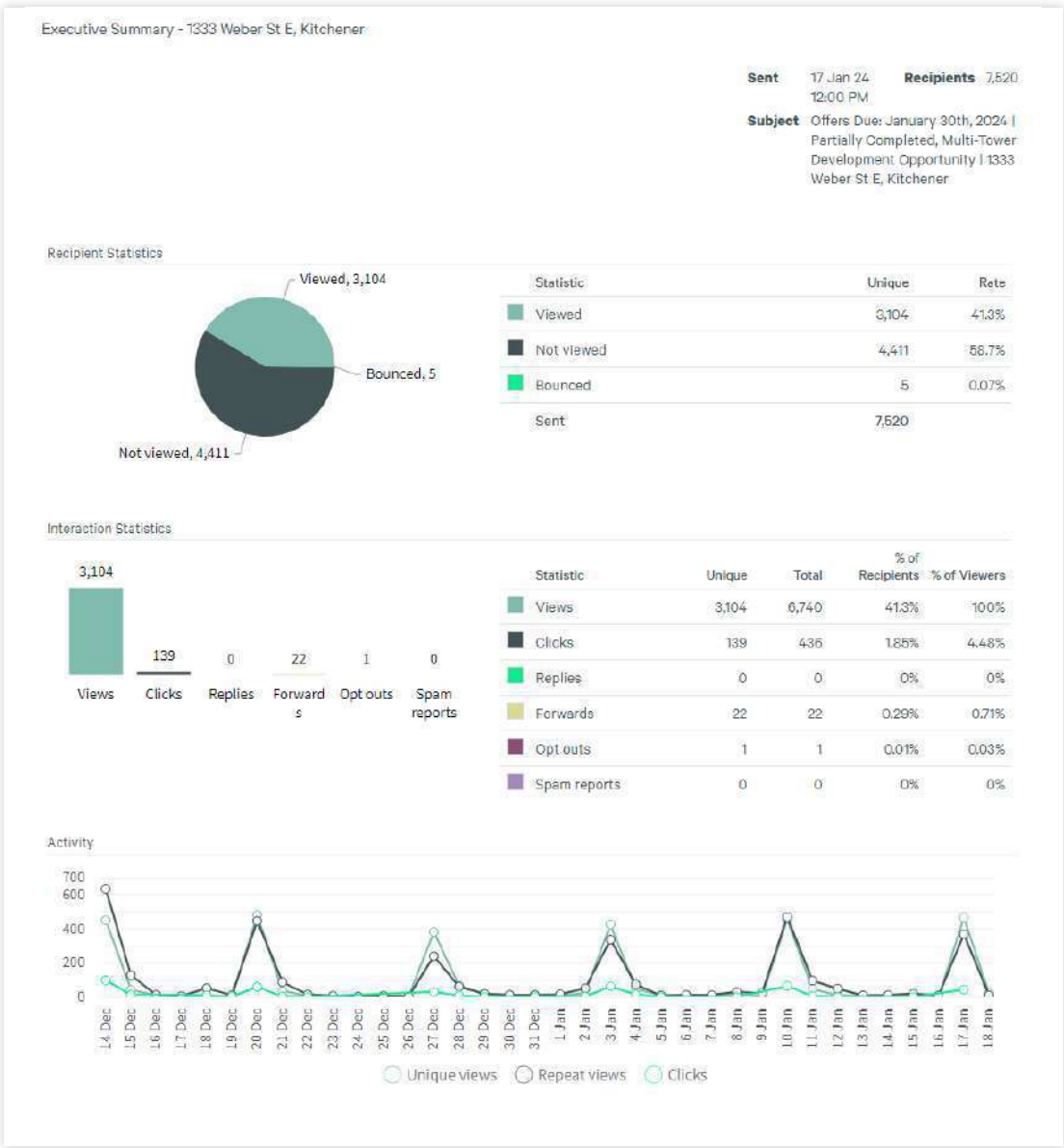
NE Corner of Norman Bethune Ave & Hwy 404
Markham, ON
Size: 4.3 acres
Offer Date: Wednesday, January 31st, 2024 by 3PM (EST)
MLS: N7313220

VIEW BROCHURE

RESIDENTIAL
properties

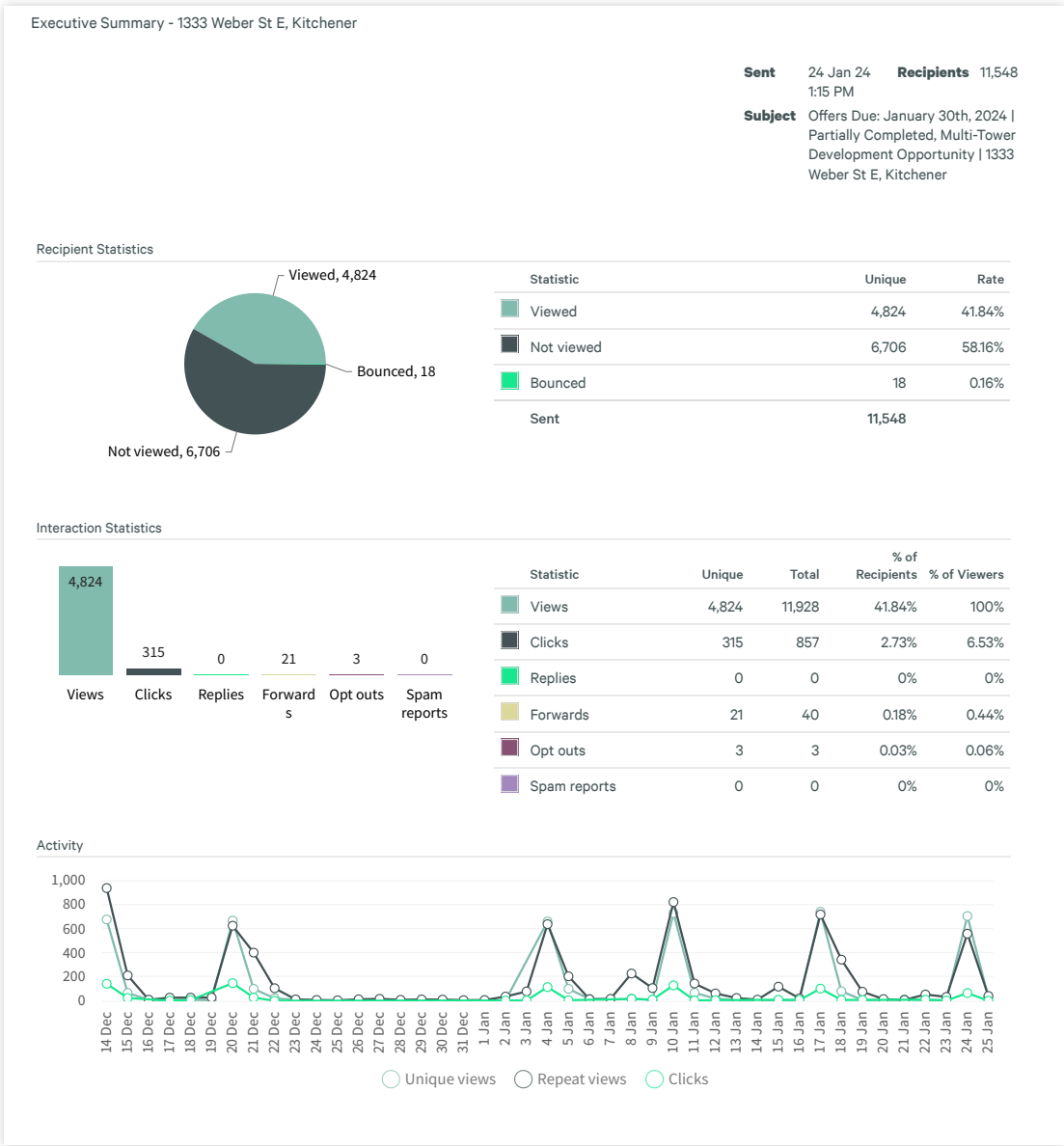
STATISTICS & ENGAGEMENT - CAMPAIGN LOGIC ACTIVITY

The following visualization indicate the statistical activity on Campaign Logic as a result of the Land Services Group’s property specific email campaign sent to 1,253 recipients on December 14, 20, 27 2023, January 3rd, 11th, 17th & 24th 2024.



STATISTICS & ENGAGEMENT - CAMPAIGN LOGIC ACTIVITY

The following visualization indicate the statistical activity on Campaign Logic as a result of the Southern Ontario Investment Team’s property specific email campaign sent to 1,928 recipients on December 14th, 20th 2023 & January 4th, 10th, 17th & 24th 2024.





BROCHURE COVER



CONFIDENTIALITY AGREEMENT



SIGNAGE

MOCK-UP



8 ft x 8 ft Single Sided Signs



MIKE CZESTOCHOWSKI



Mike Czystochowski • 1st
Vice Chairman, Land Services Group @ CBRE Canada | Specializing in Dis...
2h • Edited •

Offering for sale an unmatched development opportunity to acquire an approved 4-tower, 623 unit development opportunity in the City of Kitchener. Please click here to learn more: <https://bit.ly/3TvXrbA>

Offers due: Tuesday, January 30th, 2024 by 3PM (EST)


MLS: X7358780 & 40523106

Please reach out to one of the Advisors to coordinate a tour of the site:
[Lauren White](#), [Martin Cote](#), [Evan Stewart](#), [Emelie Rowe](#)





LAUREN WHITE




Lauren White • Following
Executive Vice President, Land Services Group @ CBRE Canada | Specializ...
45m •

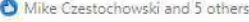
Offering for sale an unmatched development opportunity to acquire an approved 4-tower, 623 unit development opportunity in the City of Kitchener. Please click here to learn more: <https://bit.ly/3TvXrbA>

Offers due: Tuesday, January 30th, 2024 by 3PM (EST)

MLS: X7358780 & 40523106

Please reach out to one of the advisors below to coordinate a tour of the site:
[Mike Czystochowski](#), [Martin Cote](#), [Evan Stewart](#), [Emelie Rowe](#)



 1 comment

AD PROMOTION

NOVAE RES URBIS

PARTIALLY COMPLETED 4-TOWER, 623 UNIT DEVELOPMENT OPPORTUNITY IN KITCHENER

1333

WEBER STREET EAST

KITCHENER, ONTARIO

CBRE LAND SERVICES GROUP

Conceptual Rendering

CLICK TO WATCH VIDEO

OFFERS DUE: TUESDAY, JANUARY 30TH, 2024 BY 3PM(EST)

CBRE's Land Services Group, on behalf of KSV Restructuring Inc., is pleased to offer for sale a unique development opportunity at 1333 Weber Street E in the City of Kitchener. This 3.6-acre site represents an unmatched development opportunity to acquire an approved multi-tower project that is under construction.

The entire site was originally rezoned in 2016 and received Site Plan Approval in December 2019 to allow for a 4 building development with a total GFA of 611,694 sq. ft. and 623 residential units. Building A, which is under construction, is a 15-storey building with a total of 177 residential dwelling units and a total GFA of 178,626 sq. ft. Similarly, Building B is approved for a 15-storey tower with 193 residential units in total. Building C and D are both 12-storeys in height and each provide commercial space at grade along Weber Street and contain 159 residential units and 94 residential units respectively.

VIEW BROCHURE

MLS: X7358780

LAND SERVICES GROUP:

Mike Czeszochowski**
Vice Chairman
+1 416 495 6257
mike.czeszochowski@cbre.com

Emelie Rowe*
Sales Associate
+1 416 495 6306
emelie.rowe@cbre.com

Lauren White*
Executive Vice President
+1 416 495 6223
lauren.white@cbre.com

Evan Stewart
Sales Representative
+1 416 495 6205
evan.stewart@cbre.com

SOUTHERN ONTARIO INVESTMENT TEAM:

Martin Cote*
Vice President
+1 519 340 2317
martin.cote@cbre.com

Joe Benninger*,CCIM
Vice President
+1 519 340 2323
joe.benninger@cbre.com

*Sales Representative **Broker | All outlines are approximate | CBRE Limited, Real Estate Brokerage | 2005 Sheppard Ave. E., #900, Toronto, ON M2J 5B4

www.cbre.ca/mclsg

AD PROMOTION

INSOLVENCY INSIDER

FOR SALE

PARTIALLY COMPLETED 4-TOWER, 623 UNIT DEVELOPMENT OPPORTUNITY IN KITCHENER

1333

WEBER STREET EAST

KITCHENER, ONTARIO

VIEW BROCHURE

OFFERS DUE: JANUARY 30TH, 2024

MLS: X7358780 & 40523106

Mike Czeszochowski**

Vice Chairman

+1 416 495 6257

mike.czeszochowski@cbre.com

Martin Cote*

Vice President

+1 519 340 2317

martin.cote@cbre.com

Lauren White*

Executive Vice President

+1 416 495 6223

lauren.white@cbre.com

Joe Benninger*, CCIM

Vice President

+1 519 340 2323

joe.benninger@cbre.com

CBRE Limited, Brokerage | *Sales Representative **Broker

www.cbre.ca

CBRE LAND SERVICES GROUP



HWY 8

WEBER ST E

Conceptual Rendering

CBRE LAND SERVICES GROUP

1333 Weber Street East, Waterloo | REPORTING LETTER

23

Team Leads

121

Mike Czystochowski**

Vice Chairman
+1 416 495 6257
mike.czystochowski@cbre.com

Lauren White*

Executive Vice President
+1 416 495 6223
lauren.white@cbre.com

Martin Cote*

Vice President
+1 519 340 2317
martin.cote@cbre.com

Joe Benninger*, CCIM

Vice President
+1 519 340 2323
joe.benninger@cbre.com

Sales Support

Evan Stewart*

Sales Associate
+1 416 495 6205

Emelie Rowe*

Sales Associate
+1 416 495 6306
emelie.rowe@cbre.com

Marketing

Marina Lonska

Marketing Specialist
+1 416 495 6213
marina.lonska@cbre.com

Chloe Pereira

Marketing Assistant
+1 416 495 6229
chloe.pereira@cbre.com

Sally Chiu

Junior Graphic Designer
+1 416 495 6230
sally.chiu@cbre.com

Team Management

Laura Malaka

Team Lead
+1 416 495 6314
laura.malaka@cbre.com

Kayla Conlon

Transaction Manager
+1 519 340 0728
kayla.conlon@cbre.com

Planning & Due Diligence

Andrea Camina Medina

Senior Planner
+1 416 495 6284
andrea.caminamedina@cbre.com

Nicholas Webster

Associate
+1 416 495 6271
nicholas.webster@cbre.com

Administration

Sara Ambrosi

Client Services Coordinator
+1 416 495 6285
sara.ambrosi@cbre.com

*Sales Representative **Broker

APPENDIX “H”

AGREEMENT OF PURCHASE AND SALE**BETWEEN****KSV RESTRUCTURING INC.,**

solely in its capacity as the Court-appointed receiver and manager of the real property described in Schedule “A” hereto and all the other assets, undertakings and properties of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP, and not in its personal capacity or in any other capacity

- and -

**GENESIS MORTGAGE INVESTMENT CORPORATION,
ELM ACQUISITIONS CORP. and DORR CAPITAL
CORPORATION,**

collectively in trust for a corporation to be incorporated

Dated: March 4, 2024

ARTICLE 1 DEFINED TERMS	2
1.1 Definitions.....	2
ARTICLE 2 SCHEDULES.....	7
2.1 Schedules.	7
ARTICLE 3 AGREEMENT TO PURCHASE.....	7
3.1 Purchase and Sale of Purchased Assets.	7
3.2 Excluded Assets.	8
3.3 Excluded Liabilities.	8
ARTICLE 4 PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE	9
4.1 Purchase Price.....	9
4.2 Deposit.	9
4.3 Satisfaction of Purchase Price.....	9
4.4 Allocation of Purchase Price.....	10
4.5 Adjustment of Purchase Price.....	10
4.6 Property Tax Refunds and Rebates.....	11
ARTICLE 5 TAXES.....	11
5.1 Taxes.	11
ARTICLE 6 CLOSING ARRANGEMENTS	11
6.1 Closing and Closing Procedure.....	11
6.2 Tender.	11
6.3 Receiver's Closing Deliverables.....	11
6.4 Purchaser's Closing Deliverables.	12
6.5 Replacement Security	13
6.6 Receiver's Certificate.....	14
6.7 Electronic Registration.....	15
6.8 Registration Costs.	15
6.9 Tender.	15
ARTICLE 7 CONDITIONS PRECEDENT TO CLOSING	15
7.1 Conditions in Favour of the Receiver.	15
7.2 Conditions in Favour of Receiver Not Fulfilled.	16

TABLE OF CONTENTS
(continued)

125

7.3	Conditions in Favour of the Purchaser.....	16
7.4	Conditions in Favour of Purchaser Not Fulfilled.....	17
7.5	Conditions for the Mutual Benefit of the Receiver and Purchaser.	17
7.6	Conditions in favour of both Parties not Fulfilled.	18
ARTICLE 8 REPRESENTATIONS & WARRANTIES OF THE RECEIVER.....		18
8.1	Representations and Warranties of the Receiver.	18
8.2	Survival.....	18
ARTICLE 9 REPRESENTATIONS & WARRANTIES OF THE PURCHASER.....		19
9.1	Representations and Warranties of the Purchaser.....	19
9.2	Survival.....	20
ARTICLE 10 COVENANTS		20
10.1	Mutual Covenants.	20
10.2	Receiver Covenants.	20
10.3	Purchaser Covenants.....	20
ARTICLE 11 ACCESS PRIOR TO CLOSING		21
11.1	Project Documents.....	21
11.2	Examination of Title and Access to the Purchased Assets.	21
11.3	Risk	21
ARTICLE 12 AS IS, WHERE IS AND ASSUMPTION OF LIABILITIES		22
12.1	Condition of the Purchased Assets.	22
12.2	Assumption of Obligations.	23
ARTICLE 13 TERMINATION		24
13.1	Termination of this Agreement.....	24
13.2	Remedies for Breach of Agreement.....	24
13.3	Termination If No Breach of Agreement.....	25
ARTICLE 14 GENERAL CONTRACT PROVISIONS		25
14.1	Further Assurances.....	25
14.2	Survival Following Completion.....	25
14.3	Notice.....	25
14.4	Waiver.....	27
14.5	Consent.	27

TABLE OF CONTENTS
(continued)

126

14.6	Governing Law.	27
14.7	Entire Agreement.	27
14.8	Time of the Essence.	27
14.9	Time Periods.	27
14.10	Assignment.	27
14.11	Expenses.	28
14.12	Severability.	28
14.13	No Strict Construction.	28
14.14	Cumulative Remedies.	28
14.15	Currency.	28
14.16	Receiver’s Capacity.	29
14.17	Planning Act.	29
14.18	No Third Party Beneficiaries.	29
14.19	Number and Gender.	29
14.20	Publicity.	29
14.21	Confidentiality.	29
14.22	Non-Registration.	29
14.23	Counterparts.	30
SCHEDULE A “Property”		A-1
SCHEDULE B		B-1
“Approval and Vesting Order”		B-1
SCHEDULE C “Permitted Encumbrances”		2

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 4th day of March, 2024.

BETWEEN:

KSV RESTRUCTURING INC.,
solely in its capacity as the Court-appointed receiver and manager
of the real property described in Schedule “A” hereto and all the
other assets, undertakings and properties of 1776411 Ontario Ltd.
and 1333 Weber Street Kitchener LP (the “**Receivership**
Respondents”), and not in its personal capacity or in any other
capacity

(in such capacity, the “**Receiver**”)

- and -

GENESIS MORTGAGE INVESTMENT CORPORATION,
ELM ACQUISITIONS CORP. and DORR CAPITAL
CORPORATION,
collectively in trust for a corporation to be incorporated

(the “**Purchaser**”)

WHEREAS 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 (the “**Receivership Order**”), KSV Restructuring Inc. (“**KSV**”) was appointed as the Receiver, without security, of the Purchased Assets (as defined herein);

AND WHEREAS pursuant to the provisions of the Receivership Order, the Receiver has the power to sell all or any part of the Purchased Assets, subject to Court approval;

AND WHEREAS pursuant to an order of The Honourable Mr. Justice Cavanagh of the Court made on December 12, 2023 (the “**Sale Process Order**”), the Court approved the Sale Process (as defined in the Sale Process Order) recommended by the Receiver, including, without limitation, that any transaction or transactions by the Receiver in respect of the Purchased Assets shall be subject to Court approval;

AND WHEREAS the Purchaser wishes to purchase and the Receiver wishes to sell the Purchased Assets (as defined herein) upon the terms and subject to the conditions set out herein;

NOW THEREFORE, in consideration of the promises, mutual covenants and agreements contained in this Agreement (as defined herein), and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined herein), the Parties agree as follows:

ARTICLE 1 DEFINED TERMS

1.1 Definitions.

In this Agreement:

“**Accounts Payable**” means all amounts relating to the Business owing to any Person in connection with the purchase of goods or services in the ordinary course of business;

“**Agent**” means CBRE Limited, the selling agent and advisor to the Receiver in connection with the marketing and sale of the Property;

“**Agreement**” means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to “**article**”, “**section**” or “**schedule**” mean the specified article, section of, or schedule to this Agreement and the expressions “hereof”, “herein”, “hereto”, “hereunder”, “hereby” and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

“**Applicable Law**” means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

“**Approval and Vesting Order**” means the approval and vesting order issued by the Court approving this Agreement and the Transaction and conveying to the Purchaser the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, which order shall be in a form substantively similar to the draft order attached as **Schedule “B”** hereto, with only such amendments as may be acceptable to the Purchaser and the Receiver, each acting reasonably;

“**Assignable Assets**” has the meaning given in Section 3.1(3);

“**Buildings**” means the buildings constructed or to be constructed on the Lands, including without limitation Tower A and Towers B and C, together with all other improvements to the Lands;

“**Business**” means the business of the Receivership Respondents;

“**Business Day**” means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

“**Claims**” means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the

foregoing or any proceeding relating to any of the foregoing, related to the Purchased Assets or the Receivership Respondents, and “**Claim**” means any one of them;

“**Closing**” means the successful completion of the Transaction;

“**Closing Date**” means the date that is the later of: (i) the first Business Day following the date that is 10 days following the date on which the Approval and Vesting Order is issued by the Court; and (ii) the first Business Day following the date that is 10 days following the date on which any appeals or motions to set aside or vary the Approval and Vesting Order have been finally determined, or, if the Parties agree, such other date as agreed in writing by the Parties; provided, however, that the Closing Date shall not be earlier than May 15, 2024;

“**Closing Time**” means 5:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

“**Consents and Approvals**” means the consents and approvals of all relevant Third Parties, if any;

“**Contracts**” means all of the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which one or more Receivership Respondent is a party;

“**Court**” has the meaning set out in the recitals hereof;

“**Deposit**” has the meaning given in Section 4.2;

“**Due Diligence**” has the meaning given in Section 7.3(e);

“**Due Diligence Date**” means the date that is thirty (30) days following the date of acceptance of this Agreement by the Receiver;

“**Encumbrances**” means all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, 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;

“**ETA**” means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

“**Excluded Assets**” means all assets, undertakings and properties of the Receivership Respondents other than the Purchased Assets, which Excluded Assets includes the following:

- (a) any of the Receivership Respondents’ cash or cash equivalents;
- (b) any of the Receivership Respondents’ accounts receivable;
- (c) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of any of the Receivership Respondents or the Purchased Assets;

- (d) the benefit of any refundable Taxes payable or paid by any of the Receivership Respondents or paid by the Receiver in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of any of the Receivership Respondents or the Receiver to any refund, rebate, or credit of Taxes for the period prior to the Closing Date;
- (e) all Contracts identified by the Purchaser and disclosed to the Receiver prior to the Due Diligence Date;
- (f) any Existing Agreement of Purchase and Sale identified by the Purchaser and disclosed to the Receiver prior to the Due Diligence Date and any monies paid to the Receivership Respondents or on their behalf as a deposit or on account of a purchase of a condominium unit relating to any such Existing Agreement of Purchase and Sale; and
- (g) the existing agreements of purchase and sale with respect to the purchase of condominium units within Tower B and Tower C in the Project and any monies paid to the Receivership Respondents or on their behalf as a deposit or on account of a purchase of a condominium unit to be constructed in the Tower B or Tower C in the Project;

“Excluded Liabilities” has the meaning given in Section 3.3;

“Existing Agreements of Purchase and Sale” means all existing agreements of purchase and sale with respect to the purchase of condominium units within Tower A in the Project;

“Existing Security” means, collectively, all performance bonds, letters of credit and/or security deposits provided to third parties with respect to the Project, including without limitation, (i) the performance bond or letter of credit provided by Westmount Guarantee Services Inc. (**“Westmount”**), (ii) the letter of credit dated August 19, 2021, issued by Concentra Bank in favour of The Corporation of the City of Kitchener in the amount of \$2,698,148.20, and (iii) any other letters of credit arranged or issued by Genesis Mortgage Investment Corp. (**“GMIC”**), CMLS Financial Ltd. (**“CMLS”**), Computershare Trust Company of Canada (**“Computershare”**), and Concentra Bank at the request of the Receivership Respondents in connection with the Project, including all amendments, replacements and extensions thereof;

“Existing Security Creditors” means, collectively, GMIC, CMLS, Computershare, Concentra Bank and Westmount;

“First Mortgage Charge” means the charge/mortgage in the principal amount of \$82,000,000 granted by 1776411 Ontario Ltd. to and in favour of CMLS Financial Ltd., Computershare Trust Company of Canada, and Genesis Mortgage Investment Corp. registered against title to the Property on August 17, 2021 as Instrument No. WR1367209;

“Governmental Authorities” means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making

organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof, including, without limitation, any municipality in which the Property is located; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and “**Governmental Authority**” means any one of them;

“**HST**” means harmonized sales tax imposed under Part IX of the ETA;

“**Interim Period**” means the period from and including the date that this Agreement is executed by the Parties to and including the Closing Date;

“**ITA**” means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

“**KSV**” has the meaning set out in the recitals hereof;

“**Lands**” means the real property described in **Schedule “A”** hereto and all rights and benefits appurtenant thereto;

“**Levies**” means all municipal development charges, educational development charges, community benefits charges, amounts owing pursuant to agreements under sections 37 and/or 45 of the *Planning Act* (Ontario), cash in lieu of parkland, lot levies, water allocation payments, sewer allocation payments, building permit application fees, planning application fees or any other amount paid to the municipality or other Governmental Authority as a prerequisite to obtaining a building permit for the construction of the Project or any part thereof or in respect of any development thereon;

“**Notice**” has the meaning given in Section 14.3;

“**Parties**” means the Receiver and the Purchaser;

“**Permits**” means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required, if any, by any Governmental Authority in respect of the Project;

“**Permitted Encumbrances**” means all those Encumbrances described in **Schedule “C”** hereto;

“**Person**” means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

“**Project**” means the development and construction on the Lands of a four phase condominium/mixed use development which was marketed as “Elevate”, the first phase being a 177-unit residential partially completed building (“**Tower A**”), the second and third phases being two additional residential high rise buildings which presently consist of a large open pit with a partially completed foundation and underground parking area (“**Towers B and C**”), and the fourth phase being raw land;

“Project Documents” has the meaning set out in Section 11.1;

“Property” means collectively the Lands and the Buildings;

“Purchase Price” has the meaning set out in Section 4.1;

“Purchased Assets” means all the right, title and interest, if any, of the Receivership Respondents in and to the following:

- (a) the Property;
- (b) all plans and specifications and engineering drawings for the Project;
- (c) all trade names, business names, intellectual property, models including any scale models of the Buildings, and all advertising literature and materials relating to the Project;
- (d) all hoarding, preconstruction matters, and sales office contents relating to the Project;
- (e) all other tangible property relating to the creation or construction of the Buildings or the Project;
- (f) the benefit of any prepaid expenses or deposits with any Person (including, without limitation, the benefit of any prepaid rent, public utility or Governmental Authority);
- (g) all intangible property (on-site or off-site) relating to the creation of the Buildings or the Project, including without limitation, all Existing Agreements of Purchase and Sale (save and except those which are Excluded Assets in accordance with clause (f) of the definition of Excluded Assets) and the Unit Deposits, the Contracts (save and except those which are Excluded Assets in accordance with clause (e) of the definition of Excluded Assets), and the Levies; and
- (h) the Permits, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees;

“Purchaser” means GENESIS MORTGAGE INVESTMENT CORPORATION, ELM ACQUISITIONS CORP. and DORR CAPITAL CORPORATION, collectively in trust for a corporation to be incorporated and validly subsisting under the laws of Province of Ontario;

“Receiver” has the meaning set out in the recitals hereof;

“Receivership Order” has the meaning set out in the recitals hereof;

“Receivership Respondents” has the meaning set out in the preamble hereof;

“Sales Process Order” has the meaning set out in the recitals hereof;

“**Taxes**” means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

“**Third Party**” has the meaning given in Section 3.1(3);

“**Transaction**” means the transaction of purchase and sale contemplated by this Agreement;

“**Unit Deposits**” means any monies paid to the Receivership Respondents or on their behalf as a deposit or on account of a purchase of a condominium unit to be constructed in the Project pursuant to the Existing Agreements of Purchase and Sale save and except those which are Excluded Assets in accordance with clause (f) of the definition of Excluded Assets); and

“**Waiver Notice**” has the meaning given in Section 7.3(e).

ARTICLE 2 SCHEDULES

2.1 Schedules.

The following schedules are incorporated in and form part of this Agreement:

<u>Schedule</u>	<u>Description</u>
Schedule A	Lands
Schedule B	Approval and Vesting Order
Schedule C	Permitted Encumbrances

ARTICLE 3 AGREEMENT TO PURCHASE

3.1 Purchase and Sale of Purchased Assets.

- (1) Relying on the representations and warranties herein, the Receiver hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, the Purchased Assets, free and clear of all Encumbrances other than the Permitted Encumbrances.
- (2) Subject to the Closing, the Receiver hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all of its rights, Claims, interests and demands, past or present, whether known or unknown, fixed or contingent or otherwise, whatsoever in the Purchased Assets.
- (3) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies under any Permits or Consents and Approvals (collectively, the “**Assignable Assets**”) that form part

of the Purchased Assets and which are not assignable by the Receiver to the Purchaser without the required consent of the other party or parties thereto or a Governmental Authority (collectively, the “**Third Party**”). To the extent any such consent is required and not obtained by the Receiver prior to the Closing Date, then, to the extent permitted by Applicable Law:

- (a) the Receiver will, at the request, direction and sole cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and on a commercially reasonable best-efforts basis, in applying for and obtaining all consents or approvals required under the Assignable Assets in a form satisfactory to the Receiver and the Purchaser, acting reasonably, and take such actions and do such things as may be reasonably and lawfully designed to attempt to provide the benefits of the Assignable Assets to the Purchaser, including holding those Assignable Assets in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment;
- (b) in the event that certain consents or approvals cannot be obtained with respect to the Assignable Assets, the Receiver will, at the request, direction and sole cost of the Purchaser, acting reasonably, seek an order from the Court assigning the Assignable Assets, for which consents or approvals cannot be obtained, to the Purchaser; and
- (c) in the event that the Receiver receives funds with respect to those Assignable Assets, the Receiver will promptly pay over to the Purchaser all such funds collected by the Receiver, net of any outstanding costs provided in subsection (a) above.

3.2 Excluded Assets.

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

3.3 Excluded Liabilities.

With the sole exception of the Permitted Encumbrances, the Purchaser is not assuming, and shall not be deemed to have assumed, any liabilities, obligations or commitments of any of the Receivership Respondents, the Receiver or any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Property or the Receivership Respondent’s ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the “**Excluded Liabilities**”). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Receivership Respondents prior to the Closing Date;

- (b) except as otherwise agreed in this Agreement, all Taxes relating to any matters or assets other than the Purchased Assets;
- (c) any liability, obligation or commitment associated with the Accounts Payable or any employees of the Receivership Respondents;
- (d) except as otherwise agreed in this Agreement, any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (e) any liability, obligation or commitment associated with any of the Excluded Assets; and
- (f) except as otherwise agreed in this Agreement, any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

ARTICLE 4

PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price.

The purchase price for the Purchased Assets shall be equal to the full amount owing under the First Mortgage Charge on the Closing Date, including without limitation principal, interest, interest on interest, protective disbursements, legal expenses, and costs and expenses (the “Purchase Price”).

4.2 Deposit.

- (1) The Purchaser shall pay to the Receiver a deposit of Five Million Dollars (\$5,000,000) (the “**Deposit**”) immediately upon execution of this Agreement, by wire transfer, which Deposit shall be held in accordance with the provisions of this Agreement pending completion of the Transaction or other termination of this Agreement.
- (2) Upon the Waiver Notice being delivered by the Purchaser, the Deposit shall become non-refundable, subject to Section 13.2 and provided that the Deposit shall be refundable if this Agreement is terminated prior to the Approval and Vesting Order being obtained in accordance with Sections 7.2, 7.4, 7.6, 11.3 or 13.1.
- (3) The Parties agree that the Receiver shall cause the Deposit to be placed in an interest bearing account agreeable to the Purchaser, acting reasonably, and shall be, subject to the provisions of this Agreement, applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.

4.3 Satisfaction of Purchase Price.

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit shall be applied against the Purchase Price; and
- (b) the remainder of the Purchase Price, being the net amount owing after deducting the Deposit and after any adjustments provided for herein, shall be paid by the Purchaser to the Receiver on Closing by wire transfer.

4.4 Allocation of Purchase Price.

The Parties, acting reasonably and in good faith, covenant to use best efforts to agree to allocate the Purchase Price amongst the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this Section 4.4, such that each Party shall be free to make its own reasonable allocation.

4.5 Adjustment of Purchase Price.

- (1) The Purchase Price shall be adjusted as of 11:59 p.m. on the day prior to the Closing Date, in a manner and amount to be agreed upon by the Parties, acting reasonably, for any property Taxes (including interest thereon), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets in the context of a receivership sale, including, without limitation, (i) all receivership costs and (ii) all construction liens and all other amounts that have priority to the First Mortgage Charge. For greater certainty, and notwithstanding any provision to the contrary in this Agreement, the Purchaser shall be solely responsible for (a) all receivership costs and all construction liens and all other amounts that have priority to the First Mortgage Charge notwithstanding that such amounts arose prior to 11:59 p.m. on the day prior to the Closing Date, and (b) any and all property Taxes that are added to the tax roll on or after the Closing Date, regardless of the period to which such property Taxes apply. The Receiver shall prepare a statement of adjustments and deliver same with all supporting documentation to the Purchaser for its approval by no later than three Business Days prior to the Closing Date. If any item that is subject to adjustment cannot be determined, or agreed upon between the Purchaser and the Receiver, on Closing, an estimate shall be made by the Receiver for the purposes of Closing and a final adjustment shall be made when the particular item can be determined. All claims for readjustments must be made on or before that date which is six (6) months after Closing. After the expiry of such period, the adjustments made by the parties shall be final and binding.
- (2) Notwithstanding anything else contained in this Agreement, there shall be no adjustment in either Party's favour in respect of any Levies unless the Parties agree otherwise in writing.
- (3) Other than as provided for in this Section 4.5, there shall be no adjustments to the Purchase Price.

4.6 Property Tax Refunds and Rebates

Any refund or rebate of realty tax relating to the Property in respect of the period before the Closing Date (each, a “**Property Tax Refund**”) will remain the property of the Receiver. To the extent the Purchaser receives payment or credit on account of any Property Tax Refund, the Purchaser shall hold such amount in trust for the Receiver, endorse such amount (without recourse) in favour of the Receiver and immediately deliver such amounts to the Receiver. Any refund or rebate of realty tax relating to the Property in respect of the period after the Closing Date will be the property of the Purchaser. To the extent the Receiver receives payment of any such amount, the Receiver shall hold such amount in trust for the Purchaser, endorse such payment (without recourse) in favour of the Purchaser and immediately deliver such payments to the Purchaser.

ARTICLE 5 TAXES

5.1 Taxes.

The Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and other similar taxes and duties and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Receiver will not collect HST if the Purchaser provides to the Receiver a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least one Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Receiver in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Closing and Closing Procedure.

Closing shall take place at the Closing Time on the Closing Date electronically through the exchange of documents by email between respective counsel to the Purchaser and the Receiver or at such other time or at such other place as the Parties may agree in writing. At the Closing Time, the Purchaser shall take possession of the Purchased Assets where situated.

6.2 Tender.

Any tender of documents or money under this Agreement may be made upon the Parties or their respective solicitors, and money shall be tendered by wire transfer of immediately available funds to the account of the receiving Party.

6.3 Receiver’s Closing Deliverables.

The Receiver covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (1) a copy of the issued Approval and Vesting Order and the attached Receiver's Certificate;
- (2) a statement of adjustments prepared in accordance with Section 4.5;
- (3) an undertaking by the Receiver to readjust the adjustments set out in Section 4.5;
- (4) an assignment and assumption agreement for all Contracts (save and except those which are Excluded Assets in accordance with clause (e) of the definition of Excluded Assets), Permitted Encumbrances, Permits, Existing Agreements of Purchase and Sale (save and except those which are Excluded Assets in accordance with clause (f) of the definition of Excluded Assets), the Unit Deposits, Levies, and Consents and Approvals pertaining to the Purchased Assets (to the extent assignable) relating to the period from and after the Closing Date, including an indemnification by the Purchaser in favour of the Receiver relating to the period from and after the Closing Date, and to the extent not assignable, an agreement by the Receiver to hold same in trust for the Purchaser;
- (5) a certificate from the Receiver, dated as of the Closing Date, certifying:
 - (a) that all representations, warranties and covenants of the Receiver contained in this Agreement are true and have been complied with as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (b) that, except as disclosed in the certificate, the Receiver has not been served with any notice of appeal with respect to the Approval and Vesting Order, or any notice of any application, motion or proceedings seeking to set aside or vary the Approval and Vesting Order or to enjoin, restrict or prohibit the Transaction; and
- (6) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Purchaser, acting reasonably.

6.4 Purchaser's Closing Deliverables.

The Purchaser covenants to execute, where applicable, and deliver the following to the Receiver at Closing or on such other date as expressly provided herein:

- (1) the indefeasible payment and satisfaction in full of the Purchase Price according to Section 4.3;
- (2) an undertaking by the Purchaser to readjust the adjustments set out in Section 4.5;
- (3) an assignment and assumption agreement for all Contracts (save and except those which are Excluded Assets in accordance with clause (e) of the definition of Excluded Assets), Permitted Encumbrances, Permits, Existing Agreements of Purchase and Sale (save and except those which are Excluded Assets in accordance

with clause (f) of the definition of Excluded Assets), the Unit Deposits, Levies, and Consents and Approvals pertaining to the Purchased Assets (to the extent assignable) relating to the period from and after the Closing Date, including an indemnification by the Purchaser in favour of the Receiver relating to the period from and after the Closing Date, and to the extent not assignable, an agreement by the Receiver to hold same in trust for the Purchaser;

- (4) a certificate from the Purchaser, dated as of the Closing Date, certifying that all representations, warranties and covenants of the Purchaser contained in this Agreement are true and have been complied with as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (5) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption and indemnification certificates to the Receiver's satisfaction, acting reasonably, with respect to HST in accordance with Article 5; and
- (6) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably.

6.5 Replacement Security

- (1) On Closing, the Purchaser shall, subject to Section 6.5(2), deliver to the beneficiaries thereof replacement performance bonds, letters of credit and/or security deposits on the terms and conditions required by the agreements pursuant to which the Existing Security was issued (collectively, "**Replacement Security**") for all Existing Security such that the Existing Security may be returned, undrawn, for cancellation, provided that if any of the Existing Security may be returned undrawn for cancellation without replacement thereof by the Purchaser then the Purchaser shall not be obligated to deliver the Replacement Security.
- (2) Notwithstanding the foregoing, if the obligations that the Existing Security secures have been fully or partially performed such that the quantum of any Existing Security may, pursuant to the applicable agreements, be reduced or eliminated, then the obligation of the Purchaser shall be to provide replacement letters of credit or other security acceptable to the beneficiary thereof in such lesser amount as is required and confirmed by the beneficiaries thereof in order to secure the release and return of the Existing Security. If the beneficiary of any such Existing Security has not acknowledged and agreed to a reduction in the amount of the Replacement Security in exchange for the Existing Security, the Purchaser shall provide Replacement Security in the same amount as the Existing Security.
- (3) The Receiver will use commercially reasonable efforts to arrange to have the Existing Security delivered in escrow prior to Closing. The Receiver and Purchaser shall act in good faith to coordinate the exchange, in escrow (with the Receiver's Solicitors as escrow agent), of the Existing Security for the Replacement Security with the beneficiaries thereof and the Purchaser shall continue to cooperate with

the Receiver and the Existing Security Creditors in connection with the Existing Security until such time as the Existing Security has been returned, undrawn, in accordance with this Section 6.5. The Purchaser shall use commercially reasonable efforts to deliver to the Receiver (or the prospective beneficiaries thereof) drafts of the Replacement Security at least fourteen (14) days prior to Closing. For greater certainty, the return of the Existing Security is not a condition of Closing; furthermore, the failure for such return to be completed at Closing shall not constitute a default on the part of the Purchaser, nor shall it entitle the Purchaser or Receiver to terminate this Agreement. This provision shall survive Closing.

- (4) Where the beneficiaries thereof have not returned the Existing Security in escrow on Closing, the Purchaser (or if the Purchaser at Closing is a nominee for a beneficial owner, such beneficial owner) shall, on Closing, indemnify the Receiver and the Existing Security Creditors (as applicable) in respect of all costs, damages, losses or expenses incurred by such indemnified parties solely in connection with any draw on funds under the Existing Security made by the beneficiary to whom the Existing Security was issued. The Receiver shall continue to use commercially reasonable efforts, and shall use commercially reasonable efforts to cause the Existing Security Creditors (as applicable), to have the Existing Security returned for cancellation and shall provide monthly updates to the Purchaser with evidence of same. This indemnity shall terminate automatically in respect of any Existing Security which is returned to the applicable indemnified party undrawn. This indemnity shall be limited in respect of each item of Existing Security to the respective amounts thereof outstanding on the date hereof. In no event shall this indemnity constitute indemnification for any of the costs, damages, losses or expenses incurred by such indemnified parties in their attempts to have the Existing Security returned for cancellation, all of which shall be for the sole account of such indemnified parties.
- (5) For greater certainty, nothing in this Agreement requires the Purchaser to issue Replacement Security for anything other than the Existing Security, and nothing in this Agreement requires that the Purchaser use Westmount to supply the Replacement Security for the performance bond or letter of credit referred to in the definition of Existing Security.

6.6 Receiver's Certificate.

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in Section 7.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the Receiver of all of the conditions contained in Section 7.1, the Receiver shall forthwith deliver to the Purchaser the Receiver's Certificate comprising Schedule "A" of the Approval and Vesting Order, and shall file same with the Court.

6.7 Electronic Registration.

If electronic registration of documents at the applicable land registry office is mandatory on the Closing Date, or is optional and is requested by the Purchaser, the following terms shall form part of this Agreement:

- (1) the Receiver and the Purchaser shall be obliged to each retain a lawyer in good standing with the Law Society of Ontario to represent them in connection with the completion of this Transaction and shall each authorize and instruct such lawyer to enter into an escrow closing agreement in the form mandated by the Law Society of Ontario, subject to such reasonable amendments as such lawyers or the circumstances of the Transaction may require, establishing the procedures and timing for completion of the Transaction (the “**Document Registration Agreement**”);
- (2) the delivery and exchange of documents and funds and the release thereof to the Receiver and the Purchaser, as the case may be:
 - (i) shall not occur contemporaneously with the registration of the transfer; and
 - (ii) shall be governed by the Document Registration Agreement, pursuant to which the lawyer receiving the documents and/or funds will be required to hold the same in escrow and will not be entitled to release the same except in accordance with the provisions of the Document Registration Agreement.

6.8 Registration Costs.

The Purchaser shall bear all costs in registering any conveyances of title to the Purchased Assets to it and all costs of preparing any further assurances required to convey the Purchased Assets to it. The Purchaser shall register all such conveyances in accordance with the Document Registration Agreement.

6.9 Tender.

Any notice, approval, waiver, agreement, instrument, document or communication permitted, required or contemplated in this Agreement may be given or delivered and accepted or received by the Purchaser's solicitors on behalf of the Purchaser and by the Receiver's solicitors on behalf of the Receiver and any tender of Closing Documents may be made upon the Receiver's solicitors and the Purchaser's solicitors, as the case may be.

ARTICLE 7 CONDITIONS PRECEDENT TO CLOSING

7.1 Conditions in Favour of the Receiver.

The obligation of the Receiver to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Time:

- (1) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (2) all the covenants of the Purchaser contained in this Agreement to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (3) the Purchaser shall have complied with all the terms contained in this Agreement applicable to the Purchaser prior to the Closing Date; and
- (4) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper.

7.2 Conditions in Favour of Receiver Not Fulfilled.

If any of the conditions contained in Section 7.1 is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Receiver, then the Receiver may, at its sole discretion, and subject to Section 13.1:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Receiver shall be released from its obligations under this Agreement to complete the Transaction (other than those obligations which are expressly stated to survive termination of this Agreement); or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

7.3 Conditions in Favour of the Purchaser.

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Time:

- (a) all the representations and warranties of the Receiver contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Receiver under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Receiver;
- (c) the Receiver shall have complied with all the terms contained in this Agreement applicable to the Receiver prior to the Closing Date;
- (d) there shall be no Claim, litigation or proceedings pending or threatened or order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets, for the purpose of enjoining, preventing or restraining the completion of the Transaction or otherwise claiming that such completion is improper; and

- (e) on or before the Due Diligence Date, the Purchaser having given written notice (the **“Waiver Notice”**) to the Receiver that the Purchaser is satisfied in its sole, absolute and unfettered discretion:
 - (i) with the results of the Purchaser’s investigations, assessments, studies, examinations, inspections, reviews, tests and audits relating to the Purchased Assets (including, without limitation, zoning, title to the Purchased Assets and review of the Permitted Encumbrances) and the Transaction provided for herein (collectively referred to herein as the **"Due Diligence"**) which the purchaser deems necessary or desirable, the whole subject to all terms and conditions of this Agreement,;
 - (ii) with the debt financing secured by the Purchaser for the acquisition of the Purchased Assets; and
 - (iii) with the joint venture documents for the acquisition of the Purchased Assets and the development of the Project entered or to be entered into by the Purchaser, Genesis Mortgage Investment Corporation, Elm Acquisitions Corp. and Dorr Capital Corporation, or any of their respective affiliates.

7.4 Conditions in Favour of Purchaser Not Fulfilled.

- (a) In the event that the Waiver Notice has not been delivered on or before 5:00 p.m. on the Due Diligence Date, this Agreement shall be automatically terminated, null and void and of no further force or effect whatsoever and the Deposit (or such portion of the Deposit as has been paid), and all interest accrued thereon, shall be returned to the Purchaser forthwith without deduction
- (b) If any of the conditions contained in Subsections 7.3(a), (b), (c) or (d) hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion:
 - (i) terminate this Agreement by notice to the Receiver, in which event the Purchaser and the Receiver shall be released from their obligations under this Agreement to complete the Transaction (other than those obligations which are expressly stated to survive termination of this Agreement), except that the Receiver shall be obligated to return the Deposit to the Purchaser with any and all accrued interest in accordance with this Agreement; or
 - (ii) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

7.5 Conditions for the Mutual Benefit of the Receiver and Purchaser.

The sale and purchase of the Purchased Assets is subject to the following terms and conditions for the mutual benefit of the Receiver and the Purchaser, to be performed or fulfilled at or prior to the Closing Time:

- (1) the Court shall have entered and issued the Approval and Vesting Order; and
- (2) the Approval and Vesting Order shall not be stayed.

The Purchaser, at its own expense, shall promptly provide to the Receiver all such information and assistance within the Purchaser's power as the Receiver may reasonably require to obtain the Approval and Vesting Order. The foregoing condition is a true condition precedent that cannot be waived by either Party.

7.6 Conditions in favour of both Parties not Fulfilled.

If any condition set out in Section 7.5 is not satisfied or performed prior to the time specified therefor, this Agreement shall automatically be terminated, in which case neither Party shall be under any further obligation to the other to complete the Transaction (other than those obligations which are expressly stated to survive termination of this Agreement) and any Deposit and all interest accrued thereon shall be returned in accordance with Section 13.1.

ARTICLE 8 REPRESENTATIONS & WARRANTIES OF THE RECEIVER

8.1 Representations and Warranties of the Receiver.

The Receiver represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (1) the Receiver has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder;
- (2) the execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Receiver, subject to the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Receiver enforceable in accordance with its terms;
- (3) the Receiver has been duly appointed by the Court, with the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey the Purchased Assets;
- (4) the Receiver has done no act to encumber the Purchased Assets (other than the Permitted Encumbrances) and has not previously sold or agreed to sell to any Person the Purchased Assets; and
- (5) the Receiver is not a non-resident of Canada for the purposes of the ITA.

8.2 Survival

The representations and warranties contained in Section 8.1 shall survive for a period of six (6) months following the Closing Date.

ARTICLE 9
REPRESENTATIONS & WARRANTIES OF THE PURCHASER

9.1 Representations and Warranties of the Purchaser.

The Purchaser represents and warrants to the Receiver as follows, with the knowledge and expectation that the Receiver is placing complete reliance thereon and, but for such representations and warranties, the Receiver would not have entered into this Agreement:

- (1) the Purchaser is a corporation duly formed and validly subsisting under the laws of the Province of Ontario;
- (2) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Government Authority, or any Applicable Law;
- (3) the execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (4) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date;
- (5) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property;
- (6) the Purchaser has not incurred any obligation or liability, contingent or otherwise, for any broker's or finder's fees or commissions in respect of this Transaction. The Receiver shall not have any obligation or liability to pay such fees or commissions, other than to the Agent under the listing agreement between the Receiver and the Agent; and
- (7) there is no suit, action, litigation, arbitration proceeding or governmental proceeding, including appeals and applications for review, in progress, pending or, to the best of the Purchaser's knowledge, threatened against or relating to the Purchaser or any judgment, decree, injunction, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of the Purchaser to enter into this Agreement or to consummate the Transaction, and the Purchaser is not aware

of any existing ground on which any such action, suit or proceeding may be commenced with any reasonable likelihood of success.

9.2 Survival.

The representations and warranties contained in Section 9.1 shall survive for a period of six (6) months following the Closing Date.

ARTICLE 10 COVENANTS

10.1 Mutual Covenants.

Each of the Receiver and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 7 and to consummate the Transaction.

10.2 Receiver Covenants.

The Receiver hereby covenants and agrees that, from the date hereof until Closing, it shall take all such reasonable actions as are necessary to provide to the Purchaser all necessary information in respect of the Purchased Assets reasonably required to complete, if necessary, the applicable tax elections in accordance with Section 5.1 and to execute all necessary forms related thereto.

10.3 Purchaser Covenants.

The Purchaser hereby covenants and agrees that, from the date hereof until the Closing Date, it shall take all such actions as are necessary to provide to the Receiver all necessary information in respect of the Purchaser reasonably required to complete, if necessary, the applicable tax elections in accordance with Section 5.1 and to execute all necessary forms related thereto.

ARTICLE 11

ACCESS PRIOR TO CLOSING

11.1 Project Documents.

Within three (3) Business Days after the date hereof, the Receiver shall provide to the Purchaser copies of, or access to, the documents in respect of the Project and the Purchased Assets, in the possession or control of the Receiver (collectively, the "**Project Documents**").

11.2 Examination of Title and Access to the Purchased Assets.

- (1) The Purchaser acknowledges and agrees that it shall, at its own cost and expense (regardless of results), examine title to the Purchased Assets, and satisfy itself as to the state thereof, satisfy itself as to outstanding work orders affecting the Purchased Assets, satisfy itself as to the use of the Property being in accordance with applicable zoning requirements and satisfy itself that any and all buildings and structures on the Property, if any, may be insured to the satisfaction of the Purchaser. The Purchaser further acknowledges that, notwithstanding any statutory provisions to the contrary, the Purchaser has no right to submit requisitions in regard to any outstanding work orders, deficiency notices or orders to comply issued by any Government Authorities. The Purchaser further acknowledges and agrees that it shall not call upon the Receiver to produce any title deed, abstract of title, survey or other evidence of title that is not within the Receiver's possession or control.
- (2) The Purchaser and its agents and representatives may have reasonable access to the Property during normal business hours in the Interim Period for the purpose of enabling the Purchaser, at its sole cost and expense (regardless of results), to conduct such non-destructive, non-invasive inspections of the Property as it deems appropriate. The Purchaser agrees that such tests and inspections shall not include any tests or inspections by any Governmental Authority and specifically acknowledges and agrees that it shall not request or, through its actions, prompt or cause any tests or inspections to be made by any Governmental Authority. Such inspection may, if the Receiver so desires, be conducted in the presence of a representative of the Receiver.
- (3) The Purchaser covenants and agrees to repair or pay the costs to repair any damage occasioned during or resulting from the inspection of the Property conducted by the Purchaser or its authorized representatives, as outlined above, and to return the Property to substantially the condition same was in prior to such inspections. The Purchaser covenants and agrees to indemnify and save the Receiver harmless from and against all losses, costs, claims, third party claims, damages, expenses (including actual legal costs) which the Receiver may suffer as a result of the inspection of the Property conducted by the Purchaser or its authorized representatives, as outlined above.

11.3 Risk

- (1) The Purchased Assets shall be and remain at the risk of the Receiver until Closing and at the risk of the Purchaser from and after Closing.

- (2) If, prior to Closing, the Purchased Assets are substantially physically damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within 15 calendar days after notification to the Purchaser by the Receiver of the occurrence of such physical damage or destruction (or prior to the Closing Date if such occurrence takes place within 15 calendar days prior to the Closing Date), and upon exercise of such option, this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any physical damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such physical damage or destruction. For the purposes of this section, substantial physical damage or destruction shall be deemed to have occurred if the physical loss or damage to the Purchased Assets exceeds 25% of the total Purchase Price (inclusive of the Deposit). For greater certainty, physical damage or destruction does not include a change in market value of the Purchased Assets caused by any pandemic or endemic (such that, for further greater certainty, the Purchaser is not entitled to terminate this Agreement on the grounds of any future developments, whether favourable or unfavourable, in respect of such pandemic or endemic).
- (3) If, prior to the Closing Date, all or a material part of the Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Property is issued by any Governmental Authority, the Receiver shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three Business Days after the Purchaser receives Notice in writing from the Receiver of such expropriation, elect to either: (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation shall be payable to the Purchaser and all right, title and interest of the Receiver or the Receivership Respondents to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis; or (ii) terminate this Agreement and not complete the Transaction, in which case all rights and obligations of the Receiver and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith in accordance with Section 13.1.

ARTICLE 12

AS IS, WHERE IS AND ASSUMPTION OF LIABILITIES

12.1 Condition of the Purchased Assets.

- (1) The Purchaser acknowledges that the Receiver is selling and the Purchaser is purchasing the Purchased Assets on an “*as is, where is*” and “*without recourse*” basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent.

- (2) The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor any of the Receivership Respondents has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser has conducted such inspections of the condition and title to the Purchased Assets as it deems appropriate and has satisfied itself with regard to these matters. The Purchaser acknowledges that all documents and information provided or made available to it by the Receiver (including its employees, agents and representatives) are for reference only and that the Purchaser has not relied on any such documents and information in entering into this Agreement.
- (3) The Purchaser further acknowledges and agrees that no representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Receiver to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Receiver concerning the accuracy of such description.
- (4) The Purchaser further acknowledges and agrees that additional permits, authorizations and other approvals and costs associated with such permits, authorizations and other approvals, in connection with the Project may be required in order to complete the Project, and the Receiver or any other Person on behalf of or at the direction of the Receiver has not made, and the Purchaser acknowledges that it is not relying upon, any express or implied agreement, representation or warranty of any kind whatsoever as to the foregoing.
- (5) Except as otherwise expressly provided for in this Agreement, the Receiver will have no obligations or responsibility to the Purchaser after Closing with respect to any matter relating to the Purchased Assets or the condition thereof.
- (6) The Receiver has no liability for, or obligation with respect to, any special, indirect, consequential, punitive or aggravated damages.
- (7) The provisions of this Section 12.1 will survive Closing or the termination of this Agreement.

12.2 Assumption of Obligations.

The Purchaser shall assume, fulfill, perform and be responsible for all liabilities and obligations of any kind relating to the Purchased Assets in respect of the period from and after the Time of Closing, including without limitation, all liabilities and obligations under the Contracts

(save and except those which are Excluded Assets in accordance with clause (e) of the definition of Excluded Assets) that are assumed by the Purchaser under this Agreement, and the Purchaser shall indemnify and save harmless the Receiver and its directors, officers, servants, agents and employees in respect of all Claims which may be brought against or suffered by the Receiver, its directors, officers, servants, agents or employees or which any of them may suffer, sustain, pay or incur as a result of any matter or thing arising out of, or resulting from, attributable to or connected with or relating to the Purchased Assets, including without limitation all liabilities and obligations under the Leases and Contracts (save and except those which are Excluded Assets in accordance with clause (e) of the definition of Excluded Assets), in respect of the period from and after the Time of Closing. The covenants and agreements to indemnify made by the Purchaser in this Section 12.2 shall survive Closing and not be subject to any limitation periods.

ARTICLE 13 TERMINATION

13.1 Termination of this Agreement.

This Agreement may be validly terminated:

- (1) upon the mutual written agreement of the Parties;
- (2) pursuant to Section 7.2 or Section 13.1 by the Receiver;
- (3) pursuant to Section 7.4 by the Purchaser;
- (4) pursuant to Section 7.6 or Section 11.3;
- (5) by either of the Parties, in writing to the other, if the Approval and Vesting Order is not issued by the Court on or before May 15, 2024; or
- (6) automatically, should Closing have not occurred prior to the discharge of the Receiver as the receiver of the Purchased Assets, unless the Receiver's interest in this Agreement has been assigned prior to (or as part of) the Receiver's discharge.

13.2 Remedies for Breach of Agreement.

If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Receiver under this Agreement, then the Deposit with any and all accrued interest, without deduction, shall be returned to the Purchaser forthwith and in any event within 2 Business Days after such termination (and, for greater certainty, and notwithstanding any other provision in this Agreement, this shall be the Purchaser's sole right and remedy as a result of the Receiver's breach). If this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Purchaser under this Agreement, then the Deposit shall be forfeited to the Receiver as liquidated damages and not as a penalty, which Deposit the Parties agree is a genuine estimate of the liquidated damages that the Receiver would suffer in such circumstances (and, for greater certainty, and notwithstanding any other provision in this Agreement, this shall be the Receiver's sole right and remedy as a result of the Purchaser's breach).

13.3 Termination If No Breach of Agreement.

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, including, without limitation, as a result of Section 7.6, then:

- (1) the Purchaser shall return to the Receiver all documents, work papers and other material of the Receiver relating to the Transaction, whether obtained before or after the execution hereof;
- (2) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (3) subject to Section 4.2(2), the Deposit with any and all accrued interest, without deduction, shall be returned to the Purchaser forthwith and in any event within 2 Business Days after such termination; and
- (4) neither Party shall have any right to specific performance, to recover damages or expenses or to any other remedy (legal or equitable) or relief.

ARTICLE 14 GENERAL CONTRACT PROVISIONS

14.1 Further Assurances.

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof.

14.2 Survival Following Completion.

Notwithstanding any other provision of this Agreement, Section 4.5, Section 13.2 and Section 13.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of KSV as the Receiver, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

14.3 Notice.

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a "**Notice**") shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

- (a) to the Receiver:

KSV Restructuring Inc.
220 Bay Street, Suite 1300

Toronto, ON M5J 2W4

Attention: Mitch Vininsky and Ben Luder
Email: mvininsky@ksvadvisory.com
and bluder@ksvadvisory.com

and a copy to the Receiver's counsel to:

Blaney McMurtry LLP
2 Queen Street East, Suite 1500
Toronto, ON M5G 3G5

Attention: Eric Golden and Chad Kopach
Email: egolden@blaney.com and ckopach@blaney.com

(b) to the Purchaser:

c/o Gentai Capital Corporation
#805-8400 West Road, North Tower
International Trade Centre
Richmond, BC V6X 0S7

Attention: Michael Yeung / James Kim
Email: michael.yeung@gentaicapital.com / james.kim@gentaicapital.com

and a copy to the Purchaser's counsel to:

Bennett Jones LLP
3400 One First Canadian Place
Toronto, ON M5X 1A4

Attention: Sean Zweig / John van Gent
Email: zweigs@bennettjones.com / vangentj@bennettjones.com

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

14.4 Waiver.

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

14.5 Consent.

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

14.6 Governing Law.

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the Court. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes between them, regardless of whether or not such disputes arose under this Agreement.

14.7 Entire Agreement.

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

14.8 Time of the Essence.

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

14.9 Time Periods.

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

14.10 Assignment.

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Receiver's prior written approval. The parties acknowledge that the Purchaser is entering into this Agreement "in trust for a corporation

to be incorporated” and agree that, notwithstanding those words, the Purchaser shall only have until the granting of the Approval and Vesting Order to direct that title to the Purchased Assets be taken in the name of a corporation presently in existence or to be incorporated, provided that (a) such corporation shall, in writing, agree, prior to the date of the granting of the Approval and Vesting Order, to assume and be bound by the terms and conditions of this Agreement (the “**Assumption Agreement**”) and a copy of such Assumption Agreement is delivered to the Receiver forthwith after having been entered into, in which case the Purchaser shall nonetheless not be released from any and all further obligations and liabilities hereunder, and (b) if the Purchaser does not, prior to the granting of the Approval and Vesting Order, direct that title to the Purchased Assets be taken in the name of a corporation presently in existence or to be incorporated, then the Purchaser shall continue to be liable hereunder and the Approval and Vesting Order shall vest title to the Purchased Assets in the Purchaser. On Closing, if requested, the Receiver covenants and agrees to deliver a full and final release and discharge in favour of the Purchaser if title has been directed by the Purchaser and the Assumption Agreement has been entered into in accordance with the foregoing provisions of this Section 14.10.

14.11 Expenses.

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

14.12 Severability.

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

14.13 No Strict Construction.

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

14.14 Cumulative Remedies.

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

14.15 Currency.

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

14.16 Receiver's Capacity.

It is acknowledged by the Purchaser that KSV is entering into this Agreement solely in its capacity as the Receiver and that KSV shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

14.17 Planning Act.

This Agreement is to be effective only if the provisions of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, are complied with.

14.18 No Third Party Beneficiaries.

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns, nothing in this Agreement shall be construed to create any rights or obligations except amongst the Parties and no other person or entity shall be regarded as a third party beneficiary of this Agreement.

14.19 Number and Gender.

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

14.20 Publicity

The Purchaser agrees with the Receiver not to make any public announcement of the Transaction prior to Closing, except for the purpose of obtaining the Approval and Vesting Order or unless the content and timing of such announcement have been agreed upon by both Parties, or unless such announcement is otherwise required by Applicable Law.

14.21 Confidentiality

The Purchaser acknowledges that it has signed, and continues to be bound by, a confidentiality agreement with the Receiver [with respect to the Property. The Purchaser undertakes and agrees (and agrees to cause its agents, employees and representatives) to keep the existence and terms of this Agreement in strict confidence, except in the course of conveying necessary information to third parties directly involved in the Transaction and except as may be required by law or otherwise mutually agreed upon in writing by the parties.

14.22 Non-Registration

The Purchaser hereby covenants and agrees not to register this Agreement or notice of this Agreement or a caution, certificate of pending litigation, or any other document providing evidence of this Agreement against title to the Property. Should the Purchaser be in default of its obligations under this Section 14.22, the Receiver may (as agent and attorney of the Purchaser) cause the removal of such notice of this Agreement, caution, certificate of pending litigation or other document providing evidence of this Agreement or any assignment of this Agreement from the

title to the Property. The Purchaser irrevocably nominates, constitutes and appoints the Receiver as its agent and attorney in fact and in law to cause the removal of such notice of this Agreement, any caution, certificate of pending litigation or any other document or instrument whatsoever from title to the Property.

14.23 Counterparts.

This Agreement may be executed in counterparts and by facsimile or PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

/SIGNATURE PAGE FOLLOWS./

IN WITNESS WHEREOF the Receiver has duly executed this Agreement as of the date first above written.

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

Per: _____

Name:

Title:

ACCEPTED by the Purchaser this 4th day of March, 2024

**GENESIS MORTGAGE INVESTMENT
CORPORATION, IN TRUST**

Per: 

Name:
Title:

ELM ACQUISITIONS CORP., IN TRUST

Per: _____
Name:
Title:

DORR CAPITAL CORPORATION, IN TRUST

Per: _____
Name:
Title:

SCHEDULE A
“Property”

PIN 22590-0550 (LT)

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 B**“Approval and Vesting Order”**

Court File No. ●CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE

)

<*>DAY, THE <*>

JUSTICE

)

DAY OF <*>, 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 “**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**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and <*> (the “**Purchaser**”), as purchaser, dated <*>, 2024 (the “**Sale Agreement**”), a copy of which is attached as Confidential Appendix “<*>” to the Report of the Receiver dated <*>, 2024 (the “**Report**”), and vesting in the Purchaser the Purchased Assets (as defined in the Sale Agreement), was heard this day by judicial videoconference via Zoom.

ON READING the Report and appendices thereto, and on hearing the submissions of counsel for the Receiver and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of <*> sworn <*>, 2024, filed,

1. **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 Purchaser.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Receiver’s certificate to the Purchaser substantially in the form attached as Schedule A hereto (the “**Receiver’s Certificate**”), all of the Purchased Assets described in the Sale Agreement, including, without limitation, all of the Respondents’ right, title and interest in and to the Property listed on **Schedule**

“B” hereto, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, 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 • made on •; (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; and (iii) 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 immediately after the delivery of the Receiver's Certificate, each of the Existing Agreements of Purchase and Sale and all other Contracts (as each term is defined in the Sale Agreement) identified by the Purchaser to the Receiver as Excluded Assets (as defined in the Sale Agreement) and all of the existing agreements of purchase and sale with respect to the purchase of condominium units within Tower B and Tower C in the Project shall be deemed to have been terminated by the Receiver and any rights or claims thereunder or relating thereto are not continuing obligations effective against the Specified Property or binding on the Purchaser.]

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division 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 Purchaser as the owner of the subject Property identified in **Schedule “B”** hereto in fee simple, and is hereby directed to delete and expunge from title to the Property all of the Claims listed in **Schedule “C”** hereto.

5. **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.

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

7. **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 Receivership Respondents and any bankruptcy order issued pursuant to any such applications;
- and

- (c) any assignment in bankruptcy made in respect of any of the Receivership Respondents,

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Receivership Respondents and shall not be void or voidable by creditors of any of the Receivership Respondents, 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.

8. **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.

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

Schedule "A" – Form of Receiver's Certificate

Court File No. ●CL

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 <*>, 2024, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and <*> (the “**Purchaser**”), as purchaser, dated <*>, 2024 (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 _____ [TIME] on _____ [DATE].

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:

Title:

Schedule “B” – Legal Description of the Property

PIN 22590-0550 (LT)

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
“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. Notice (encroachment agreement) registered on May 5, 2022 in favour of The Corporation of the city of Kitchener as Instrument No. WR1434025.
14. Notice registered on September 20, 2022 in favour of The Corporation of the City of Kitchener as Instrument No. WR1467608.

APPENDIX “I”



September 27, 2024

To: Elevate Tower A condo unit purchasers ("Tower A Condo Buyers") with 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (together, the "Partnership")

Re: Update No. 2 to Condo Buyers

The purpose of this notice is to provide Tower A Condo Buyers with an update regarding the Partnership's condominium project that was marketed under the name "Elevate" (the "**Project**"), and the status of their pre-sale unit purchase agreements (the "**Purchase Agreements**").

As we previously advised in our letter to you dated October 25, 2023 (copy enclosed), pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 12, 2023 (the "**Receivership Order**"), KSV Restructuring Inc. was appointed receiver (the "**Receiver**"), of the property, assets and undertaking of the Partnership, including the real property located at 1333 Weber Street, Kitchener.

The application to appoint the Receiver was made by Genesis Mortgage Investment Corp. ("**GMIC**"), which is a first mortgage secured creditor of the Partnership. A copy of the Receivership Order and other materials filed in the receivership proceedings can be found on the Receiver's case website (the "**Website**") at <https://www.ksvadvisory.com/experience/case/1776411ontario>.

Sale Process Update

Pursuant to an Order dated December 12, 2023, the Court approved a sale process for the Project, including the retention of CBRE Limited as listing agent.

For the reasons that are set out in the Receiver's second report to Court dated September 27, 2024 (the "**Second Report**", a copy of which is posted on the Website), the Receiver will be seeking Court approval at 11:00 am on October 8, 2024, of an agreement of purchase and sale for the Project and certain related assets (the "**Transaction**"), made between the Receiver, as vendor, and a purchase group consisting of GMIC, Elm Acquisitions Corp. and Dorr Capital Corporation (collectively, the "**Purchasers**").

If approved by the Court, the Transaction is scheduled to close on or before October 30, 2024.

The hearing on October 8, 2024, will proceed virtually. The Zoom link for the hearing is as follows:

<https://ca01web.zoom.us/j/64172244590?pwd=OHg5VkFZNIRHb3FPdFcxaVY4dnRRZz09%20%27>

Treatment of Tower A Pre-Sale Purchase Agreements

The Purchasers have presented a plan to the Receiver regarding their approach to the Tower A Pre-Sale Purchase Agreements. A copy of the Tower A Plan is provided as Schedule "A" and is subject to Court approval. The Purchasers will correspond with the Tower A Condo Buyers if the Plan is approved and following closing of the Transaction.

Return of Condo Buyer Deposits

At the hearing on October 8, 2024, the Receiver will also be seeking Court approval of a deposit return protocol (the “**DRP**”) that will allow Tower A Condo Buyers to make claims for the return of the deposits that they paid pursuant to the Purchase Agreements (the “**Deposits**”), if their Purchase Agreements are terminated. The **DRP**, a copy of which will be posted on the Website before October 8, 2024, will set out in detail the steps that Condo Buyers will need to take in order to claim the return of the Deposits if their Purchase Agreements are terminated.

* * *

The Receiver will provide further updates as soon as possible.

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

Yours truly,



KSV RESTRUCTURING INC.

**SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
AND NOT IN ITS PERSONAL CAPACITY**



October 25, 2023

To: Condo unit purchasers (“Condo Buyers”) of the 1333 Weber Street Project known as “Elevate”

Re: Update No. 1 to Condo Buyers

Pursuant to an order (the “Receivership Order”) issued by the Ontario Superior Court of Justice on October 12, 2023, KSV Restructuring Inc. was appointed receiver and manager (the “Receiver”) of the property, assets and undertaking of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (together, the “Partnership”), including the real property located at 1333 Weber Street, Kitchener (the “Real Property”).

Copies of the Receivership Order and other materials filed in the receivership proceeding can be found on the Receiver’s case website at <https://www.ksvadvisory.com/experience/case/1776411ontario>.

Project Status

The purpose of this notice is to provide Condo Buyers with information regarding the Partnership and the condominium project it was marketing under the name “Elevate”.

The Receiver understands that construction of the first phase of the four-phase project is approximately 80% complete, while construction on the remaining phases is early stage. The Receiver is currently reviewing the status of the project and discussing next steps with the lenders that have advanced over \$60 million to date. At present, no action has been taken by the Receiver with respect to the project completion or any purchase agreements between the Partnership and the Condo Buyers.

Deposits

As no action has been taken by the Receiver with respect to any purchase agreements between the Partnership and the Condo Buyers, the purchase agreements remain in full force and effect. In the event that the purchase agreements are terminated by the Receiver, you will be notified of the termination and you will be provided with detailed information regarding the steps that you may take in order to recover your deposits, which would include information regarding the deposit protection provided by Tarion Warranty Corporation of up to \$20,000 and excess condominium deposit insurance provided to the Partnership by Westmount Guarantee Services Inc. There are no steps that you need to take in this regard at this time.

* * *

The Receiver will provide further updates as soon as possible.

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

Yours truly,

KSV Restructuring Inc.

KSV RESTRUCTURING INC.

**SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
AND NOT IN ITS PERSONAL CAPACITY**

Schedule “A”

SCHEDULE "B"

Tower A Sales Plan

1. All existing Tower A purchasers will be offered to keep their units with a 24% purchase price increase.
2. Within the 4 month period following Closing, and in accordance with the new financing requirements, existing Tower A purchasers will be approached in stages so that at most 40 existing purchase agreements are terminated at any time.
3. Where an existing Tower A purchaser accepts the increased purchase price, he/she will be required to enter into a new agreement of purchase and sale, old purchase agreement will be cancelled with old deposits assigned and directed to the new owner in satisfaction of the new deposits pursuant to the terms of the new agreement of purchase and sale.
4. The new agreement of purchase and sale will include new dates, condominium documents, budgets, etc. and will not include any upgrades, incentives, promotions, etc. that may have been included or added to the old purchase agreement entered with the previous ownership group. Statutory rescission periods shall apply to all new agreements of purchase and sale.
5. If an existing Tower A purchaser does not agree to pay the increased purchase price, its agreement will be disclaimed pursuant to the Approval and Vesting Order (without the need to return to Court) and re-marketed, first to purchasers in Tower B and Tower C and then to the public.
6. Existing Tower B and C purchasers will have a right of first refusal to disclaimed Tower A units at the same price they contracted to pay for the equivalent unit in Tower B or Tower C, based on availability, provided that the purchase price increase for any such Tower A unit will not be more than 24% of the original purchase price.
7. Incentives of \$5,000-15,000 may be offered to unit purchasers, based on market standards, in each case at the discretion of the new owner.
8. If, for any unit, the Tower A, B and C purchasers have refused their offers then the unit will be re-marketed to the public



September 27, 2024

To: Elevate Tower B condo unit purchasers ("Tower B Condo Buyers") with 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (together, the "Partnership")

Re: Update No. 2 to Condo Buyers

The purpose of this notice is to provide Tower B Condo Buyers with an update regarding the Partnership's condominium project that was marketed under the name "Elevate" (the "**Project**"), and the status of their pre-sale unit purchase agreements (the "**Purchase Agreements**").

As we previously advised in our letter to you dated October 25, 2023 (copy enclosed), pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 12, 2023 (the "**Receivership Order**"), KSV Restructuring Inc. was appointed receiver (the "**Receiver**"), of the property, assets and undertaking of the Partnership, including the real property located at 1333 Weber Street, Kitchener.

The application to appoint the Receiver was made by Genesis Mortgage Investment Corp. ("**GMIC**"), which is a secured first mortgage creditor of the Partnership. A copy of the Receivership Order and other materials filed in the receivership proceedings can be found on the Receiver's case website (the "**Website**") at <https://www.ksvadvisory.com/experience/case/1776411ontario>.

Sale Process Update

Pursuant to an Order dated December 12, 2023, the Court approved a sale process for the Project, including the retention of CBRE Limited as listing agent.

For the reasons that are set out in the Receiver's second report to Court (the "**Second Report**", a copy of which is posted on the Website), the Receiver will be seeking Court approval at 11:00 am on October 8, 2024, of an agreement of purchase and sale for the Project and certain related assets (the "**Transaction**"), made between the Receiver, as vendor, and a purchase group consisting of GMIC, Elm Acquisitions Corp. and Dorr Capital Corporation (collectively, the "**Purchasers**").

If approved by the Court, the Transaction is scheduled to close on or before October 30, 2024.

The hearing on October 8, 2024, will proceed virtually. The Zoom link for the hearing is as follows:

<https://ca01web.zoom.us/j/64172244590?pwd=OHg5VkFZNIRHb3FPdFcxaVY4dnRRZz09%20%27>

Termination of Tower B Pre-Sale Purchase Agreements

The Purchasers have advised the Receiver that they will not be assuming the Purchase Agreements for Tower B of the Project. Accordingly, as part of the relief the Receiver will be seeking on October 8, 2024, it will be requesting that the Court declare that the Purchase Agreements for Tower B of the Project are terminated contemporaneously with the closing of the Transaction.

Return of Condo Buyer Deposits

At the hearing on October 8, 2024, the Receiver will also be seeking Court approval of a deposit return protocol (the “**DRP**”) that will allow Tower B Condo Buyers to make claims for the return of the deposits that they paid pursuant to the Purchase Agreements (the “**Deposits**”), once their Purchase Agreements are terminated. The **DRP**, a copy of which will be posted on the Website before October 8, 2024, will set out in detail the steps that Condo Buyers will need to take in order to claim the return of the Deposits when their Purchase Agreements are terminated.

* * *

The Receiver will provide further updates as soon as possible.

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

Yours truly,

A handwritten signature in blue ink that reads "KSV Restructuring Inc." with a stylized, cursive script.

KSV RESTRUCTURING INC.

**SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
AND NOT IN ITS PERSONAL CAPACITY**



ksv restructuring inc.
220 Bay Street, Suite 1300
Toronto, Ontario, M5J 2W4
T +1 416 932 6266
F +1 416 932 6266
info@ksvadvisory.com
ksvadvisory.com

October 25, 2023

To: Condo unit purchasers (“Condo Buyers”) of the 1333 Weber Street Project known as “Elevate”

Re: Update No. 1 to Condo Buyers

Pursuant to an order (the “Receivership Order”) issued by the Ontario Superior Court of Justice on October 12, 2023, KSV Restructuring Inc. was appointed receiver and manager (the “Receiver”) of the property, assets and undertaking of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (together, the “Partnership”), including the real property located at 1333 Weber Street, Kitchener (the “Real Property”).

Copies of the Receivership Order and other materials filed in the receivership proceeding can be found on the Receiver’s case website at <https://www.ksvadvisory.com/experience/case/1776411ontario>.

Project Status

The purpose of this notice is to provide Condo Buyers with information regarding the Partnership and the condominium project it was marketing under the name “Elevate”.

The Receiver understands that construction of the first phase of the four-phase project is approximately 80% complete, while construction on the remaining phases is early stage. The Receiver is currently reviewing the status of the project and discussing next steps with the lenders that have advanced over \$60 million to date. At present, no action has been taken by the Receiver with respect to the project completion or any purchase agreements between the Partnership and the Condo Buyers.

Deposits

As no action has been taken by the Receiver with respect to any purchase agreements between the Partnership and the Condo Buyers, the purchase agreements remain in full force and effect. In the event that the purchase agreements are terminated by the Receiver, you will be notified of the termination and you will be provided with detailed information regarding the steps that you may take in order to recover your deposits, which would include information regarding the deposit protection provided by Tarion Warranty Corporation of up to \$20,000 and excess condominium deposit insurance provided to the Partnership by Westmount Guarantee Services Inc. There are no steps that you need to take in this regard at this time.

* * *

The Receiver will provide further updates as soon as possible.

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

Yours truly,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
AND NOT IN ITS PERSONAL CAPACITY**



September 27, 2024

To: Elevate Tower C condo unit purchasers ("Tower C Condo Buyers") with 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (together, the "Partnership")

Re: Update No. 2 to Condo Buyers

The purpose of this notice is to provide Tower C Condo Buyers with an update regarding the Partnership's condominium project that was marketed under the name "Elevate" (the "**Project**"), and the status of their pre-sale unit purchase agreements (the "**Purchase Agreements**").

As we previously advised in our letter to you dated October 25, 2023 (copy enclosed), pursuant to an Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated October 12, 2023 (the "**Receivership Order**"), KSV Restructuring Inc. was appointed receiver (the "**Receiver**"), of the property, assets and undertaking of the Partnership, including the real property located at 1333 Weber Street, Kitchener.

The application to appoint the Receiver was made by Genesis Mortgage Investment Corp. ("**GMIC**"), which is a secured first mortgage creditor of the Partnership. A copy of the Receivership Order and other materials filed in the receivership proceedings can be found on the Receiver's case website (the "**Website**") at <https://www.ksvadvisory.com/experience/case/1776411ontario>.

Sale Process Update

Pursuant to an Order dated December 12, 2023, the Court approved a sale process for the Project, including the retention of CBRE Limited as listing agent.

For the reasons that are set out in the Receiver's second report to Court (the "**Second Report**", a copy of which is posted on the Website), the Receiver will be seeking Court approval at 11:00 am on October 8, 2024, of an agreement of purchase and sale for the Project and certain related assets (the "**Transaction**"), made between the Receiver, as vendor, and a purchase group consisting of GMIC, Elm Acquisitions Corp. and Dorr Capital Corporation (collectively, the "**Purchasers**").

If approved by the Court, the Transaction is scheduled to close on or before October 30, 2024.

The hearing on October 8, 2024, will proceed virtually. The Zoom link for the hearing is as follows:

<https://ca01web.zoom.us/j/64172244590?pwd=OHg5VkFZNIRHb3FPdFcxaVY4dnRRZz09%20%27>

Tower C Pre-Sale Purchase Agreements

The Purchasers have advised the Receiver that they will be assuming the Purchase Agreements for Tower C of the Project. Accordingly, the Purchase Agreements will remain in full force and effect after the closing of the Transaction, and you will receive correspondence from the Purchasers following the Transaction regarding the Project.

* * *

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

Yours truly,

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

KSV RESTRUCTURING INC.

**SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
AND NOT IN ITS PERSONAL CAPACITY**



October 25, 2023

To: Condo unit purchasers (“Condo Buyers”) of the 1333 Weber Street Project known as “Elevate”

Re: Update No. 1 to Condo Buyers

Pursuant to an order (the “Receivership Order”) issued by the Ontario Superior Court of Justice on October 12, 2023, KSV Restructuring Inc. was appointed receiver and manager (the “Receiver”) of the property, assets and undertaking of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (together, the “Partnership”), including the real property located at 1333 Weber Street, Kitchener (the “Real Property”).

Copies of the Receivership Order and other materials filed in the receivership proceeding can be found on the Receiver’s case website at <https://www.ksvadvisory.com/experience/case/1776411ontario>.

Project Status

The purpose of this notice is to provide Condo Buyers with information regarding the Partnership and the condominium project it was marketing under the name “Elevate”.

The Receiver understands that construction of the first phase of the four-phase project is approximately 80% complete, while construction on the remaining phases is early stage. The Receiver is currently reviewing the status of the project and discussing next steps with the lenders that have advanced over \$60 million to date. At present, no action has been taken by the Receiver with respect to the project completion or any purchase agreements between the Partnership and the Condo Buyers.

Deposits

As no action has been taken by the Receiver with respect to any purchase agreements between the Partnership and the Condo Buyers, the purchase agreements remain in full force and effect. In the event that the purchase agreements are terminated by the Receiver, you will be notified of the termination and you will be provided with detailed information regarding the steps that you may take in order to recover your deposits, which would include information regarding the deposit protection provided by Tarion Warranty Corporation of up to \$20,000 and excess condominium deposit insurance provided to the Partnership by Westmount Guarantee Services Inc. There are no steps that you need to take in this regard at this time.

* * *

The Receiver will provide further updates as soon as possible.

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

Yours truly,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS COURT-APPOINTED RECEIVER AND MANAGER OF
1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP
AND NOT IN ITS PERSONAL CAPACITY**

APPENDIX “J”

SCHEDULE "B"**Tower A Sales Plan**

1. All existing Tower A purchasers will be offered to keep their units with a 24% purchase price increase.
2. Within the 4 month period following Closing, and in accordance with the new financing requirements, existing Tower A purchasers will be approached in stages so that at most 40 existing purchase agreements are terminated at any time.
3. Where an existing Tower A purchaser accepts the increased purchase price, he/she will be required to enter into a new agreement of purchase and sale, old purchase agreement will be cancelled with old deposits assigned and directed to the new owner in satisfaction of the new deposits pursuant to the terms of the new agreement of purchase and sale.
4. The new agreement of purchase and sale will include new dates, condominium documents, budgets, etc. and will not include any upgrades, incentives, promotions, etc. that may have been included or added to the old purchase agreement entered with the previous ownership group. Statutory rescission periods shall apply to all new agreements of purchase and sale.
5. If an existing Tower A purchaser does not agree to pay the increased purchase price, its agreement will be disclaimed pursuant to the Approval and Vesting Order (without the need to return to Court) and re-marketed, first to purchasers in Tower B and Tower C and then to the public.
6. Existing Tower B and C purchasers will have a right of first refusal to disclaimed Tower A units at the same price they contracted to pay for the equivalent unit in Tower B or Tower C, based on availability, provided that the purchase price increase for any such Tower A unit will not be more than 24% of the original purchase price.
7. Incentives of \$5,000-15,000 may be offered to unit purchasers, based on market standards, in each case at the discretion of the new owner.
8. If, for any unit, the Tower A, B and C purchasers have refused their offers then the unit will be re-marketed to the public

APPENDIX “K”

ABA Architects Inc. (“ABA Architects”)

1. ABA Architects registered its claim for lien in the amount of \$432,315 on August 29, 2023, as instrument no. WR1530052 (the “ABA Architects Claim for Lien”). The lien was perfected by registering a Certificate of Action on October 10, 2023, as instrument no. WR1538280.
2. The Partnership retained ABA Architects to perform architectural services for the design and construction of all four planned towers at the Real Property pursuant to a contract dated February 22, 2019 (the “ABA Architectural Contract”). The fee estimate in the ABA Architectural Contract was \$2,198,500, plus tax. The Partnership also retained ABA Architects to perform interior design services for the Project’s four towers pursuant to a contract dated October 16, 2019 (the “ABA Design Contract”).
3. ABA Architects produced copies of 57 invoices, and an account statement summarizing the balances outstanding. The invoices reference work additional to the original contracts, including a change to the specifications for the heat pumps, the design of an overhead door at the base of the parking garage ramp, and changes to certain balconies to address hydro clearance issues. The 57 invoices are all unpaid, and total \$432,315.03, inclusive of tax and without deduction for holdback. Counsel for ABA Architects confirmed that no other holdback is owing for any other invoices issued by ABA (that is, for prior invoices that were paid). Accordingly, ABA’s maximum holdback claim is \$43,231.50, inclusive of tax.

Aluminum Window Designs Ltd. (“Aluminum Window”)

1. Aluminum Window registered its claim for lien in the amount of \$1,662,600 on July 19, 2023, as instrument no. WR1521083 (the “Aluminium Window Claim for Lien”). The lien was perfected by registering a Certificate of Action on October 5, 2023, as instrument no. WR1537806.
2. The Partnership retained Aluminum Window pursuant to a CCDC 17 contract dated May 19, 2021 (the “Aluminum Window Contract”). The Aluminum Window Contract was to supply windows, doors and exterior glazing at Tower A. The total contract price was \$2,596,740.00 (tax included). Pursuant to a series of four change orders, the contract price was increased to \$2,640,900.40 (tax included).
3. Aluminum Window initially sent only three invoices for work done under the Aluminum Window Contract dated April 25, 2023 (\$413,354.06, inclusive of tax but not including holdback of \$40,644.45 plus tax), May 24, 2023 (\$213,484.57, inclusive of tax but not including holdback of \$20,991.60 plus tax), and June 22, 2023 (\$210,216.95, inclusive of tax but not including holdback of \$20,670.30 plus tax), and three invoices for the extra work; two dated May 30, 2023 (\$17,105.94, inclusive of tax not including holdback of \$1,682.00 plus tax, and \$13,912.56, inclusive of tax but not including holdback of \$1,368.00 plus tax), and one dated June 27, 2023 (\$6,508.80, inclusive of tax but not including holdback of \$640.00, plus tax).

4. The six Aluminum Window invoices total \$874,582.88, inclusive of tax but exclusive of holdback. The total holdback in the six invoices is \$97,175.88, inclusive of tax; however, the Aluminum Window Claim for lien was registered in the amount \$1,662,600.29.
5. The difference is set out in an accounting of all invoices issued and payments received by Aluminum Window since the inception of the Project. Aluminum Window's accounting sets out invoices totaling \$2,206,003.17, inclusive of tax, but exclusive of holdback, and payments received of \$788,514.35. Based on the accounting, Aluminum Window's maximum holdback claim is \$245,111.48, inclusive of tax.

Conestoga Roofing & Sheet Metal Ltd. ("Conestoga Roofing")

1. Conestoga Roofing registered its claim for lien in the amount of \$311,562 on July 10, 2023, as instrument no. WR1519072 (the "Conestoga Roofing Claim for Lien"). The lien was perfected by registered a Certificate of Action on October 5, 2023, as instrument no. WR1537739.
2. The Partnership retained Conestoga Roofing pursuant to a CCDC 17 contract dated April 30, 2021 (the "Conestoga Roofing Contract"). The Conestoga Roofing Contract was to supply roofing, waterproofing and related sheet metal work at Tower A. The total contract price was \$924,340.00, inclusive of tax. Pursuant to a change order dated July 5, 2022, the contract price was increased to \$950,753.75.
3. Conestoga Roofing provided an invoice summary and all of the invoices referenced therein. The summary lists 16 invoices from June 25, 2021, to December 31, 2022, totaling \$296,307.19 inclusive of tax but exclusive of holdback. The summary also states that payments were received totaling \$296,307.19. The summary also lists a 17th invoice in the amount of \$250,775.93 and holdback owing on all 17 invoices in the amount of \$60,787.01. The "total owing" in this summary is \$311,562.94.
4. Conestoga Roofing's accounting confirms that it has invoiced a total of \$607,870.13, inclusive of tax and without deduction for holdback, and although the first 16 invoices were paid, the holdback portion was not (and invoice 17 remains outstanding in full). Accordingly, Conestoga Roofing's maximum holdback claim is \$60,787.01, inclusive of tax.

Dean-Lane Contractors Inc. ("Dean Lane")

1. Dean Lane registered its claim for lien in the amount of \$2,157,415 on July 7, 2023, as instrument no. WR1518912 (the "Dean Lane Claim for Lien"). The lien was perfected by registering a Certificate of Action on September 27, 2023, as instrument no. WR1535931.
2. The Partnership retained Dean Lane pursuant to two CCDC 17 contracts. The first was dated January 18, 2021, to supply mechanical scope of work at Tower A (the "Dean Lane Tower A Contract"), with a total contract price of \$6,064,710.00. The second was dated June 14, 2022, to supply mechanical scope of work to Tower B (the "Dean Lane Tower B Contract"), with a total contract price of \$7,679,240.44.

3. Dean Lane's Statement of Claim issued in support of its lien claim includes not only a claim in respect of its lien, but also (among other things) a claim related to an alleged breach of a Forbearance Agreement dated April 27, 2023 (the "Forbearance Agreement"), which is described in more detail below in Section 5.0 under the heading "Litigation and Stay Order").
4. Among other things, Dean Lane states that it ought to have received \$2,173,426.30 in respect of its unpaid invoices outstanding as of that date. In fact, it received \$1,173,426.30.
5. Dean Lane's lien consists of the \$1,000,000 that it says was not paid to it in 2023 following the Forbearance Agreement, unpaid invoices for work performed after the Forbearance Agreement totaling \$608,163.96, exclusive of holdback, and three separate holdback invoices totaling \$549,251.98, inclusive of tax.
6. Dean Lane has provided backup invoices in the amount of \$5,602,196.89, inclusive of tax, which is the complete Dean Lane invoicing for the two contracts back to their inception. It has also confirmed payments received of \$3,444,050.94. All of Dean Lane's invoices deducted the applicable holdback, save for one in the amount of \$98,970.00, which was in respect of reimbursement for a bonding facility. In the circumstances, Dean Lane's maximum holdback claim is \$549,251.98, inclusive of tax.

Gillam Urban Constructors Inc. ("Gillam")

1. Gillam registered its initial claim for lien in the amount of \$1,748,531 on September 6, 2023, as instrument no. WR1532157. On October 3, 2023, Gillam registered additional claims for lien in the amount of \$2,467,563 and \$873,036 as instrument nos. WR1537429 and WR1537430, respectively (collectively with WR1532157, the "Gillam Claims for Lien"). Gillam's liens were perfected by registering three Certificates of Action on October 12, 2023, as instrument nos. WR1538821, WR1538822 and WR1538823.
2. Gillam's three separate liens relate to three separate contracts it had with the Partnership: one in respect of Tower A (the "Gillam Tower A Contract"); one in respect of Tower B (the "Gillam Tower B Contract"); and one in respect of Tower C (the "Gillam Tower C Contract").
3. Gillam's claim for lien in respect of the Gillam Tower A Contract was registered in the amount of \$1,748,531.95 (registered as instrument no. WR1532157 on September 6, 2023, the "Gillam Tower A Lien"). The Gillam Tower A Lien indicates a total contract price of \$10,318,493.80.
4. Gillam's accounting indicates that the total contract work performed/invoiced was \$7,205,481.56, inclusive of tax, and that it was paid \$5,456,949.61.
5. Based on Gillam's accounting for Tower A, and on the quantum of the outstanding invoices, Gillam was paid in full on its invoices prior to February, 2023. There was no holdback maintained on these payments.

6. Gillam has provided copies of five invoices dated from March 25, 2023, to July 25, 2023, which are all outstanding, and a copy of an invoice dated February 25, 2023, which is partially outstanding. In total, the amount Gillam claims as outstanding under these invoices is \$1,748,531.95, inclusive of tax and holdback.
7. Gillam's total holdback in respect of the Gillam Tower A Lien is \$174,853.20.
8. Gillam's claim for lien in respect of the Gillam Tower B Contract was registered in the amount of \$2,467,563.37 (registered as instrument no. WR1537429 on October 3, 2023, the "Gillam Tower B Lien"). The Gillam Tower B Lien indicates a total contract price of \$9,324,745.40. Gillam received no payment in respect of the Gillam Tower B Contract. Accordingly, the holdback portion of the Gillam Tower B Lien is \$246,756.33.
9. Gillam's claim for lien in respect of the Gillam Tower C Contract was registered in the amount of \$873,036.05 (registered as instrument no. WR1537430 on October 3, 2023, the "Gillam Tower C Lien"). The Gillam Tower C Lien indicates a total contract price of \$9,364,348.69. Gillam received no payment in respect of the Gillam Tower C Contract. Accordingly, the holdback portion of the Gillam Tower B Lien is \$87,303.61.
10. In the aggregate, Gillam's maximum holdback claim is \$508,913.14, inclusive of tax. Gillam's entitlement to be paid its holdback is subject to the claim of its subtrade Matthews Equipment, discussed below.

Matthews Equipment Limited o/a Herc Rentals ("Matthews Equipment")

1. Matthews Equipment registered its claim for lien in the amount of \$85,018.08 (instrument no. WR1527801 on August 17, 2023, the "Matthews Equipment Claim for Lien"). The Matthews Equipment Claim for Lien alleges a total contract amount of \$85,018.08, inclusive of tax and holdback. Matthews Equipment did not register its own Certificate of Action.
2. In the Matthews Equipment Claim for Lien, Matthews Equipment alleges its contract was with Gillam, not with the owner directly. Matthews Equipment's invoicing confirms this contractual arrangement, and Matthews Equipment advised that on or about December 22, 2023, it received a partial payment of \$58,600.45 from Gillam. Accordingly, Matthews Equipment's claim is reduced to \$26,417.63. The balance of Matthews Equipment's lien ought to be paid out in full from the holdback to which Gillam is entitled.
3. The Receiver's position is that this lien does not entitle Matthews Equipment to a separate holdback priority claim, but rather its claim is subsumed in Gillam's lien. Accordingly, Matthews is entitled to payment out of the holdback otherwise payable to Gillam.

Gold Star Drywall Services Inc. ("Gold Star Drywall")

1. Gold Star Drywall registered its claim for lien in the amount of \$787,259 on July 6, 2023, as instrument no. WR1518428 (the "Gold Star Drywall Claim for Lien"). The

lien was perfected by registering a Certificate of Action on October 12, 2023, as instrument no. WR1538754.

2. The Partnership retained Gold Star Drywall pursuant to a CCDC 17 contract dated April 1, 2021 (the "Gold Star Drywall Contract"). The Gold Star Drywall Contract was to supply drywall services at Tower A. The total contract price was \$3,699,281.00.
3. Gold Star Drywall has produced five invoices that were paid (save for holdback), dated from September 13, 2022, to January 20, 2023. The holdback in these paid invoices is \$93,629.88, inclusive of tax. Gold Star has then produced six invoices it says were unpaid, dated from February 24, 2023, to July 4, 2023. The invoices total \$621,617.52, exclusive of holdback, but inclusive of tax. The holdback in these six invoices totals \$69,068.63 (inclusive of tax).
4. Gold Star Drywall then issued a final holdback invoice dated July 6, 2023, seeking holdback of \$165,642.13, inclusive of tax. However, the total holdback in the earlier invoices it produced is only \$162,697.51, inclusive of tax. The difference between the holdback claimed in the holdback invoice, and the total of the holdback in the various invoices, relates to approximately \$26,050.00 worth of work that was done and should have been billed in July, 2023, but was not due to inadvertence. Gold Star Drywall's maximum holdback claim is \$165,642.13, inclusive of tax.

Greentech Sealants Inc. ("Greentech Sealants")

1. Greentech Sealants registered its claim for lien in the amount of \$220,190 on July 20, 2023, as instrument no. WR1521506 (the "Greentech Sealants Claim for Lien"). Greentech Sealants did not issue its own Statement of Claim or Certificate of Action.
2. The Partnership retained Greentech Sealants pursuant to a CCDC 17 contract dated April 21, 2022 (the "Greentech Sealants Contract"). The Greentech Sealants Contract was to supply firestopping and sealant applications at Tower A. The total contract price was \$465,323.54.
3. Greentech Sealants has produced nine invoices dated from November 1, 2022, to March 23, 2023, totaling \$440,640.22 inclusive of tax, but exclusive of holdback. It has also produced an accounting showing that four of the nine invoices were paid (total payment of \$220,449.83).
4. The holdback on the nine invoices totals \$43,327.45, exclusive of tax. With tax added in, Greentech Sealants' maximum holdback claim is \$48,960.02.

O'Connor Electric Ltd. ("O'Connor Electric")

1. O'Connor Electric registered an initial claim for lien in the amount of \$344,955 on July 25, 2023, as instrument no. WR1522297. On September 12, 2023, O'Connor Electric registered a second claim for lien in the amount of \$12,555 as instrument no. WR1533262 (collectively, the "O'Connor Electric Claims for Lien"). The liens were perfected by registering a Certificate of Action on September 27, 2023, as instrument no. WR1536124.

2. The Partnership retained O'Connor Electric pursuant to a CCDC 17 contract dated January 18, 2021 (the "O'Connor Electric Contract"). The O'Connor Electric Contract was to supply all electrical work at Tower A. The total contract price was \$2,813,700.00.
3. O'Connor Electric has produced 19 unpaid invoices variously dated from March 31, 2023, to July 31, 2023, and totaling \$344,955.55, inclusive of tax and holdback. The holdback is in the amount of \$34,495.53.
4. O'Connor Electric also alleges it is owed a separate amount for the supply of temporary power to the Project. It issued two invoices dated September 12, 2023, in the total amount of \$12,555.54, inclusive of tax and holdback. The holdback on these invoices is \$1,255.55.
5. O'Connor Electric does not appear to be entitled to a separate lien for the supply of temporary power. The O'Connor Electric Contract requires O'Connor Electric to supply temporary power as part of its scope of work and contract price. Based on the material provided to the Receiver, here is no separate agreement with the Partnership for the supply of temporary power. The lien (and thus the holdback claim) for temporary power would be subsumed in its first lien, and cannot be claimed separately. Accordingly, O'Connor Electric's maximum holdback claim is \$34,495.53.

Oxford Builders Supplies Inc. ("Oxford")

1. Oxford registered three claims for lien in the amounts of \$135,600, \$66,912 and \$364,425 on August 3, 2023, as instrument nos. WR1525011, WR1525014 and WR152022, respectively (the "Initial Oxford Claims for Lien"). Additionally, on August 29, 2023, Oxford registered two additional claims for lien in the amounts of \$45,878 and \$143,133 as instrument nos. WR1530175 and WR1530179 (collectively with the Initial Oxford Claims for Lien, the "Oxford Claims for Lien"). The liens were perfected by registering a Certificate of Action on October 4, 2023, as instrument no. WR1537590.
2. The Partnership rented two tower cranes and a hoist from Oxford. The first tower crane lease was dated September 9, 2021, and the second was dated January 16, 2022. Based on their dates, the first lease was in respect of Tower A (the "Oxford Tower A Crane Lease"), and the second in respect of Tower B (the "Oxford Tower B Crane Lease"). The hoist lease is dated March 25, 2022, and is in respect of the exterior elevating device on Tower A (the "Oxford Hoist Lease").
3. The five Oxford Claims for Lien consist of two liens for the Oxford Tower A Crane Lease, two liens for the Oxford Hoist Lease, and one lien for the Oxford Tower B Crane Lease. For the Oxford Tower A Crane Lease and Oxford Hoist Lease, the first lien for each piece of equipment is in respect of lease payments due (but not paid) up until mid-July, 2023, and the second lien is in respect of the demobilization and removal costs. The lien for the Oxford Tower B Crane Lease combines the rental costs with the demobilization and removal costs.

4. Eight invoices were issued from March 1, 2023, to August 25, 2023, in respect of the Oxford Tower A Crane Lease totaling \$278,733.34. 11 invoices were issued from February 28, 2023, to August 25, 2023, in respect of the Oxford Hoist Lease totaling \$112,790.95. Seven invoices were issued from March 1, 2023, to July 11, 2023, in respect of the Oxford Tower B Crane Lease totaling \$364,435.00.
5. No holdback is deducted from the invoices in respect of any of the leases, and the invoices issued and paid prior to February, 2023 were paid in full, without deduction for holdback. In the circumstances, Oxford's maximum holdback claim is \$75,595.93, inclusive of tax, being \$27,873.33 for the Oxford Tower A Crane Lease invoices, \$11,279.10 for the Oxford Hoist Lease invoices, and \$36,443.50 for the Oxford Tower B Crane lease invoices.

Pearson Metal Inc. ("Pearson Metal")

1. The Receiver's position is that only part of Pearson Metal's lien is valid.
2. Pearson Metal registered its claim for lien in the amount of \$647,217 on August 9, 2023, as instrument no. WR1525872 (the "Pearson Metal Claim for Lien"). The Lien was perfected by registering a Certificate of Action on September 20, 2024, as instrument no. WR1534716.
3. The Partnership retained Pearson Metal pursuant to a CCDC 17 contract dated October 5, 2021 (the "Pearson Metal Tower A Contract") to supply and install metal at Tower A. The total amount of that contract was \$870,103.39 (inclusive of tax).
4. With respect to the Pearson Metal Tower A Contract, Pearson Metal has produced a holdback summary setting out the 14 invoices it issued related to Tower A dated from October 25, 2021, to June 25, 2023, and which indicates the total holdback for the Pearson Metal Tower A Contract is \$91,868.91. Pearson Metal has also produced the invoices themselves, which confirm that the holdback number is exclusive of tax. With tax added in, the total holdback claim for the Pearson Metal Tower A Contract is \$103,811.87.
5. Pearson Metal has also produced an invoice for interest (dated April 25, 2023, in the amount of \$65,567.12), but interest is not properly the subject of a lien claim.
6. Pearson Metal produced its contract for Tower B dated July 5, 2022 (the "Pearson Metal Tower B Contract"), and its contract for Tower C dated July 5, 2022 (the "Pearson Metal Tower C Contract").
7. Pearson Metal has also produced invoices for Tower B (#1463 dated October 19, 2022 in the amount of \$220,627.53, which includes taxes, but has no deduction for holdback) and Tower C (#1464 also dated October 19, 2022 in the amount of \$200,187.51, and also includes taxes but has no deduction for holdback). However, both invoices indicate they are in respect of the supply and installation of, among other things, metal canopies, an elevator hoist, divider beams, pit latter, framing for interior stairs and platforms, handrails and guardrails.

8. This purported supply does not accord with the status of construction of Towers B and C, neither of which progressed beyond excavation and installation of a concrete slab. The relevant caselaw interpreting s.1(2) of the *Construction Act*, including [*Melloul-Blamey v Schleiss Development*](#), (2001) 15 C.L.R. (3d) 10 (Ont. S.C.J. – Justice Scott), and [*1508270 Ontario Ltd. v. Laudervest Developments*](#) [2007] O.J. No. 5434 (Ont. S.C.J. – Master Albert), confirms that material not supplied to site cannot be the basis for a claim for lien. Accordingly, Pearson Metal cannot maintain a lien for the work set out in its invoices in respect of Tower B and Tower C.
9. In the circumstances, Pearson Metal’s lien claim must be reduced from \$647,217 to \$160,834.85, and its maximum holdback claim is \$103,811.87, inclusive of tax.

Stubbe’s Precast Inc. (“Stubbe’s Precast”)

1. Stubbe’s Precast registered its claim for lien in the amount of \$1,374,127 on July 25, 2023, as instrument no. WR1522293 (the “Stubbe’s Precast Claim for Lien”). The lien was perfected by registering a Certificate of Action on September 7, 2023, as instrument no. WR1532406.
2. The Partnership retained Stubbe’s Precast pursuant to a CCDC 17 contract dated February 14, 2021 (the “Stubbe’s Precast Contract”). The Stubbe’s Precast Contract was to supply precast concrete (including engineering and design) at Tower A. The total contract price was \$10,901,110.00.
3. Stubbe’s Precast has produced 34 invoices, dated from February 9, 2020, to August 15, 2023 (the invoices up to mid-February, 2021, the date the Stubbe’s Precast Contract was signed, all reference engineering services supplied by Stubbe’s Precast). The 29 invoices up to and including February 21, 2023, in the total amount of \$9,002,890.61 (inclusive of tax, exclusive of holdback) were paid in full (save for the holdback). The five subsequent invoices in the amount of \$438,126.01, inclusive of tax but exclusive of holdback, were not paid.
4. Stubbe’s Precast’s maximum holdback claim is therefore \$936,001.85, inclusive of tax.

Troy Life & Fire Safety Ltd. (“Troy Life”)

5. Troy Life registered its claim for lien in the amount of \$184,715 on December 15, 2023 as instrument no. WR1551094 (the “Troy Life Claim for Lien”). The lien was perfected by registering a Certificate of Action on March 13, 2024, as instrument no. WR1562497.
6. The Partnership retained Troy Life pursuant to a CCDC 17 contract dated March 16, 2021 (the “Troy Life Contract”). The Troy Life Contract was to supply the fire protection at Tower A. The total contract price was \$868,851.35.
7. Troy Life produced an “open invoice statement” for the Troy Life Contract setting out four unpaid invoices variously dated from February 21, 2023, to July 17, 2023 in the total amount of \$121,704.78 (exclusive of holdback), plus a holdback invoice dated

November 22, 2023, in the amount of \$63,010.39. To quantify its holdback claim, Troy Life produced copies of the eight paid and partially paid invoices dated from November 30, 2021, to February 21, 2023 (the February 21, 2023 invoice was partially paid).

8. Troy Life's invoicing and accounting confirm its maximum holdback claim is \$63,919.39, inclusive of tax.

APPENDIX “L”

EXCLUSIVE LISTING AGREEMENT

THIS AGREEMENT is dated as of the 22th day of March, 2019.

BETWEEN:

1776411 Ontario Ltd.
(herein called the "Developer")

-and-

REGO REALTY INC.
(herein called the "Broker")

WHEREAS:

- A. The Developer desires to sell all of the condominium units (individually a "Unit" and collectively, the "Units") in relation to the condominium project being developed by the Developer on the property known municipally as 1333 Weber St., Kitchener comprising four buildings containing approximately 544 Units, or such other number of buildings and Units as may be constructed by the Developer on the said property (the "Project").
- B. The Broker is licensed under the pursuant to the Real Estate and Business Brokers Act, R.S.O.2002. as amended and may in accordance therewith solicit offers for the purchase of property in the Province of Ontario.
- C. The Broker, at the request of the Developer, has agreed to act as its Exclusive Broker; and
- D. The parties desire to enter into this Exclusive Listing Agreement (the "Agreement") in order to set out the terms and conditions of the services contemplated herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that is consideration of the premises and the mutual covenants hereinafter contained, both the Vendor and the Broker hereto hereby covenant and agree as follows:

SCOPE

- 1. The Developer hereby grants to the Broker, and the Broker hereby accepts from the Developer, the exclusive listing rights for the purpose of selling all the Units in the Project save and except as otherwise provided. The Broker hereby acknowledges and agrees to act on behalf of the Developer as its Exclusive Broker. In this regard, the Developer hereby acknowledges and agrees to refer to the Broker any and all (i) enquiries



regarding the purchase of Units that it receives from any source whatsoever, including any other realtor, and (ii) offers to purchase the Units. The Broker shall, at all times during the Term, be and remain an independent contractor, and shall retain or utilize the Sales Agents (as hereinafter defined) for the purpose of selling the Units. . The Developer hereby covenants and agrees not to employ or solicit any of the Sales Agents for its own use, whether in connection with the Project or any of the Developer's and/or its affiliates(s) other condominium projects, for a period of one (1) year following the termination of this Agreement for any reason whatsoever.

The Developer has the right to reserve/hold units to a maximum of 30 units at all times and in its sole discretion without being charged or having to pay any commission whatsoever to the Broker.

TERM

2. The term of the Agreement shall commence on the date this Agreement is signed by both Parties and continue thereafter until the earlier of the date all of the Units in the Project are sold, or this Agreement is terminated in accordance with the terms herein.

TERMINATION OF AGREEMENT

3. The Developer and the Broker hereby acknowledge and agree that neither party hereto shall terminate, or have the right to terminate, this Agreement during the six (6) month period after the date on which the Broker has finalized its marketing program for the sales launch of the Project (the "Sales Commencement Date") (the said date six months after the Sales Commencement Date hereinafter the "Termination Threshold Date"). In the event, either party hereto wishes to terminate this Agreement at any time after the Termination Threshold Date, the terminating party shall provide at least thirty (30) days' prior written Notice to the non-terminating party. Provided such termination shall not prejudice the right of the Broker to receive any commissions which may be owing to the Broker as provided for hereunder.

SALE PRICE

4. The sale price allocated to each Unit (the "Sale Price") shall be determined by the Developer in consultation with the Broker. For the purpose hereof, the Developer and the Broker hereby acknowledge and agree that the Sale Price shall (i) exclude the costs of any extras and upgrades purchased, ordered, or chosen by the Purchasers in respect of their respective Units, and (ii) include, as applicable, the purchase price payable by the Purchaser for any ancillary units such as parking and/or locker.

TERM OF SALE

5. Unless the Developer provides its written consent to the contrary, the Broker will sell the Units, including parking space(s), bicycle storage space(s) and locker space(s) applicable thereto, without any set-off,

W

compensation, deduction, or abatement whatsoever to the Sale Price originally allocated to each such Unit. For the purposes hereof, a "Standard Transaction" is a transaction respecting a Unit in which the Purchaser is prepared to execute, or has executed and submitted an agreement of purchase and sale which is unamended except for those standard amendments which have been pre-approved in writing by the Developer. For purpose of clarity and as an example only, standard amendments may include items such as fee caps at the rate previously determined by the Developer, a one (1) time assignment of a Unit by the applicable Purchaser included in the purchases price without additional charge as pre-approved by the Developer, and/or (1) locker space included in the purchase price without additional charge as pre-approved by the Developer. For further clarity, the Parties acknowledge and agree that the Broker may accept and rely upon an email from the Developer for pre-approval of any standard amendment.

PAYMENT OF COMMISSION

6. Subject to paragraph 7 a., the Developer agrees to pay the Broker a base commission defined as a percentage the "total selling price" on all residential condominium Units sold by the Broker either through the on-site salespersons utilized by the Broker or through cooperating broker firms upon the title to such Units being transferred to the purchasers (Final Closing). Further, the Developer shall pay the commission which may be owing to any cooperating broker firm, in addition to the base commission owing to the Broker, in relation to any agreement of purchase and sale accepted by the Developer having a purchaser represented by such cooperating broker, subject to the provisions of paragraph 16 h hereof.
 - a. The "total selling price" is defined as the purchase price that appears in the Agreement of Purchase and Sale net of all GST/HST and Rebates applicable thereto. The Developer agrees to pay a base commission listing portion equal to 1.50% of the "total selling price" (as defined above). The Developer agrees to pay a co-operating fee equal to 3.00% for Rego Realty Sales Representatives. The Vendor further agrees to pay a co-operating fee equal to 4.00% for out-side Sales Representatives.
 - b. In the event, this Agreement is terminated in accordance with the terms herein, the Developer agrees to pay fifty (50%) of the base commission, plus HST, to the Broker for any sales which are accepted at any time during the sixty days (60) after the delivery of the termination notice and that:
 - i. Firm up; and
 - ii. For which, the Broker has provided the necessary paperwork to complete the same and, provided that such sales were made to purchasers who had already made contact with and/or registered with the Broker or the Sales Office for the Project.



7. Listing Commission:

The base commissions referred to in paragraphs 6(a) and 6(b) shall be earned and payable by the Developer to the Broker on the following basis:

- a. Fifty percent (50%) of the commission shall be due and payable to the Broker upon firm up of the Agreement of Purchase and Sale for a Unit accepted by the Developer.
- b. The balance of the commission, fifty percent (50%) will be due and payable upon Final Closing of the Unit. Should a Unit in the Project subject to an Agreement of Purchase and sale which has firmed up not proceed to Final Closing for any reason, the first installment of the commission already paid to the Broker shall be deemed a fee and shall be retained by the Broker and considered non-refundable, and the final balance of the commission, shall not accrue or be deemed payable by the Developer to the Broker except as set out in paragraphs 8 (a) and (b).

Co-operating Commission:

- c. Fifty percent (50%) of the commission shall be due and payable to the Broker 30 days following; the rescission period (firm agreement) and the waiving of any Purchaser's condition; deposits totaling no less than \$5,000 have been received and cleared by the Vendor's financial institution; receipt by the Vendor of all required posted-dated deposit cheques; and mortgage commitment (containing a 36 month capped rate) have been received as per the Agreement of Purchase and Sale.
 - d. Fifty percent (50%) of the commission payable 30 days after the final closing of the Unit per the terms of the Agreement of Purchase and Sale except as set out in paragraphs 8 (a) and (b).
8. (a) If the Project does not proceed for any reason, the commission, as provided in paragraph 7 (a) payable to the date such decision is made and notice thereof is given in writing to the Broker, shall be deemed to be a fee and shall be retained by the Broker and will be considered non-refundable and no further commissions shall accrue and be payable from the date such notice is given by the Developer to the Broker.
- (b) Should the purchaser under an Agreement of Purchase and Sale terminate the Agreement of Purchase and sale due to the extensions on closing beyond the Tarion New Home Warranty limits then the first installment of the commission paid to the Broker will be deemed to be a fee payable by the Developer to the Broker and shall be retained by the Broker and will be considered non-refundable by the Broker.
- (c) Should a sold Unit in the Project not proceed to Final Closing and the Developer retains deposits as liquidated damages then the first installment of the commission paid to the Broker will be deemed to be a fee by the Developer and will be retained by the Broker and considered non-refundable by

the Broker. To the extent that the Broker has not been paid such first installment or otherwise received sufficient Advances equal to the amount of such first installment, and provided the retained deposits exceed the first installment portion of the commission not otherwise paid, the Developer shall pay such first installment of the base commission to the Broker from the forfeited deposits.

PAYMENT OF ADVANCES

9. Notwithstanding any other provision of this Agreement to the contrary, the Developer hereby acknowledges and agrees that the Broker will draw funds from the Developer per month as advances against base commissions payable to the Broker to assist the Broker in the proposed selling of the Units prior to the receipt by the Broker of any portion of the first instalment of the base commission. In this regard, the Developer hereby agrees to advance to the Broker such funds (the "Advances") in order to assist the Broker with the proposed selling of Units. The Advances shall be paid by the Developer to the Broker in monthly instalments of Five Thousand (\$5,000) Dollars plus HST, such Advances commencing on the date of this Agreement and shall be paid thereafter on the same day of each and every successive month, ending on the date on which all the Units have been sold (the "Advance Period").

DEDUCTION OF ADVANCES

10. The aggregate amount of the Advances (collectively, the "Total Advance") paid by the Developer to the Broker during the Advance Period shall be deducted against the aggregate of the first installment and the aggregate of the second installment of the base commissions of all the Units such that Fifty (50%) percent of the Total Advance shall be deducted against the aggregate of the first instalment and the aggregate of the second instalment for all the Units such that Fifty (50%) percent of the Total Advance shall be deducted against the aggregate of the first instalment and Fifty (50%) percent of the Total Advance shall be deducted against the aggregate of the second instalment. For purpose of clarity and as an example only, if the Total Advance paid to the Broker totals Fifty Thousand (\$50,000) Dollars, Twenty-Five Thousand (\$25,000) Dollars shall be deducted against the aggregate of the first installment and Twenty-Five Thousand (\$25,000) Dollars shall be deducted against the aggregate of the second instalment payable to the Broker hereunder.

GOODS AND SERVICES TAXES, HARMONIZED SALES TAXES

11. All fees, commissions and any other amounts payable for services rendered by the Broker hereunder are exclusive of any amounts which the Developer is required to pay, and shall pay to the Broker, as a result of any Good and Services Tax and/or Harmonized Sales Taxes now in force or any substitute legislation.

wh

12. The Developer shall pay the Listing Broker within thirty (30) days of receipt of any invoices.

TERMINATION OF PURCHASE AGREEMENTS

13. In the event (i) a firm up Purchase Agreement is terminated by the Developer due to applicable Purchaser's default, or (ii) a firm up Purchase Agreement is terminated by the Developer (the "Terminated Purchase Agreement") for any reason other than the applicable Purchaser's default, the Broker shall be entitled to retain the first instalment(s) of Commission and Advances it has received prior to the applicable termination aforesaid. Provided that in the event that a satisfactory Purchaser is thereafter secured by the Broker in connection with the Unit subject to the Terminated Purchase Agreement, the Broker shall be entitled to any Commissions previously paid and the balance commission would not be payable in accordance with the provisions set out in Section 6 hereof. In the event the Unit subject to the Terminated Purchase Agreement is sold to a new Purchaser at a (i) higher Sale Price than the original Sale Price for such Unit, the balance of the Commission not yet paid to the Broker shall be adjusted upward based on the new Sale Price and such adjustment shall be paid accordingly on a pro rata basis in accordance with the remaining payment(s) pursuant to Section 6 hereof, or (ii) lower Sale Price than the original Sale Price for such Unit, the balance of the Commission not yet paid to the Broker shall be adjusted downward based on the lower Sale Price and such adjustment shall be paid accordingly on a pro rata basis in accordance with the remaining payments) pursuant to Section 6 hereof.

PROJECT CANCELLATION

14. Subject to the provisions of this Agreement, in the event, the Project is cancelled by the Developer for any reason whatsoever, the Developer hereby covenants and agrees to pay the Broker any unpaid commission in accordance with the provisions of this Agreement. The Developer hereby acknowledges and agrees that the payments to the Broker of any unpaid commission in such instance is not to be construed or interpreted as a forfeiture or waiver of any of the Brokers' rights hereunder or at law.

BROKER'S RESPONSIBILITIES

15. The Broker shall be required to perform services pursuant to this Agreement including but not limited to the following;
- a. Comply with all ethical standards as may be prescribed from time to time by the Real Estate Council of Ontario;
 - b. Review and comment on product design respecting the Project;
 - c. Provide ongoing research and support to the Developer respecting the sale of the Project;
 - d. Collaborate with the Developer to develop a marketing program for the launching of the Project;
 - e. Work with the Developer in the recommendation of other consultants, if required;
 - f. Work with the appointed marketing firm, if any, to establish an appropriate and cost-effective advertising approach and marketing plan;
 - g. On-going refinement of the initial marketing strategy including specific recommendations for general qualified traffic;
 - h. Review of all marketing and advertising material in consultation with the Developer including advertising materials (the brochure, floor plan hand-outs), on-site signage, off-site signage, A-



frames, direct mail, newspaper ads, television and magazine schedules, electronic media and including media plans;

- i. The institution of a systemized reporting format, customized by the Developer to monitor levels and patterns of traffic, sales volume, closing ratios, sales revenues, advertising results, prospective purchasers and other matters affecting the marketing and sales of units in the Development, such reporting to be on a timely basis as required agreed to by the Developer; moreover the Broker shall be responsible for the maintenance of all sales reports provided by the Developer;
- j. Implement reporting format to monitor levels and patterns of traffic, sales volume, closing ratios, sales revenues, advertising results, prospective purchasers and other matters affecting the marketing and sales of units in the Development, such reporting to be on a timely basis as required and agreed to by the Developer; moreover the Broker shall be responsible for the maintenance of all sales reports provided by the Developer;
- k. The maintenance of all records of prospective buyers and sales activity for the Development;
- l. To the best of the Broker's ability all necessary tracking and follow up with purchasers in respect of missing information including purchasers' solicitors, delinquent payments, etc;
- m. Provide a local market report each quarter outlining current trends and conditions of the overall market as measured against the Developer's performance during the period;
- n. Solicit offers from potential purchasers for the Units;
- o. Staff each sales centre with qualified sales (a) agents (individually a "Sales **Agent**" and collectively, the "Sales **Agents**"), managers, accountants, and/or administrative personnel to the extent that it enables the Broker to (i) carry out an effective and comprehensive campaign respecting the proposed sale of Units, and (ii) manage the sale of the Units and provide record keeping and accounting services in relation thereto. Prior to retaining additional sales centre support staff, the Broker shall obtain the Developer's prior written consent, which consent shall not be unreasonably withheld. Except as otherwise provided by Section 16 (g) hereof, the Broker shall be solely responsible for the costs and expenses related to staffing the sales centre(s), including the costs of hiring and employing the Sales Agents.
- p. Use commercially reasonable efforts to (i) secure satisfactory Purchasers for each Unit and (ii) verify the accuracy of the Purchaser's information contained in each Binding Purchase Agreement, together with any schedules and amendments thereto. The Broker shall also verify the terms, conditions, prices, and suite types applicable to each agreement of purchase and sale, prior to presenting the agreements for acceptance by the Developer.
- q. Attend bi-weekly sales meetings with the Developer should the Developer deem the Brokers' attendance to be necessary, provided the Developer shall provide reasonable prior notice to the Broker of such meetings.
- r. Provide sales updates to the Developer on a timeframe mutually agreed upon by the Broker and the Developer in writing

DEVELOPER RESPONSIBILITIES

16. The Developer hereby acknowledges and agrees that it shall be solely responsible for the following items including all costs and expenses relating to:

- a. The preparation of all requisite documents in connection with the purchase and sale of the Units (collectively, the "Sales Documents"). The Sales Documents shall include, without limitation, the Agreement of Purchase and Sale and applicable Disclosure Documents in accordance with the



provisions of the Act. The Developer hereby acknowledges and covenants that it is solely responsible for any errors and/or omissions contained in the Sales Documents;

- b. HST exigible in connection with the services provided by the Broker in the capacity of the Exclusive Broker;
- c. The advertising and promotion of the Units, including but not limited to the preparation of any promotional material and display for the Brokers' use, printing and ad spend;
- d. The provision and maintenance of all external sales centres and model suites;
- e. The provision and maintenance of all office equipment including, without limitation, computers and stationery supplies used by the Broker and the Brokers' employees and contractors, including the Sales Agents, in carrying out their respective obligations hereunder;
- f. The provision for a full-time site administrator for the sales centre(s);
- g. Any commission payable to co-brokers (outside co-brokers and Rego Realty co-brokers) contracted by the Brokers representing the sale of the Units. The Broker shall obtain the Developer's written consent prior to the contracting with any co-broker, which consent may not be arbitrarily withheld; and
- h. All Claims exerted against the Developer respecting any matter in relation to the Project, the Units and the Sales Documents including, without limitation, failure by the Developer to disclose to any Purchaser and (i) latent defect in the Units and (ii) environmental contamination of the Property. The Developer hereby agrees to indemnify, save and hold the Broker, and each of its directors, officers, shareholders and Sales Agents harmless from and against any Claims which may be made or brought against any of them directly or indirectly, arising out of or in connection with the foregoing.

CONFIDENTIAL INFORMATION

17. The Broker acknowledges that it will acquire information (the "Confidential Information") about matters which are confidential to the Developer, which Confidential Information is the exclusive property of the Developer, including but not limited to the following:
- a. List of present and prospective purchasers and their purchase requirements both in respect of the Development and any planned future developments of the Developer;
 - b. Pricing and sales policies and concepts, financial information, etc.
 - c. Marketing plans and forecasts; and
 - d. Sales activity within the Development and any planned future development

The Broker acknowledges that this Confidential Information is the property of the Developer and accordingly undertakes to treat all such Confidential Information as such and, subject to the Broker's right to disclose such Confidential Information to its legal and accounting advisers, not to disclose it to any third-party to use it for any purpose either during the term of this Agreement, except as may be necessary in the proper discharge of its duties, or after termination of this Agreement for any reason except with the prior written permission of the Developer. All notes, data, tapes, reference items, sketches, drawings, memoranda, records, electronic storage devices and other materials in any way relating to any of the Confidential

Information or the Developer's business produced by the Broker or coming into its possession by or through this Agreement shall belong exclusively to the Developer and the Broker agrees to turn over to the Vendor. Notwithstanding anything contained herein, Confidential Information shall not include any information generally available to the public or information which the Broker already had in its possession prior to the date hereof.

18. Disclosure of Third-parties

The Broker shall only disclose Personal Information to a third-party

- o If directed by the Developer, to affiliates of the Developer; and
- o If it complies with the privacy provisions as included in the Agreement of Purchase and Sale for the project only as necessary to perform this Agreement.

19. Return of Information Disclosed to Third-parties on Termination

The Broker agrees not to disclose Personal Information to any affiliated or non-affiliated third-party after the termination of the Agreement, and after termination, to return to the Developer all Personal Information in its possession or control.

ACCESS TO PERSONAL INFORMATION

20. "Personal Information" means information about an identifiable individual, who is or may become a customer of the Developer.

The Broker acknowledges that it may have access to information regarding customers of the Developer.

21. Privacy Obligations Under Personal/Information Protection and Electronic Documents Act.

The broker agrees, warrants and represents that it will comply with the requirements imposed by all applicable privacy laws, rules and regulations and has implemented and maintains all necessary safeguards appropriate to ensure the security, integrity and confidentiality of Personal Information it receives or accesses from the Developer.

22. Protection of Personal Information

The Broker shall receive and use Personal Information only for the purposes contained in this Exclusive Listing Agreement. The Broker agrees to treat Personal Information as confidential. The Broker will apply standards of protection for Personal Information that are necessary or required by applicable law and/or as may be required under the Developer's policies and processes in .

23. Processes to Maintain Confidentiality

The Broker agrees to inform its employees, representatives, and Broker of the contents and requirements of this Agreement and to maintain and implement procedures, processes, systems and security safeguards sufficient to ensure the confidentiality of Personal Information.

REPRESENTATION OF THE BROKER

24. The Broker hereby represents and warrants to the Developer that as of the date hereof and throughout the Term, the Broker is and shall continue to be a licensed real estate broker in good standing under the *Real Estate Business Brokers Act, 2002 (Ontario)*.

SURVIVAL OF DEVELOPER'S RIGHTS AND OBLIGATIONS

25. The obligations of the Developer hereunder respecting payments and indemnity shall survive the expiration of the Term of the earlier termination of this Agreement for any reason whatsoever.

INDEPENDENT LEGAL ADVICE

26. This Agreement sets forth all of the covenants, conditions, obligations and agreements between the Developer and the Broker. Except as otherwise provided in this Agreement, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the Developer or the Broker unless reduced to writing and agreed to by both parties. The Developer and the Broker hereby acknowledge and agree that (i) this Agreement supersedes, replaces and merges all previous or concurrent agreements, arrangements and discussions, whether oral, written, or otherwise, regarding the subject matter hereof, and (ii) no representations, inducements, or agreements which are not expressly set out herein have been made by either one of them or by anyone acting on each of their behalf.

NOTICES

27. Any notice, demand, approval, consent, information, agreement, offer, invoice, payment, request or other communication (each, a "Notice") to be given under or in connection with this Agreement shall be in writing and shall be given by personal delivery and/or e-mail, addressed as set out below or to such other address or e-mail address as may from time to time be communicated by one party to the other party by Notice:

- (a) If to the Developer: 1776411 Ontario Ltd.
645 Hidden Valley Rd
Kitchener, Ontario N2C 2S4

Attention: Werner Leuschner, President
E-mail: leuschner.werner@gmail.com

- (b) If to the Broker: Rego Realty Inc.



618 King Street, West
Kitchener, Ontario N2G 1C8

Attention: Cliff Rego
E-mail: cliff@regorealty.ca

Any Notice so given shall be deemed to have been received on the date of delivery, if delivered, and on the next Business Day after transmission, if transmitted by electronic transmission. Any party may from time to time by Notice is given as provided above change its address for the service of Notice.

ASSIGNMENT

28. Neither party to this Agreement may assign, directly or indirectly, its rights and obligations hereunder without the prior written consent of the other party, which consent may be arbitrarily withheld.

GOVERNING LAW

29. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable hereto.

BUSINESS DAY

30. In this Agreement, Business Day shall mean any day other than a Saturday, Sunday or statutory holiday in the Province of Ontario.

TIME

31. Time shall be strictly of the essence herein.

ENUREMENT

32. This Agreement shall enure to the benefit of, and be binding upon the parties hereto and their respective successors and assigns.

CURRENCY AND PAYMENT OBLIGATION

33. Except as otherwise expressly provided in this Agreement, all dollar amounts referred to in this Agreement are stated in Canadian Dollars and any payment contemplated by this Agreement shall be made by certified cheque, bank draft, direct deposit, or wire transfer or any other method that provides immediately available funds.



COUNTERPARTS AND ORIGINALS

34. This Agreement may be executed in counterparts and transmitted by email each of which, when so executed and transmitted, shall be deemed to be an original and such counterpart together shall constitute one and the same instrument, and notwithstanding their date of execution shall be deemed to bear date as of the date first above written.

[Signature page follows immediately]

IN WITNESS WHEREOF the parties have duly executed this Agreement as of the date first above

1776411 Onatrio Ltd.

Per:



Name: Werner Leuschner

Title: President

I/We have the authority to bind the Corporation

Rego Realty Inc.

Per:



Name: Cliff Rego

Title: President

I/We have the authority to bind the Corporation

APPENDIX “M”



Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

B E T W E E N:

DEAN-LANE CONTRACTORS INC.

Plaintiff

and

**1776411 ONTARIO LTD. AS GENERAL PARTNER OF
1333 WEBER STREET KITCHENER LP,
WESTMOUNT GUARANTEE SERVICES INC., CMLS FINANCIAL LTD.,
COMPUTERSHARE TRUST COMPANY OF CANADA,
GENESIS MORTGAGE INVESTMENT CORP. and CORFINANCIAL CORP.**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANTS

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

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

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

-2-

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

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,500 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400 for costs and have the costs assessed by the Court.

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

Date September 27, 2023 Issued by _____
Local Registrar

Address of court office: Superior Court of Justice
85 Frederick Street
Kitchener, Ontario N2H 0A7

TO: **1776411 Ontario Ltd. as General Partner for**
1333 Weber Street Kitchener LP
8-258 Edgewater Crescent
Kitchener, Ontario
N2A 4M2

AND TO: **Westmount Guarantee Services Inc.**
600 Cochrane Drive
Suite 205
Markham, ON
L3R 5K3

AND TO: **CMLS Financial Ltd.**
700 West Georgia Street, 2700
Vancouver, British Columbia
V7Y 1B8

-3-

AND TO: **Computershare Trust Company of Canada**
100 University Avenue
11th Floor
Toronto, Ontario
M5J 2Y1

AND TO: **Genesis Mortgage Investment Corp.**
6345 197 Street
Langley, British Columbia
V2Y 1K8

AND TO: **Corfinancial Corp.**
77 Ingram Drive, Suite 201
North York, Ontario
M6M 2L7

-4-

CLAIM

1. THE PLAINTIFF CLAIMS:

- (a) payment of the sum of \$2,157,415.95, inclusive of HST, with respect to the Lien, as defined herein, against the Defendants, or any of them;
- (b) additional damages in the amount of \$3,006,160.01 for the Loss of Profit Claim, as defined herein, as against the Defendant, 1776411 Ontario Ltd. as General Partner for 1333 Weber Street Kitchener LP;
- (c) additional damages in the amount of \$636,585.50 for the Supplier Equipment Costs, as defined herein;
- (d) damages in the amount of \$1,050,000.00 as against the Defendant, Corfinancial Corp., for breach of the CorFinancial Undertaking, as defined herein;
- (e) damages in the amount of \$2,157,415.95 as against the Defendant, CMLS Financial Ltd., for breach of the May 5th Agreement, as defined herein, and negligent misrepresentation;
- (f) alternatively, damages in the amount of \$2,157,415.95 inclusive of HST, on the basis of *quantum meruit* or unjust enrichment, against the Defendants, or any of them;
- (g) payment of pre-judgment interest against the Defendants, or any of them, on unpaid amounts as they become due under the terms of the Contract, as defined herein, at

-5-

the rate of 2% per annum above the Royal Bank of Canada prime rate for business loans for the first 60 days, and 4% per annum above the Royal Bank of Canada prime rate for business loans after the first 60 days, compounded monthly;

- (h) alternatively, payment of pre-judgment interest against the Defendants, or any of them, on the amounts claimed, in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (i) post-judgment interest against the Defendants, or any of them, in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (j) that in default of payment of the sum of \$2,157,415.95 plus costs, that the estate and interest of the Defendants, or any of them, in the lands and premises to which the Lien hereinafter described attaches, and which are the subject matter of this action, be sold and the proceeds applied toward payment of the Plaintiff's claim as aforesaid plus costs, pursuant to the provisions of the *Construction Act*, R.S.O. 1990, c. C.30 (the "*Act*");
- (k) full priority over the Mortgages, as defined herein, in favour of the Defendants, Westmount Guarantee Services Inc., CMLS Financial Ltd., Computershare Trust Company of Canada, Genesis Mortgage Investment Corp., and Corfinancial Corp., or alternatively, priority over the Mortgages, as defined herein, to the extent that any portion of the said mortgages advanced exceeded the actual value of the lands and premises at the time the first lien arose, or, in the further alternative, priority

-6-

over the said mortgages to the extent of any unadvanced portions, or in the further alternative, priority to the extent of any deficiencies in the holdback required to be maintained pursuant to the provisions of the *Act*;

- (l) for all purposes aforesaid and for all other purposes, that accounts be taken, and directions be given;
- (m) costs of this action against the Defendants, or any of them, including all HST attributable to any award of costs; and
- (n) such further and other relief as this Honourable Court deems just.

THE PARTIES

2. The Plaintiff, Dean-Lane Contractors Inc. (“Dean-Lane”), is a corporation incorporated pursuant to the laws of the Province of Ontario and carries on business as a mechanical contractor.

3. The Defendant, 1776411 Ontario Ltd. as General Partner of 1333 Weber Street Kitchener LP (“Owner”), is, and at all material times was, the registered owner of the lands and premises known as Eleva8 Condos, located at 1333 Weber Street East, Kitchener, Ontario, which are the lands and premises to which the Lien hereinafter described attach (the “Subject Lands”).

4. The Defendants, Westmount Guarantee Services Inc. (“Westmount”), CMLS Financial Ltd. (“CMLS”), Computershare Trust Company of Canada (“Computershare”), Genesis Mortgage Investment Corp. (“Genesis”) and Corfinancial Corp. (“Corfinancial”), (collectively, the

-7-

“Mortgagees”) are the holders of the Mortgages, as defined herein, registered on title to the Subject Lands.

THE CONTRACTS

5. Dean-Lane and the Owner entered into the following contracts:

- (a) on January 18, 2021, CCDC 17-2010 Stipulated Price Contract for the supply of mechanical contracting services and materials for the construction of Tower A at the Subject Lands for a contract price of \$6,064,710.00, inclusive of HST (“Contract A”);
- (b) on June 14, 2022, CCDC 17-2010 Stipulated Price Contract for the supply of mechanical contracting services and materials for the construction of Tower B at the Subject Lands for a contract price of \$7,679,240.44, inclusive of HST (“Contract B”); and
- (c) on June 14, 2022, CCDC 17-2010 Stipulated Price Contract for the supply of mechanical contracting services and materials for the construction of Tower C at the Subject Lands for a contract price of \$7,354,497.65, inclusive of HST (“Contract C”),

6. Contract A, Contract B, and Contract C are hereinafter collectively referred to as the “Contracts”.

-8-

7. Pursuant to the Contracts, Gillam Urban Constructors Inc (“Gillam”) acted as the Construction Manager and ABA Architect Inc. (“ABA”) acted as the Consultant.

8. It was an express or implied term of the Contracts that:

- (a) Dean-Lane would submit applications for payment monthly as the Work progressed, dated the 25th day of each month or an alternative day of the month agreed in writing by Dean-Lane and the Owner (the “Submission Date”);
- (b) the Owner would make payments to Dean-Lane on or before 20 calendar days after the Submission Date, or the last day of the monthly payment period for which the application for payment is made, whichever is later; and
- (c) interest would accrue on unpaid amounts from the date they became due until payment, at the rate of 2% per annum above the prime rate for the first 60 days and at the rate of 4% per annum above the prime rate, thereafter, as quoted by the Royal Bank of Canada for prime business loans as it may change from time to time, compounded monthly.

9. In additions to the work required under the Contracts, the Owner and/or Gillam directed Dean-Lane to perform extra work and issued change orders for the extra work in respect of each of the Contracts (the “Extras”).

10. Dean-Lane made applications for payment for the Work and the Extras in accordance with the terms of the Contracts.

-9-

11. Throughout the course of performing the Work, the Owner continuously defaulted on its payment obligations under the Contracts. Dean-Lane raised concerns to the Owner, the Mortgagees and/or Gillam, or any of them, of the Owner's financial ability to pay for the Work and the Extras performed under the Contracts.

12. Further, in accordance with the Contracts, Dean-Lane procured and ordered equipment from material suppliers that were ready to be delivered to the Project. However, despite repeated follow ups to the Owner and Gillam, or either of them, to arrange for delivery of same, Dean-Lane did not receive a response and the equipment suppliers are looking for payment of the procured equipment for Contract A and Contract B (the "Equipment"). The total liability of Dean-Lane to the equipment suppliers for the Equipment is \$636,585.50, inclusive of HST (the "Supplier Equipment Costs").

13. Further to the preceding paragraph, the Owner, CMLS and Corfinancial, or any of them, provided assurances that Dean-Lane would be paid, for which Dean-Lane relied upon to continue to perform the Work and the Extras under the Contracts, including procuring the Equipment from the suppliers for the Contracts.

THE UNDERTAKINGS

14. In light of the Owner defaulting on payments owing to Dean-Lane in respect of work performed under Contract A and Contract B, on or about May 5, 2023, at the request of the Owner, CMLS and Corfinancial, Dean-Lane entered into an agreement with the Owner and CMLS whereby,

-10-

- (a) Dean-Lane agreed to provide an Undertaking agreeing to continue to provide, services and/or materials to the Owner in respect of Contract A and Contract B upon receipt of payments for amounts due and owing at the time, less \$1,000,000.00 and not to lien the Project (the “Dean-Lane Undertaking”);
- (b) the Owner, CMLS and Corfinancial represented that the Owner was working with the Mortgagees to complete a refinancing of the Project; and
- (c) the Owner and CMLS agreed that Dean-Lane shall be paid from the next construction advance for the Project, which was to occur at the end of May 2023

(the “May 5th Agreement”).

15. Further to the May 5th Agreement and as part of Dean-Lane agreeing to provide the Dean-Lane Undertaking, Corfinancial provided Dean-Lane with an Undertaking (the “CorFinancial Undertaking”) which provided in part as follows:

- (a) representing that the Owner was working with the Mortgagees to complete a refinancing of the Project;
- (b) Dean-Lane agreed to defer the sum of \$1,000,000.00 (the “Deferred Amount”) from the payment due to Dean-Lane, to be paid from the next construction advance;
- (c) Corfinancial agreed to pay on behalf of the Owner the Deferred Amount to Dean-Lane if Dean-Lane was not paid by the Owner by May 26, 2023, at Dean-Lane’s option, exercisable in writing on or after the payment date; and

-11-

- (d) Corfinancial would pay to Dean-Lane, on behalf of the Owner, an accommodation fee of \$50,000.00 (the “Developer Accommodation Fee”).

16. Dean-Lane states that it did not receive payment by May 26, 2023 and as such provided notice to Corfinancial in accordance with the CorFinancial Undertaking for payment, and Corfinancial has failed to pay in accordance with the CorFinancial Undertaking.

17. In light of the representations and assurances made by the Owner, CMLS and Corfinancial, Dean-Lane complied with the Dean-Lane Undertaking and continued to supply services and materials in accordance with Contract A and Contract B for the Project but states that the Owner, CMLS and Corfinancial breached the terms of the May 5th Agreement and the CorFinancial Undertaking and failed to pay the Deferred Amount within the time frame agreed to in the Dean-Lane Undertaking and the CorFinancial Undertaking.

18. Despite repeated requests and demands to the Owner, CMLS and Corfinancial, Dean-Lane did not receive payment of the Deferred Amount and did not receive any further payments for services and materials supplied. The total amount owing to Dean-Lane is \$2,157,415.95, exclusive of Loss of Profit and the Developer Accommodation Fee.

19. Further to the preceding paragraph, on or about June 11, 2023, notice of default of the CorFinancial Undertaking was provided to Corfinancial (the “Default Notice”), wherein Dean-Lane demanded immediate payment to be made in accordance with the CorFinancial Undertaking and, notwithstanding, by no later than July 14, 2023.

-12-

20. Despite the Default Notice, payment was not made by Corfinancial to Dean-Lane under the terms of the CorFinancial Undertaking. As such, Dean-Lane is entitled to payment of the Deferred Amount and the Developer Accommodation Amount from Corfinancial.

NEGLIGENT MISREPRESENTATION

21. In light of representations made by the Owner, CMLS and Corfinancial, or any of them, Dean-Lane agreed to continue to perform the Work under the Contracts at the Subject Lands.

22. Dean-Lane states that at all material times, it relied upon the representations made by the Owner, CMLS and Corfinancial, or any of them, to continue to perform the Work and the Extras and that it would be paid but, despite said representations, payment has not been made to Dean-Lane.

23. Dean-Lane's reliance on the Mortgagees' representations was detrimental and resulted in substantial damages to Dean-Lane, including damages to Dean-Lane's relationship with suppliers from whom equipment was ordered but could not be supplied due to the delays on the Project and the failure of the Owner to confirm it had the financing to pay for same. In light of the foregoing, the conduct of the Owner, CMLS and Corfinancial has increased costs and damages to Dean-Lane, the full particulars of which will be provided in advance of trial.

THE INDEBTEDNESS

24. Dean-Lane states that the Owner has failed to pay the amounts certified by ABA and which are properly due and owing to Dean-Lane under the Contracts.

-13-

25. As of the date hereof, Dean-Lane is owed the total sum of \$2,157,415.95, inclusive of HST (the “Indebtedness”) for the Work performed at the Subject Lands, but not including the Loss of Profit Claim, as defined herein, in accordance with the Contracts, broken down as follows:

Invoice Date	Invoice No.	Description	Amount Owning, incl. HST
May 25, 2023	J004906	Tower A Progress Billing No. 24	\$82,179.70
May 25, 2023	J004900	Tower A Progress Billing No. 6	\$48,205.80
June 23, 2023	J004990	Tower A Progress Billing No. 25	\$457,438.46
June 23, 2023	J004991	Tower A Progress Billing No. 7	\$20,340.00
		Tower A Previous Holdback -1	\$466,356.31
		Tower A Previous Holdback -2	\$40,441.57
		Tower B Holdback	\$42,454.10
		Previous Balance	\$1,000,000.00
INDEBTEDNESS			\$2,157,415.94

26. Particulars of the Work and Extras supplied by Dean-Lane to the Owner and for which payment has not been received, are contained in the payment applications which were sent or delivered to the Owner on or about their respective dates.

27. Despite repeated demands for payment, the Owner has failed, refused, or neglected to pay Dean-Lane the Indebtedness, being the sum of \$2,157,415.95, inclusive of HST, for the Work and Extras, which is properly due and owing to Dean-Lane.

REPUDIATION OF THE CONTRACTS AND LOSS OF PROFIT

28. Dean-Lane states that the Owner breached the terms of the Contracts by failing to pay the amounts due and owing to Dean-Lane, delaying the supply of the Equipment and delaying the schedule for completion of the Work under the Contracts. Further, the Owner’s inability to have sufficient financing to pay for the Work resulted in delays to the Project and increased costs and

-14-

damages to Dean- Lane. The Owner has breached the terms of the Contracts and by its very conduct repudiated the Contracts (the “Repudiation of the Contracts”).

29. Dean-Lane states in light of the Owner’s failure to have the financing to pay for the services and materials supplied by Dean-Lane and to be supplied under the Contracts, the Project encountered numerous delays, which were beyond its control (the “Delays”).

30. Despite the Delays, in order to mitigate the Delays and on the direction and authorization of the Owner and/or Gillam, Dean-Lane ordered the Equipment to secure pricing and avoid material escalation costs. Dean-Lane requested authorization from the Owner and Gillam to deliver the Equipment to the Project by end of August 2023 to mitigate damages, including material escalation costs and storage costs that the suppliers would be claiming. Despite Dean-Lane’s notices, the Owner and Gillam failed to respond, and Dean-Lane is liable for the Supplier Equipment Costs. Dean-Lane states that the Owner is liable for the Supplier Equipment Costs and Dean-Lane is entitled to damages against the Owner to recover those costs.

31. In addition to the Supplier Equipment Costs, in light of the Delays and the Repudiation of the Contracts, Dean-Lane had to substantially reduce its work forces and has suffered damages. Since Dean-Lane was not afforded an opportunity to complete the Work and Extras under the Contracts, and has incurred additional costs, Dean-Lane is entitled to recover damages for loss of profit in the amount of \$3,006,160.01 inclusive of HST (the “Loss of Profit Claim”), which represents 15% of the value of the balance of the Works and Extras under the Contracts that Dean Lane was not paid for and/or was not provided an opportunity to complete.

-15-

32. Therefore, Dean-Lane is claiming damages in the amount of the Loss of Profit Claim against the Owner.

THE LIEN

33. By reason of performing the Work, Dean-Lane is entitled to a lien upon the interest of the Defendants, or any of them, in the Subject Lands.

34. On July 7, 2023, Dean-Lane caused to be registered a Construction Lien against title to the Subject Lands in the amount of \$2,157,415.95, inclusive of HST, in the Land Registry Office for the Land Titles Division of the City of Waterloo (No. 58) at Kitchener, as Instrument No. WR1518912 (the “Lien”). Attached hereto as Schedule “A” is a true copy of the Lien.

35. The Subject Lands were at all material times occupied by the Owner and are the lands for which Dean-Lane performed the Work at the request of, on behalf of, with the consent and for the direct benefit of the Owner, and accordingly, the Owner is, and at all material times was, an owner within the meaning of section 1(1) of the *Act*.

THE MORTGAGES

36. The following mortgages are registered on title to the Subject Lands:

Name of Mortgagee	Instrument Number	Registration Date	Principal Amount
Westmount	WR1299640	November 24, 2020	\$20,000,000.00
CMLS, Computershare and Genesis	WR1367209	August 17, 2021	\$82,000,000.00
Corfinancial	WR1507448	May 8, 2023	\$3,500,000.00

(collectively, the “Mortgages”).

-16-

37. Dean-Lane states that the Mortgages were given and taken with the intention to secure the financing of the improvements herein and Dean-Lane claims that it has full priority over the Mortgages.

38. Alternatively, Dean-Lane states that the Lien has priority over the Mortgages to the extent of any deficiency in the holdbacks required to be retained pursuant to the provisions of the *Act*.

39. In the further alternative, Dean-Lane states that the Lien has priority over the Mortgages to the extent that any portion of the monies advanced under the Mortgages exceeds the actual value of the Subject Lands at the time when the first lien arose.

40. In the further alternative, Dean-Lane states that the Lien has priority over the Mortgages to the extent of any unadvanced portion thereof.

41. Dean-Lane states that the knowledge of all advances made pursuant to the Mortgages is within the knowledge of the Defendants.

UNJUST ENRICHMENT/QUANTUM MERUIT

42. In the alternative, Dean-Lane states that by reason of performing the Work and the Extras, the Defendants, or any of them, have received the benefit of same and have been unjustly enriched in the amount of \$2,157,415.95 at the expense and to the detriment of Dean-Lane. Dean-Lane pleads and relies upon the doctrine of unjust enrichment.

43. In the further alternative, Dean-Lane states that it is entitled to damages in the amount of \$2,157,415.95 as against the Owner on the basis of *quantum meruit*.

-17-

OUT OF PROVINCE SERVICE

44. CMLS and Genesis conduct business in British Columbia.

45. In serving CMLS and Genesis with this Statement of Claim in British Columbia, Dean-Lane relies on Rule 17.02 subparagraphs (a), (e), (f), and (p), specifically relying on the following facts:

- (a) the Subject Lands are in Ontario;
- (b) the Mortgages are registered on the Subject Lands which is in Ontario;
- (c) the Contract was made in Ontario; and
- (d) CMLS and Genesis carry on business in Ontario.

Date: September 27, 2023

PALLET VALO LLP
Lawyers
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario
L5B 1M5

MARIA RUBERTO (LSO # 51148D)
mruberto@pallettvalo.com
Direct Dial/Fax: 289-805-3441

Lawyers for the Plaintiff

-18-

SCHEDULE "A"

LRO # 58 Construction Lien

Received as WR1518912 on 2023 07 07 at 15:23

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 1 of 2

Properties

PIN 22590 - 0550 LT

Description LOTS 29, 30, 31, 32, 33, 34, 45, 46, 47, 48, 49, 50 AND 91 AND PART LOTS 12, 13, 14, 15, 16, 17, 43, 44, 86, 87, 89 AND 90, PLAN 322, AND LOT 127 STREETS AND LANES, (BEING A LANE, PLAN 322, CLOSED BY BY-LAW AS IN 175368) AND PART LOT 126 STREETS AND LANES, (BEING PART OF HERMAN AVENUE, PLAN 322, CLOSED BY BY-LAW AS IN 175368) AND PART LOT 141 STREETS AND LANES, (BEING PART OF HERMAN AVENUE, PLAN 322, CLOSED BY BY-LAW AS IN 210008) AND PART LOT 173 STREETS AND LANES, (BEING PART OF WEBER STREET, PLAN 322 (RENAMED SUNNYSIDE AVENUE) CLOSED BY BY-LAW AS IN 270278), 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 WR1328075; CITY OF KITCHENER

Address KITCHENER

Consideration

Consideration \$2,157,415.95

Claimant(s)

Name DEAN-LANE CONTRACTORS INC.
Address for Service o/o Pallett Valo LLP
Lawyers
Attention: Maria Ruberto
77 City Centre Drive
West Tower, Suite 300
Mississauga, Ontario L5B 1M5
Direct: 289-805-3441
Email: mruberto@pallettvalo.com

I, SCOTT MACDONALD, am the agent of the lien claimant and have informed myself of the facts stated in the claim for lien and believe them to be true.

A person or persons with authority to bind the corporation has/have consented to the registration of this document.

This document is not authorized under Power of Attorney by this party.

Statements

Name and Address of Owner 776411 Ontario Ltd. as general partner of 1333 Weber Street Kitchener LP, 8-258 Edgewater Crescent, Kitchener, ON N2A 4M2. Name and address of person to whom lien claimant supplied services or materials 1776411 Ontario Ltd. as general partner of 1333 Weber Street Kitchener LP, 8-258 Edgewater Crescent, Kitchener, ON N2A 4M2. Time within which services or materials were supplied from 2021/02/24 to 2023/06/30 Short description of services or materials that have been supplied Supply and install all plumbing and HVAC and installation of heat pumps for the suites. Contract price or subcontract price \$6,124,832.78, inclusive of HST. Amount claimed as owing in respect of services or materials that have been supplied \$2,157,415.95, inclusive of HST.

The lien claimant claims a lien against the interest of every person identified as an owner of the premises described in said PIN to this lien

Signed By

Maria Ruberto

77 City Centre Drive, West Tower, acting for
Suite 300 Applicant(s)
Mississauga
L5B 1M5

Signed 2023 07 07

Tel 905-273-3300

Fax 905-273-6920

I have the authority to sign and register the document on behalf of the Applicant(s).

Submitted By

PALLET VALO LLP

77 City Centre Drive, West Tower,
Suite 300
Mississauga
L5B 1M5

2023 07 07

-19-

Tel 905-273-3300
Fax 905-273-8920

Fees/Taxes/Payment	
Statutory Registration Fee	\$89.00

LRO # 58 Construction Lien

Received as WR1518912 on 2023 07 07 at 15:23

The applicant(s) hereby applies to the Land Registrar.

yyyy mm dd Page 2 of 2

Fees/Taxes/Payment	
Total Paid	\$89.00

File Number	
Claimant Client File Number :	89382

DEAN-LANE CONTRACTORS INC.

Plaintiff

-and- 1776411 ONTARIO LTD. AS GENERAL PARTNER OF 1333
WEBER STREET KITCHENER LP, et al.
Defendants

Court File No.

**ONTARIO
SUPERIOR COURT OF JUSTICE**

IN THE MATTER OF the *Construction Act*, R.S.O. 1990, c. C.30

PROCEEDING COMMENCED AT
KITCHENER

STATEMENT OF CLAIM

PALLET VALO LLP

Lawyers
77 City Centre Drive, West Tower
Suite 300
Mississauga, Ontario
L5B 1M5

MARIA RUBERTO (LSO # 51148D)
mruberto@pallettvalo.com
Direct Dial/Fax: 289-805-3441

Lawyers for the Plaintiff

APPENDIX “N”



**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

CORFINANCIAL CORP.

Plaintiff

and

**CMLS FINANCIAL LTD., COMPUTERSHARE TRUST COMPANY OF CANADA, and
GENESIS MORTGAGE INVESTMENT CORP.**

Defendants

STATEMENT OF CLAIM

TO THE DEFENDANT(S)

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

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

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

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

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

IF YOU PAY THE PLAINTIFF'S CLAIM, and \$1,250.00 for costs, within the time for serving and filing your Statement of Defence you may move to have this proceeding dismissed by

231

the Court. If you believe the amount claimed for costs is excessive, you may pay the Plaintiff's claim and \$400.00 for costs and have the costs assessed by the Court.

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

Date _____ Issued by _____
Local Registrar

Address of 330 University Avenue
court office: Toronto, Ontario, M5G 1R7

TO: CMLS Financial Ltd.
700 West Georgia Street, Suite 2700
Vancouver, British Columbia
V7Y 1B8

Attn: Andrea Cali
T: 647-729-8436
F: 416-646-1009
E: andrea.cali@cmls.ca

AND TO: Computershare Trust Company of Canada
100 University Avenue, 11th Floor,
Toronto, ON, M5J 2Y1

AND TO: Genesis Mortgage Investment Corp.
885 West Georgia Street
19th Floor
Vancouver, British Columbia, V6C 3H4

CLAIM

1. The Plaintiff CorFinancial Corp. (the “**Plaintiff**” or “**COR**”) claims against the Defendants CMLS Financial Ltd. (“**CMLS**”), Computershare Trust Company of Canada (“**Computershare**”), and Genesis Mortgage Investment Corp. (“**Gentai**”) jointly and severally for the following:
 - a. General damages in the amount of \$1,000,000.00;
 - b. Special and aggravated damages in the amount of \$100,000.00;
 - c. Pre-judgement and postjudgment interest pursuant to the *Courts of Justice Act* RSO 1990, c C.43, as amended;
 - d. the Plaintiff’s costs of this action on a substantial indemnity basis plus H.S.T.; and
 - e. such further and other relief as this Honourable Court deems just and the circumstances require.

Background

2. The Plaintiff COR is a corporation duly incorporated pursuant to the laws of the province of Ontario. At all material times, it carried on business as a provider of financial and restructuring consulting services to businesses located in Ontario.
3. The defendant CMLS is a corporation duly incorporated pursuant to the laws of British Columbia. At all material times, it carried on business as, *inter alia*, a mortgage lender, mortgage administrator and servicer, and a provider of mortgage syndication services in the province of Ontario.

233

4. At all material times, CMLS was a mortgagee under the Mortgage (as defined below) and held its interest in the Mortgage in trust for Concentra Bank, a Schedule I bank incorporated under the *Bank Act (Canada)*.
5. Furthermore, at all material times CMLS was retained jointly by the Defendants to act as their mortgage administrator and agent with respect to the Mortgage. CLMS especially acted in this capacity at all times when dealing with the Plaintiff.
6. The defendant Computershare is a trust company duly incorporated under the *Trust and Loan Companies Act (Canada)*. At all material times, it carried on business as, *inter alia*, a provider of mortgage servicing and related trust services in the province of Ontario.
7. At all material times, Computershare was a mortgagee under the Mortgage and held its interest in the Mortgage in trust for Equitable Bank, a Schedule I bank incorporated under the *Bank Act (Canada)*.
8. The defendant Gentai is a corporation duly incorporated pursuant to the laws of the province of British Columbia. At all material times, Gentai carried on business as, *inter alia*, an asset management and private lending company in the province of Ontario and was a mortgagee under the Mortgage.

The Mortgage and Forbearance Agreement

9. This claim arises out of a forbearance agreement (the “**Forbearance Agreement**”) executed between CMLS, as mortgage administrator on behalf of the mortgagees; 1333 Weber Street Kitchener Limited Partnership and its general partner 1776411 Ontario Ltd as the mortgagor (collectively hereinafter the “**Borrower**”); and Werner Leuschner, Kamal Patel, Jaykam

Developers Limited, and 1639993 Ontario Ltd. as the guarantors of the Mortgage (collectively hereinafter the “**Guarantors**”).

10. On or about August 17, 2021, the Borrowers, as Chargors, and the Defendants, as Chargees, registered a first mortgage (the “**Mortgage**”) as instrument no WR1367209 in the Land Titles Division of Kitchener (No. 58) against the property municipally known as 1333 Weber Street, Kitchener, ON (the “**Property**”).
11. The Mortgage secured all amounts due under construction loan facility (the “**Facility**”) which the Defendants made available to the Borrowers. The purpose of the Facility was to finance the Borrower’s development and construction of a four-tower condominium complex (the “**Development**”) on the Property.
12. Financing was to be advanced to the Borrowers through draws requested by the Borrower from time to time, and on certain terms and conditions set out in the Mortgage.
13. From about August 17, 2021, until about November 2022, the Defendants advanced funds to the Borrowers under the Mortgage from time to time, and at the Borrower’s request.
14. In about November 2022, the Borrowers defaulted under the terms of the Mortgage and as a result, the Defendants refused to advance any further funds under the Facility.
15. The cessation of further advances caused the Borrower to default in its payments due to the construction trades (hereinafter the “**Trades**”) who had supplied labour and materials to the Development. As a result, the Trades stopped working and proceeded to register and enforce construction liens against the Property.

The Forbearance Agreement

16. In about December 2022, the Borrower retained the Plaintiff to provide it with financial consulting services with respect to the Development and the Borrower's default under the Mortgage.
17. From about December 2022, until about May 2023, the Borrower and the Plaintiff negotiated terms of a forbearance agreement with CMLS. The purpose of the agreement was, among other things: i) to set out terms on which the Defendants would defer further enforcement of the Mortgage, and ii) to advance additional funds under the Facility on certain terms and conditions in order to pay all amounts owing to the Trades so that they would continue working on the Development.
18. During those negotiations, the Plaintiff used its relationships with the Trades to convince them to delay further enforcement of their lien claims to give the parties sufficient time to negotiate, sign, and close the Forbearance Agreement.
19. On or about May 8, 2023, the Borrowers, Guarantors, and CMLS on behalf of itself and the other Defendants, executed the forbearance agreement (the "**Forbearance Agreement**"). The material terms of the agreement included, *inter alia*, the following:
 - a. The Defendants agreed to forbear from any further enforcement of the Mortgage on certain terms and conditions.
 - b. On closing of the forbearance, the Defendants agreed to advance a one-time payment under the Mortgage (the "**Forbearance Payment**"). These funds would be used to

236

pay, among other things, all outstanding amounts owing to the Trades for their labour and materials supplied to the Development.

- c. The Borrower agreed to obtain from each Trade: i) a statutory declaration confirming the outstanding balance owing to them, and ii) a release in the Defendants' standard form whereby they released any lien claims on receiving payment of the balance owing to them.

Forbearance Miscalculation and The Dean-Lane Accommodation

20. On or about May 5, 2023, after the terms of the Forbearance Agreement were settled but before the agreement was signed, CMLS advised the Plaintiff that the Defendants had made a calculation error when calculating the amount of the Forbearance Payment. The net effect of this error was that the Forbearance Payment was \$714,979.27 less than the total obligations which the Defendants agreed to pay under the Forbearance Agreement (hereinafter referred to as the "**Shortfall**").
21. Notwithstanding the fact that the Shortfall was caused by the Defendants' own error, CMLS advised the Plaintiff that the Forbearance Agreement could not close, and that the Forbearance Payment would not be advanced, until the mistake was corrected and CMLS obtained additional funds from the Defendants to cover the Shortfall.
22. CMLS further advised the Plaintiff that it would take approximately two weeks to reconcile their records and correct the mistake.
23. In an effort to avoid any further delays in paying the Trades, the Plaintiff proposed, and CMLS on behalf of itself and the other Defendants agreed, to a separate side agreement with

the Plaintiff to remedy the Shortfall (the “**Shortfall Agreement**”). The terms of that agreement included, *inter alia*, the following:

- a. The Plaintiff would obtain an agreement from one of the Trades, Dean-Lane Contracting Inc. (hereinafter “**Dean-Lane**”), where Dean-Lane would allow CMLS to defer paying \$1,000,000.00 (the “**Deferred Amount**”) of the \$2,173,426.30 which it agreed to pay to Dean-Lane as part of the Forbearance Payment for its outstanding invoices;
- b. On receiving this concession from Dean-Lane, CMLS would proceed to close the Forbearance Agreement and pay Dean-Lane \$1,173,426.30 as part of the Forbearance Payment, being the portion of Dean-Lane’s outstanding invoices which were not being deferred;
- c. CMLS further agreed to pay Dean-Lane the Deferred Amount after the Forbearance Agreement closed, and at or around the same time that they paid the first draw under the Facility post-closing;
- d. In consideration of Dean-Lane allowing CMLS to defer payment of the Deferred Amount, the Plaintiff agreed to give Dean-Lane a written undertaking to pay them an accommodation fee \$50,000.00, and, at Dean-Lane’s sole option, to pay them the Deferred Amount and take an assignment of their remaining unpaid invoices should CMLS fail to pay them the Deferred Amount on or before May 28, 2023.

238

24. The Plaintiff gave this undertaking in reliance on CMLS' representations, agreements, and assurances to the Plaintiff and Dean-Lane that it would pay the Deferred Amount to Dean-Lane after closing of the Forbearance Agreement.
25. On or about May 5, 2023, Dean-Lane agreed to the terms proposed by the Plaintiff and the Plaintiff delivered a written undertaking to Dean-Lane on the terms set out above.
26. With Dean-Lane agreeing to defer payment of the Deferred Amount, CMLS was able to close the Forbearance Agreement on or about May 8, 2023, and pay all amounts which the Defendants were obligated to pay under the agreement, save and except for the Deferred Amount payable to Dean-Lane.
27. However, despite the Plaintiff's repeated demands, CMLS has failed or otherwise refused to pay the Deferred Amount to Dean-Lane as of the date of this claim.
28. By failing to pay the Deferred Amount to Dean-Lane, the Defendants have breached the terms of the Forbearance Agreement and the Shortfall Agreement.
29. In response to the Plaintiff's demands, CMLS advised the Plaintiff that it was not under an obligation to pay the Deferred Amount to Dean-Lane because it was not able to pay the first advance under the Facility.
30. However, the Plaintiff states that this is patently wrong. Rather, the Plaintiff states, and the fact is, that:
 - a. The Defendants' obligation to pay the Deferred Amount is part of their overarching obligation to pay all of the Trades' outstanding invoices under the Forbearance

239

Agreement as they originally agreed to pay the Deferred Amount as part of the Forbearance Payment on closing;

- b. This obligation is separate and distinct from any obligation which the Defendants have, or may have, to continue funding the Development or to pay further advances under the Facility, and this obligation is not governed by the same terms and conditions which govern the advances of draws under the Facility;
 - c. CMLS acknowledged and admitted in the Forbearance Agreement that Borrower owed Dean-Lane \$2,173,426.30 for materials and labour which Dean-Lane to the Development; and
 - d. The Shortfall Agreement did not relieve the Defendants from their obligation under the Forbearance Agreement to pay Dean-Lane's outstanding invoices, rather it only allowed them to defer paying \$1,000,000.00 of Dean-Lane's invoices (i.e. the Deferred Amount) to a later date.
31. As a result of the foregoing, even if the Defendants were not under an obligation to pay any further advances under the Facility, which is not admitted but rather expressly denied, they are still not relieved from their obligation to pay the Deferred Amount to Dean-Lane, and they are not entitled to rely on this fact as the basis to avoid their obligation to pay the Deferred Amount.
32. As a result of the Defendants' breach, the Plaintiff has incurred a liability to pay Dean-Lane the Deferred Amount, causing it to suffer damages.

33. Furthermore, the Plaintiff states that by failing to pay the Deferred Amount, CMLS has been unjustly enriched to the detriment of the Plaintiff.
34. By giving its undertaking to Dean-Lane, the Plaintiff obtained a deferral for CMLS of its strict contractual obligation set out in the Forbearance Agreement to pay Dean-Lane \$2,173,426.30 on closing of the forbearance, which it was not able to satisfy.
35. This deferral further benefited the Defendants, as it allowed them to close the forbearance when they otherwise would not have been able to do so because of their own calculation error.
36. Furthermore, in giving their undertaking to Dean-Lane, the Plaintiff has incurred a corresponding detriment in the form of a liability to pay Dean-Lane the Deferred Amount.
37. The Plaintiff states that there is no juristic reason for the Defendants to retain the benefits of the Plaintiff's undertaking.
38. The Plaintiff has incurred considerable time and expense as a result of the Defendants' failure to satisfy their obligations under the Forbearance Agreement and the Settlement Agreement. As a result, the Defendants have caused the Plaintiff to suffer special and aggravated damages which the Defendants are liable to pay.
39. The Plaintiff states that at all material times CMLS, as the Defendants' mortgage administrator and servicer, was acting as the Defendants' agent, both in fact and in law. As such, the Plaintiff states, and the fact is, that the Defendants are bound by the actions of CMLS, and particularly, are bound by the terms of the Forbearance Agreement and the Shortfall Agreement.

Relief Sought

40. As a result of the foregoing, the Plaintiff seeks judgment against the Defendants, jointly and severally, for general damages in the amount of \$1,000,000.00 for breach of contract and unjust enrichment.
41. The Plaintiff further seeks judgment against the Defendants jointly and severally for special and aggravated damages in the amount of \$100,000.00.
42. The Plaintiff further seeks prejudgment and postjudgment interest on any amounts awarded pursuant to the *Courts of Justice Act*.
43. The Plaintiff further seeks its costs of this action jointly and severally against the Defendants on a substantial indemnity basis.
44. The Plaintiff proposes that this action be tried in the City of Toronto.

DATE: September 27, 2023.

BERNARD B. GASEE
Barrister & Solicitor
90 Eglinton Avenue East, Suite 980
Toronto, Ontario
M4P 2Y3

Derek Ketelaars (67154R)
T: (416) 363-8104
F: (416) 363-0252
E: dketelaars@gcylaw.com

Lawyers for the Plaintiff

CorFinancial Corp.
Plaintiffs

— and —

CMLS Financial Ltd. et al.
Defendants

ONTARIO
SUPERIOR COURT OF JUSTICE
(Proceedings commenced in Toronto)

STATEMENT OF CLAIM

BERNARD B. GASEE
Barrister & Solicitor
90 Eglinton Avenue East
Suite 980
Toronto, Ontario
M4P 2Y3

Derek Ketelaars (67154R)
T: 416-363-3351
F: 416-363-0252
E: dketelaars@gcylaw.com
Lawyers for the Plaintiff

APPENDIX “O”

1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP

Statement of Receipts and Disbursements

For the Period Ending September 12, 2024

(\$; unaudited)

Description	Amount
Receipts	
Advance from Equitable Bank	2,000,000
HST refunds	241,521
Misc. refunds	87,204
Interest earned from funds on hand	18,399
Cash from Debtor's bank	129
	<u>2,347,253</u>
Disbursements	
Construction services	1,090,596
HST & PST	245,496
Insurance	202,436
Security	146,854
Legal fees and disbursements	189,791
Receiver fees and disbursements	181,174
Consultants	128,028
Utilities	56,879
Bank charges	448
Filing fees	151
	<u>2,241,851</u>
Balance	<u>105,401</u>
<i>Accrued but unpaid expenses</i>	
KSV fees (January 1 to August 31, 2024)	133,485
Blaney fees (February 1 to July 31, 2024)	102,763
Elm	51,991
Security and misc	41,761
	<u>330,000</u>

APPENDIX “P”

**ONTARIO
SUPERIOR COURT OF JUSTICE
(IN BANKRUPTCY AND INSOLVENCY)
COMMERCIAL LIST**

IN THE MATTER OF THE RECEIVERSHIP OF 1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

B E T W E E N :

GENESIS MORTGAGE INVESTMENT CORP.

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondent

**AFFIDAVIT OF MITCH VININSKY
(sworn September 20, 2024)**

I, **MITCH VININSKY**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Managing Director of KSV Restructuring Inc. ("KSV").
2. Pursuant to an order (the "**Receivership Order**") of the Ontario Superior Court of Justice (Commercial List) made on October 12, 2023, KSV was appointed as the receiver and manager (in such capacities, the "**Receiver**"), without security, of (i) the real property located at 1333 Weber Street East, Kitchener (the "**Real Property**"), (ii) all of the right, title and interest of 1776411 Ontario Ltd. ("**177**") and 1333 Weber Street Kitchener LP (the "**Partnership**", and collectively with 177, the "**Debtor**") in the personal property arising from, pertaining to, located on, or used in the operation or maintenance of the Real Property, and all proceeds therefrom, and (iii) all of the Debtor's rights and interests in, to, under, and in respect of all material agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder.
3. I have managed this mandate since the date of the Receivership Order. As such, I have knowledge of the matters to which I hereinafter depose.
4. The Receiver prepared invoices detailing its services rendered and disbursements incurred (the "**Invoices**") from September 25, 2023 to August 31, 2024 in the aggregate amount of \$298,176.25. Attached hereto and marked as **Exhibit "A"** to this Affidavit are copies of the Invoices.

5. Additionally, attached hereto as **Exhibit "B"** is a summary of the roles, hours and rates charged by members of the Receiver who have worked on this matter, and I hereby confirm that the list represents an accurate account of such information. The average hourly rate of the Receiver is \$619.78.
6. I consider the accounts to be fair and reasonable considering the circumstances connected with this matter.
7. This Affidavit is made in support of a motion to, *inter alia*, approve the attached accounts of the Receiver and the fees and disbursements detailed therein, and for no improper purpose whatsoever.

SWORN before me at the City of
Toronto, in the Province of Ontario,
this 20th day of September, 2024



Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires February 23, 2027

)
)
)
)
)
)



MITCH VININSKY

This is Exhibit "A" referred to in the Affidavit of Mitch Vininsky sworn before me, this 20th day of September, 2024



.....
Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires February 23, 2027



Mitch Vininsky

ksw advisory inc.

220 Bay Street, Suite 1300

Toronto, Ontario, M5J 2W4

T +1 416 932 6207

F +1 416 932 6266

mvininsky@ksvadvisory.com

ksvadvisory.com

249

INVOICE

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

December 19, 2023

Invoice No: 3420

HST #: 818808768RT0001

**Re: In the matter of the Receivership 1776411 Ontario Ltd and 1333 Weber Street
Kitchener LP (together, the "Partnership")**

For professional services rendered by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the "Receiver") in respect of the period from September 25, 2023 to November 30, 2023, including:

General Matters

- Corresponding extensively with Blaney McMurtry LLP ("Blaney"), the Receiver's counsel, regarding all aspects of this mandate, as outlined in detail below;
- Corresponding extensively with Equitable Bank ("EQ") and Gentai Capital Corporation ("Gentai"), the Partnership's senior secured creditors, including calls on October 16 and 25, 2023 and November 10, 14, 16 and 29, 2023;
- Corresponding with Aird & Berlis LLP and Bennett Jones LLP, the counsel of EQ and Gentai, respectively, regarding the receivership proceeding, including calls on October 10 and 16, 2023 and November 3, 13, 20, 24 and 27, 2023;
- Corresponding with Loopstra Nixon LLP, counsel to the Partnership, to obtain information regarding:
 - the Partnership's creditors;
 - reports regarding the Partnership's condominium development project located at 1333 Weber Street, Kitchener (the "Project");
 - purchasers of condominium units and deposits held in trust;

- security and other site specific information;
- Reviewing the Partnership's accounts payable listing;
- Preparing Notices and Statements of the Receiver for the Partnership pursuant to Subsections 245(1) and 246(1) of the *Bankruptcy and Insolvency Act*;
- Corresponding and calls on October 16, 2023 and November 10, 2023 with Gillam Urban Constructors Inc., the Partnership's former construction manager, to discuss:
 - construction of a temporary or permanent roof on Tower A of the Project;
 - on-site and remote-monitoring security at the Project;
 - winterization of the Project;
- Corresponding with CMLS Financial Ltd. ("CMLS"), the administrator and servicer of the senior secured credit facility, to obtain all files and reports relating to the Project;
- Reviewing the files obtained from CMLS, including quantity surveyor reports, sales summaries and details of the Project, such as site plans and drawings, environmental site assessments and geotechnical reports;
- Engaging Tert & Ross Inc. ("T&R"), a third-party contractor, to perform site visits and to secure and monitor the Project;
- Corresponding extensively with T&R regarding the Project;
- Dealing extensively with T&R regarding site conditions, erosion, safety and security matters at the Project;
- Corresponding with Elm Developments Corp. ("Elm"), a general contractor, to discuss the construction of a temporary roof on Tower A, winterization of the site, plumbing and electrical work, grading and drainage management and other winterization and stabilization activities for the Project, including a call on November 18, 2023;
- Reviewing a CCDC contract from Elm;
- Responding to numerous inquiries from creditors and interested parties regarding the Partnership;
- Corresponding with Finnegan Marshall Inc. ("Finnegan Marshall"), a cost consultant, to regarding, among other things, the estimated cost to complete the first tower of the Project and to review proposals from trade contractors regarding the Project, including a call on October 19, 2023;
- Providing information to FM regarding its estimate to complete reporting mandate;
- Opening an estate bank account;
- Corresponding with Bank of Montreal ("BMO") regarding the Partnership's bank accounts and requesting that BMO transfer the Partnership's balances to the Receiver's accounts;

251

- Corresponding with Brokerlink Inc. (“Brokerlink”), the Partnership’s insurance broker, to obtain copies of the insurance policies and to request that the Receiver be added as a named insured and loss payee on the policies, including calls on October 17, 2023, October 31, 2023 and November 9, 2023;
- Corresponding with Aviva Insurance Company of Canada (“Aviva”), the deposit insurance provider for the Project, regarding the receivership proceeding, including calls on November 13 and 23, 2023;
- Reviewing a proposal provided by CorFinancial Corp. (“COR”), dated October 27, 2023, and corresponding with Blaney, EQ and Gentai over the same;
- Reviewing and corresponding on a proposal from RWH Engineering Inc. (“RWH”), the firm retained for shoring monitoring and inspection services for the Project, including a call on November 8, 2023;
- Reviewing the shoring monitoring report and site visit reports dated November 22 and 27, 2023 provided by RWH;
- Reviewing and corresponding on a proposal from Chung & Vander Doelen Engineering Ltd. (“CVD”), the firm retained for soil and ramp integrity review services for the Project;
- Reviewing a geotechnical site review report provided by CVD;
- Reviewing a proposal and corresponding with Stubbes Precast Commercial Ltd. (“Stubbes”), the firm hired to perform weep hole work;
- Corresponding with Blaney regarding the proposals from RWH, CVD and Stubbes;

Court Matters

- Reviewing and commenting on all application materials regarding the appointment of the Receiver;
- Attending at Court, virtually, on October 12, 2023;
- Reviewing the Receivership Order and the corresponding Endorsement issued by the Court;
- Preparing the Receiver’s First Report to Court (“First Report”), in draft, regarding approval of a sale process for the Project;
- Corresponding extensively with Blaney regarding the First Report;

Request for Proposals from Realtors

- Requesting proposals from five commercial real estate brokerage firms (the “Brokers”) to list the Project for sale (“RFP”);
- Preparing an RFP package for each of the Brokers, including a confidentiality agreement;
- Corresponding with each of the Brokers regarding the receivership proceedings and the RFP process;

252

- Preparing a virtual data room with detailed information regarding the Project, including drawings, designs, development applications, environmental reports and correspondence with municipalities for the purpose of providing the Brokers with information to perform due diligence;
- Corresponding and attending calls with the Brokers to assist with their due diligence, including calls on November 1, 9 and 20, 2023;
- Reviewing and summarizing the proposals from the realtors;
- Corresponding with EQ and Gentai regarding the proposals;
- Attending calls on November 20, 2023 with EQ, Gentai and two of the realtors;

Unit Holder Matters

- Preparing a Notice to Unit Purchasers dated October 24, 2023;
- Corresponding with condominium unit purchasers regarding the receivership proceedings, the deposit insurance available through Tarion Warranty Corporation and Westmount Guarantee Services Inc. and the status of their purchase agreements;
- Attending calls and corresponding by email with numerous unit holders of the Project on a near-daily basis;

SISP Development

- Corresponding with Starwood Group Inc. and its counsel, McCarthy Tétrault LLP, regarding a potential stalking horse bid, including several information requests and a call on November 24, 2023.
- Corresponding with Blaney in connection with the potential stalking horse bid;

Other

- Maintaining the receivership case website;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements	\$ 101,051.73
HST	13,136.72
Total due	<u>\$ 114,188.45</u>

Time Summary

For the period September 25, 2023 to November 30, 2023

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	700	95.90	67,130.00
Noah Goldstein	700	5.00	3,500.00
Ben Luder	425	63.10	26,817.50
Other Staff and administration		14.55	2,686.75
Total fees			100,134.25
Add: Out of pocket disbursements			
Ascend Fee			325.00
Postage			515.48
Photocopies			77.00
Out of pocket disbursements			917.48
Total fees and disbursements			101,051.73



ksv advisory inc.
220 Bay Street, Suite 1300
Toronto, Ontario, M5J 2W4 **254**
T +1 416 932 6262
F +1 416 932 6266

ksvadvisory.com

INVOICE

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

January 8, 2024

Invoice No: 3425
HST #: 818808768RT0001

**Re: 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP (together, the
“Partnership”)**

For professional services rendered in December 2023 by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the “Receiver”), including:

General Matters

- Corresponding extensively with Blaney McMurtry LLP (“Blaney”), the Receiver’s counsel, regarding all aspects of this mandate, as outlined in detail below;
- Corresponding with Equitable Bank (“EQ”) and Gentai Capital Corporation (“Gentai”), the Partnership’s senior secured creditors, regarding, among other things, construction activities at the Partnership’s construction project located at 1333 Weber Street, Kitchener (the “Project”) and the sale process for the Partnership’s property;
- Corresponding with Aird & Berlis LLP (“A&B”) and Bennett Jones LLP (“Bennett Jones”), counsel representing EQ and Gentai, respectively, regarding the receivership proceeding;
- Corresponding with Elm Developments Corp. (“Elm”), the general contractor engaged by the Receiver, to discuss the ongoing construction activities for the Project, including the construction of a temporary roof on Tower A, winterization of the site, plumbing and electrical work, grading and drainage management and other winterization and stabilization activities;
- Reviewing a change order of the CCDC contract between the receiver and Elm;
- Corresponding with Finnegan Marshall Inc. (“Finnegan Marshall”), the cost consultant engaged by the Receiver, regarding, among other things, the estimated cost to complete the first tower of the Project and to review proposals from trade contractors regarding the Project, including calls on December 15 and 20, 2023;

- Review reports from Finnegan Marshall regarding the Project and estimated costs to complete it;
- Corresponding with Aviva Insurance Company of Canada (“Aviva”), the deposit insurer for the Project, regarding the receivership proceeding and the sale process;
- Corresponding with RWH Engineering Inc. (“RWH”), the firm retained for shoring monitoring and inspection services for the Project;
- Reviewing the shoring monitoring report and site visit reports dated December 12, 2023 provided by RWH;
- Corresponding with Chung & Vander Doelen Engineering Ltd. (“CVD”), the firm retained for soil and ramp integrity review services for the Project;
- Reviewing a geotechnical site review report dated December 1, 2023 provided by CVD;
- Corresponding with EQ regarding the Receiver’s funding requests;
- Reporting regularly to EQ and Gentai on the receivership proceedings;

Court Matters

- Attending at Court, virtually, on December 7, 2023 regarding the scheduling of a hearing to deal with, among other things, a request by certain creditors to lift the stay of proceedings;
- Preparing the Receiver’s First Report to Court dated December 4, 2023 (“First Report”) regarding approval of a sale process for the Project and an increase in the Receiver’s borrowing limit;
- Corresponding with Blaney, A&B and Bennett Jones regarding the First Report;
- Reviewing and commenting on motion materials related to the sale process;
- Attending in Court, virtually, on December 12, 2023 regarding the sale process approval;
- Reviewing the Court’s endorsement issued on December 12, 2023;

Unit Holder Matters

- Corresponding with condominium unit purchasers regarding the receivership proceedings, the deposit insurance available through Tarion Warranty Corporation and Westmount Guarantee Services Inc. and the status of their purchase agreements;
- Attending calls and corresponding by email with numerous unit holders of the Project;

SISP Development

- Corresponding with Starwood Group Inc. and its counsel, McCarthy Tétrault LLP, regarding a potential stalking horse bid, including several information requests;
- Corresponding with Blaney in connection with the potential stalking horse bid;

256

- Corresponding with CBRE Limited ("CBRE"), the commercial real estate brokerage firm selected to list the Project for sale, regarding all aspects of the Sale Process, including calls on December 1 and 21, 2023;
- Reviewing and commenting on a listing agreement with CBRE;
- Reviewing and commenting on marketing materials prepared by CBRE, including a teaser;
- Corresponding with CBRE regarding a virtual data room;
- Reviewing and discussing with CBRE its first sale process update report dated December 20, 2023;

Other

- Responding to numerous inquiries from creditors and interested parties regarding the Partnership;
- Maintaining the receivership case website;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements	\$ 35,874.00
HST	4,663.62
Total due	<u>\$ 40,537.62</u>

KSV Restructuring Inc.
1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP
Time Summary
For the period ended December 31, 2023

257

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	700	43.90	30,730.00
Ben Luder	425	11.25	4,781.25
Other Staff and administration		1.90	362.75
Total fees			<u>35,874.00</u>

Wire Instructions

Pay to:	KSV Restructuring Inc. 220 Bay Street, Suite 1300 Toronto, ON M5J 2W4
Bank:	BMO Bank of Montreal First Canadian Place, 42nd Floor Toronto, ON M5X 1A3
Bank No.:	001
Transit (ABA):	32132
Account No.:	1995-665
Swift Code:	BOFMCAM2



Mitch Vininsky

ksv advisory inc.

220 Bay Street, Suite 1300

Toronto, Ontario, M5J 2W4 **259**

T +1 416 932 6013

F +1 416 932 6266

mvininsky@ksvadvisory.com

ksvadvisory.com

INVOICE

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

July 22, 2024

Invoice No: 3795

HST #: 818808768RT0001

**Re: 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP (together, the
"Partnership")**

For professional services rendered from January 1 to June 30, 2024 by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the "Receiver"), including:

General Matters

- Corresponding extensively with Blaney McMurtry LLP ("Blaney"), the Receiver's counsel, regarding all aspects of this mandate, as outlined in detail below;
- Corresponding with Equitable Bank ("EQ") and Gentai Capital Corporation ("Gentai"), the Partnership's senior secured creditors, regarding, among other things, construction activities at the Partnership's condominium development project located at 1333 Weber Street, Kitchener (the "Project") and the sale process for the Partnership's property;
- Corresponding with Aird & Berlis LLP ("A&B") and Bennett Jones LLP ("Bennett Jones"), counsel representing EQ and Gentai, respectively, regarding the receivership proceeding;
- Corresponding with Elm Developments Corp. ("Elm"), the general contractor engaged by the Receiver, to discuss the ongoing construction activities for the Project, including the construction of a temporary roof on Tower A, winterization of the site, plumbing and electrical work, grading and drainage management, window caulking and other winterization and stabilization activities;
- Reviewing a change order to the CCDC contract between the Receiver and Elm;

260

- Reviewing reports from Elm regarding the status of the Project and the progress of the construction;
- Corresponding with Finnegan Marshall Inc. ("Finnegan Marshall"), the cost consultant engaged by the Receiver, regarding, among other things, its reviews of Elm's invoices for work performed in relation to the Project;
- Reviewing a proposal from Hayat Engineering Inc. ("Hayat") to review the building envelope of the Project and corresponding with Blaney regarding same;
- Reviewing a building envelope review report prepared by Hayat and corresponding with Elm regarding same;
- Reviewing a proposal from Hayat for to perform inspections of the installation of exterior caulking at the Project and corresponding with Finnegan Marshall regarding the pricing and scope of same;
- Corresponding with ABA Architects Inc. ("ABA"), the Project's architect, to, among other things, obtain drawings related to the Project and retain its services to conduct a site review of Elm's stabilization work;
- Reviewing ABA's stabilization investigation report and discussing the same with Blaney;
- Corresponding with Rego Realty ("Rego"), the realtor that was engaged by the Partnership to sell pre-construction units, to obtain a copy of its listing agreement for the Project and corresponding with Blaney to discuss the treatment of Rego's commission;
- Corresponding with Aviva Insurance Company of Canada ("Aviva"), the deposit insurer for the Project, regarding the receivership proceeding and the sale process;
- Corresponding with RWH Engineering Inc. ("RWH"), the firm retained for shoring monitoring and inspection services for the Project;
- Reviewing the shoring monitoring report and site visit reports provided by RWH dated January 5, 19 and 31, 2024, February 15 and 27, 2024, March 13, 2024, April 9 and 30, 2024, May 17 and 28, 2024 and June 12 and 27, 2024;
- Corresponding with EQ regarding the Receiver's funding requests;
- Reporting regularly to EQ and Gentai on the receivership proceedings;
- Corresponding with Blaney regarding a letter dated January 22, 2024 received from Rockwater Construction, a potential bidder for the Project, and drafting a response;
- Corresponding with Blaney regarding lien claimants' claims on the Project, including a call on January 23, 2024;
- Corresponding with Blaney regarding certain trust funds held by Schneider Ruggiero Spencer Milburn LLP and coordinating the transfer of such funds to the Receiver's estate account;
- Preparing and maintaining an ongoing cost tracker related to the Project and providing the same to EQ;

261

- Corresponding regularly with Brokerlink Inc., the Partnership's insurance broker, to discuss extensions of the insurance policies for the Project;
- Corresponding with McCarter Grespan Beynon Weir Professional Corporation ("McCarter Grespan") to obtain copies of the pre-construction agreement of purchase and sales (the "APSs") related to the Project;
- Corresponding with Blaney and McCarter Grespan regarding a request from the principal of the Partnership to obtain the Partnership's minute books;
- Corresponding with The Corporation of the City of Kitchener regarding a letter of credit from Concentra Bank related to the Project;
- Corresponding with counsel to Tarion Warranty Corporation regarding the status of the receivership proceedings;

Unit Holder Matters

- Corresponding with condominium unit purchasers regarding the receivership proceedings, the deposit insurance available through Tarion Warranty Corporation and Westmount Guarantee Services Inc. and the status of their purchase agreements;
- Attending calls and corresponding by email with numerous unit holders of the Project;

SISP Development

- Corresponding regularly with CBRE Limited ("CBRE"), the listing brokerage for the Project, regarding all aspects of the Sale Process;
- Reviewing and commenting on several versions of a template asset purchase agreement to be used in the Sale Process;
- Corresponding with CBRE regarding a virtual data room;
- Attending a call on January 29, 2024 with CBRE and a prospective purchaser;
- Attending a call on January 30, 2024 with CBRE and Gentai to discuss the Sale Process;
- Reviewing and discussing with CBRE its sale process update reports dated January 11, 18 and 26, 2024;
- Reviewing a summary prepared by CBRE of the Round 1 bids and attending a call on January 31, 2024 to discuss same;
- Reviewing a summary prepared by CBRE of the Round 2 bids submitted on February 6, 2024;
- Corresponding with EQ and A&B regarding the Sale Process, including calls on February 8, 13 and 21, 2024;
- Corresponding with Dorr Capital Corporation, Gentai, and Elm (collectively, the "Purchaser Group") regarding their bid submission, including calls on February 9, 2024 and April 18, 2024;

262

- Executing an asset purchase agreement dated March 4, 2024 with the Purchaser Group (the "APA");
- Corresponding with Bennett Jones regarding the status of the APA, including calls on February 6, 8, 27, 2024, March 27, 2024 and April 29, 2024;
- Corresponding with Bennett Jones regarding several extension requests related to the APA;
- Corresponding with the Purchaser Group regarding its intended treatment of the APSs and discussing same with Blaney;
- Preparing an authorization letter as requested by Elm to assist in its due diligence;
- Reviewing due diligence updates ("Due Diligence Reports") prepared by Elm dated March 15 and 27, 2024, April 15 and 22, 2024 and May 6, 2024 and providing the Due Diligence Reports to EQ;
- Attending a call on March 27, 2024 with Bennett Jones to discuss the status of the Purchaser Group's due diligence;
- Reviewing and commenting on several amendments to the APA;
- Attending a call with the Purchaser Group and Aviva on May 15, 2024 to discuss the treatment of the APSs;
- Executing an extension of the listing agreement with CBRE;

Other

- Responding to numerous inquiries from creditors and interested parties regarding the Partnership;
- Preparing a statement of receipts and disbursements;
- Maintaining the receivership case website;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements	\$ 131,707.46
HST	17,121.97
Total due	<u>\$ 148,829.43</u>

Time Summary

For the period ended June 30, 2024

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	700 - 750	142.90	107,150.00
Ben Luder	450	45.10	20,295.00
Other Staff and administration		19.45	4,054.75
Total fees		207.45	131,499.75
Out-of-pocket disbursements			207.71
Total fees and disbursements			131,707.46



Mitch Vininsky

ksv advisory inc.

220 Bay Street, Suite 1300

Toronto, Ontario, M5J 2W4 **264**

T +1 416 932 6013

F +1 416 932 6266

mvininsky@ksvadvisory.com

ksvadvisory.com

INVOICE

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

September 5, 2024

Invoice No: 3867

HST #: 818808768RT0001

**Re: 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP (together, the
"Partnership")**

For professional services rendered from July 1 to August 31, 2024 by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the "Receiver"), including:

General Matters

- Corresponding extensively with Blaney McMurtry LLP ("Blaney"), the Receiver's counsel, regarding all aspects of this mandate, as outlined in detail below;
- Corresponding with Equitable Bank ("EQ") and Gentai Capital Corporation ("Gentai"), the Partnership's senior secured creditors, regarding, among other things, construction activities at the Partnership's condominium development project located at 1333 Weber Street, Kitchener (the "Project") and the sale process for the Partnership's property;
- Corresponding with Aird & Berlis LLP ("A&B") and Bennett Jones LLP ("Bennett Jones"), counsel representing EQ and Gentai, respectively, regarding the receivership proceeding;
- Corresponding with Elm Developments Corp. ("Elm"), the general contractor engaged by the Receiver, to discuss the ongoing construction activities for the Project;
- Corresponding with Finnegan Marshall Inc. ("Finnegan Marshall"), the cost consultant engaged by the Receiver, regarding, among other things, its reviews of Elm's invoices for work performed in relation to the Project;
- Corresponding with RWH Engineering Inc. ("RWH"), the firm retained for shoring monitoring and inspection services for the Project;

265

- Reviewing the shoring monitoring report and site visit reports provided by RWH dated July 8 and 24, 2024 and August 6 and 21, 2024;
- Reporting to EQ and Gentai on the receivership proceedings;
- Preparing and maintaining an ongoing cost tracker related to the Project;
- Corresponding regularly with Brokerlink Inc., the Partnership's insurance broker, to discuss extensions of the insurance policies for the Project;
- Corresponding with the City of Kitchener and Bennett Jones regarding a letter of credit from Concentra Bank related to the Project;
- Attending a call on July 10, 2024 with Blaney and Friedmans LLP, counsel representing the Partnership's principal, to discuss a potential redemption of the Partnership's mortgages;
- Corresponding with Canada Revenue Agency regarding an audit of the Partnership's HST returns, including a call on July 23, 2024;
- Corresponding with Blaney regarding its review of the liens registered on title to the Project;
- Corresponding with Blaney regarding certain power supply units installed at the Project and the potential for the Receiver to purchase them;

Unit Holder Matters

- Corresponding with condominium unit purchasers regarding the receivership proceedings, the deposit insurance available through Tarion Warranty Corporation and Westmount Guarantee Services Inc. and the status of their purchase agreements;
- Attending calls and corresponding by email with numerous unit holders of the Project;

Sale Process

- Corresponding with CBRE Limited ("CBRE"), the listing brokerage for the Project, regarding the conditional sale of the Project;
- Corresponding with EQ regarding the Sale Process, including calls on July 17, 2024 and August 29, 2024;
- Corresponding with Bennett Jones regarding several extension requests related to the asset purchase agreement dated March 4, 2024 (the "APA") with Dorr Capital Corporation, Gentai, and Elm (collectively, the "Purchaser Group");
- Corresponding with the Purchaser Group regarding the conditions and closing of the APA, including calls on July 11, 2024 and August 6, 2024;
- Preparing a schedule of estimated closing costs and providing it to the Purchaser Group;
- Attending a call on August 9, 2024 with Blaney and Bennett Jones to discuss the status of the Purchaser Group's due diligence and the treatment of the condominium unit purchaser sale agreements;

- Reviewing and commenting on several amendments to the APA;

Other

- Responding to numerous inquiries from creditors and interested parties regarding the Partnership;
- Preparing a statement of receipts and disbursements;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees	\$	30,668.25
HST		<u>3,986.87</u>
Total due	\$	<u>34,655.12</u>

Time Summary

For the period ended August 31, 2024

Personnel	Rate (\$)	Hours	Amount (\$)
Mitch Vininsky	750	26.30	19,725.00
Ben Luder	450	22.75	10,237.50
Other Staff and administration		3.55	705.75
Total fees		52.60	30,668.25

This is Exhibit "B" referred to in the Affidavit of Mitch Vininsky sworn before me, this 20th day of September, 2024



.....
Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires February 23, 2027

Personnel	Title	Duties	Hours	Billing Rate (\$ per hour)	Amount (\$)
Mitch Vininsky	Managing Director	Overall responsibility	309.00	700 - 750	224,735.00
Ben Luder	Manager	All aspects of mandate	142.20	425 - 450	62,131.25
Other staff and administrative			29.90	175 - 700	11,310.00
Total fees			<u>481.10</u>		<u>298,176.25</u>
Out of pocket					<u>1,125.19</u>
Total					<u>299,301.44</u>
Total hours					481.10
Average hourly rate					\$ 619.78

APPENDIX “Q”

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

BETWEEN:

GENESIS MORTGAGE INVESTMENT CORPORATION

Applicant

-and-

1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP

Respondents

**IN THE MATTER OF AN APPLICATION UNDER SUBSECTION 243(1) OF THE
BANKRUPTCY AND INSOLVENCY ACT, R.S.C. 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 CHAD KOPACH

I, CHAD KOPACH, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY AS FOLLOWS:**

1. I am a partner with the law firm of Blaney McMurtry LLP (“**Blaneys**”), independent counsel for the Receiver, KSV Restructuring Inc. (“**KSV**”, or the “**Receiver**”). As such, I have knowledge of the matters hereinafter deposed to except where stated to be on information and belief, and where so stated I verily believe it to be true.

2. By Order of Justice Cavanagh dated October 12, 2023 (the “**Appointment Order**”), KSV was appointed Receiver without security, of all the assets, undertakings, and properties of the

Respondents, 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (collectively, the “**Respondents**”), acquired for, or used in relation to, a business carried on by the Respondents.

3. Blaneys has provided services and incurred disbursements in relation to the receivership for the period from September 19, 2023, to and including August 30, 2024, as described in the Legal Costs Summary attached hereto and marked as **Exhibit “A”**, and the detailed accounts rendered by Blaneys dated October 31, 2023, December 12, 2023, December 29, 2023, January 31, 2024, April 30, 2024 and August 31, 2024 which are attached hereto and marked as **Exhibits “B”, “C”, “D”, “E”, “F”, and “G”** respectively (the “**Blaneys Accounts**”), redacted to remove confidential and privileged information.

4. Notwithstanding the production of the Blaneys Accounts, Blaneys and the Receiver are in no way waiving privilege or confidentiality with respect to the accounts or the activities described therein.

5. Based on my review of the Blaneys Accounts and my personal knowledge of this matter, the Blaneys Accounts represent a fair and accurate description of the services provided and the amounts charged by Blaneys.

6. A total of approximately 412.8 hours were expended by Steven Jeffery, Eric Golden, Chad Kopach, Jeffrey M. Warren, Shawn Wolfson, Kym Stasiuk, Roman Pekaruk, Robert Hawkins and Blaneys’ law clerks and students during the period noted above in performing legal services relating to the Receivership proceeding herein.

7. I verily believe that the hourly billing rates, outlined in detail in the Blaneys Accounts, are in the range of normal average hourly rates charged by legal counsel for services rendered in relation to engagements similar to Blaneys’ engagement with respect to the Receivership.

8. I swear this Affidavit in support of a motion for, among other things, approval of Blaneys' fees and disbursements, and for no improper purpose.

SWORN by Chad Kopach at the City of)
 Toronto, in the Province of Ontario, before)
 me on September 18, 2024)



 A Commissioner for Taking Affidavits, etc.

Kelly Vickers (P13560)



CHAD KOPACH

This is Exhibit "A" referred to in the Affidavit of Chad Kopach sworn September 18, 2024.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

LEGAL COSTS SUMMARY

LAWYER	YEAR OF CALL	CURRENT HOURLY RATE
Steven Jeffery	1984	\$850.00
Eric Golden	1996	\$850.00
Jeffery M. Warren	1999	\$595.00
Shawn Wolfson	2002	\$800.00
Chad Kopach	2003	\$650.00
Kym Stasiuk	2008	\$525.00
Roman Pekaruk	2010	\$575.00
Robert Hawkins	2021	\$375.00
Shaun Odes	2022	\$350.00
Jennifer Trung	2022	\$350.00

SUMMARY OF ACCOUNTS

No.	Date of Account	Fees	Disbursements	H.S.T.	Total
1.	October 31, 2023	\$25,396.00	\$0	\$3,301.48	\$28,697.48
2.	December 12, 2023	\$56,422.50	\$531.95	\$7,380.20	\$64,334.65
3.	December 29, 2023	\$44,740.00	\$339.00	\$5,816.20	\$50,895.20
4.	January 31, 2024	\$44,166.00	\$662.95	\$5,799.27	\$50,628.22
5.	April 30, 2024	\$59,625.00	\$0	\$7,751.25	\$67,376.25
6.	August 31, 2024	\$49,835.00	\$142.00	\$6,495.45	\$56,472.45
TOTAL		\$318,404.25			
Average Hourly Rate - (before H.S.T.)		Total fees (before H.S.T.): \$280,184.50 ÷ Total hours: 412.80 = \$678.74			

This is Exhibit "B" referred to in the Affidavit of Chad Kopach sworn September 18, 2024.



Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
KSV Advisory
220 Bay Street, 13th Floor
P.O. Box 20
Toronto ON M5J 2W4

Date
October 31, 2023

Invoice No.
779573

File No.
205172-0001

Attention: Mr. Noah Goldstein

RE: Elevate Condominiums

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended October 31, 2023 as more particularly described below.

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
September 19, 2023	EG	0.30	Call with Noah re status
September 19, 2023	EG	0.30	Emails from and to Bennett Jones re Appointment Order;
September 20, 2023	EG	1.40	Review draft Receivership affidavit in detail and email to Bennett Jones re same; instructions to Kopach re same re AO;
September 20, 2023	CK	2.10	Receipt and review of draft application material; memorandum regarding revisions to draft appointment order given construction issues; correspondence with applicant's lawyer regarding appointment as CL trustee;
September 25, 2023	EG	0.20	Emails from and to Sean Zweig re revisions to NOA affidavit; emails with KSV re consent;
September 25, 2023	CK	2.20	Instructions to clerk regarding liens registered on title; prepare schedule with claimants' lawyers names and memorandum to lawyers for Gentai regarding same; correspondence regarding draft consent to act as receiver;
September 25, 2023	HC	0.50	Conducting title search. Retrieved documents from teraview.
September 26, 2023	EG	0.20	Communications with, A&B, KSV and Bennett

Date
October 31, 2023

Invoice No.
779573

File No.
205172-0001

278

-2-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			Jones re status and next steps'
September 28, 2023	EG	0.10	Emails from and to Bennett Jones re status of NOA issuance;
September 29, 2023	HC	0.30	Conducting title search.
October 1, 2023	EG	0.20	Email from BJ with final drafts of moving affidavit and draft order;
October 2, 2023	EG	0.50	Email from COR counsel re its position on its claim; email to same re same; email to CMLS re same; email from Chad re Dean Lane lien claim; email to BJ and KSV re same;
October 3, 2023	EG	0.20	Communications with Chad re SR law request to release settlement funds to lien holder and next steps;
October 5, 2023	CK	0.60	Prepare for and attend on call with lawyer for HC Matcon regarding pending receivership application, and anticipated role of receiver in vetting requests of release of holdback; review documents from HC Matcon counsel;
October 10, 2023	EG	0.70	Call with counsel for COR re position on receivership and stay of its action; email from and to Bennett Jones re status; review Gentai application record; review Gentai factum;
October 11, 2023	EG	0.30	Call with Graham Phoenix re borrower position; status update to and from KSV; instructions to Kopach re reporting to BJ and KSV re SR trust funds being held;
October 11, 2023	CK	1.90	Receipt of correspondence regarding status of opposition to receivership application; review correspondence from EG regarding same; correspondence to proposed receiver and to applicant's counsel regarding trust funds held by SR Law, and proposal to pay same to Receiver to determine proper payees given characterization of funds as holdback fund;
October 12, 2023	EG	2.40	Email from and to BJ re COR positions; emails with COR counsel re stay; prepare submissions re independent counsel; attend hearing; emails with KSV re insurance; email from borrower counsel with insurance policies;

Date
October 31, 2023

Invoice No.
779573

File No.
205172-0001

279

-3-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			emails from and to COR counsel and other stakeholders on motion re Chambers date for stay motion; email to CMLS re same; emails to and from counsel for Dean Lane re its position on COR claim and Dean Lan lien claim; communications with Kopach re stay motion and consolidating COR and Dean Lane claims; instructions to assistant re service list;
October 12, 2023	CK	1.90	Correspondence regarding insurance coverage issues; confirmation of attendance regarding receivership application, and no opposition to same; correspondence exchanged with lien claimants regarding next steps; revisions to draft appointment order;
October 13, 2023	EG	0.70	Review Dean Lane claim in detail; call with Maria Roberto and Chad re Dean Lane lien claim and COR claim; emails to and from counsel for Gentai re same;
October 13, 2023	EG	1.20	Email from Phoenix with insurance documents and re Hydro; email from Court re AO; emails with BJ and KSV re same and Service List; instructions to assistant re same; emails to EQ/A&B/CMLS re Computershare;
October 13, 2023	CK	1.20	Attend on call with MR (counsel to Dean Lane) regarding next steps, nature of claim, and possibility of bifurcation of same; correspondence exchanged with lawyer for HC Matcon;
October 15, 2023	EG	1.00	Email from Phoenix re insurance and APS's; review CBRE and Milborne status; email to CMLS re same; email to KSV re Finnegan updated report;
October 16, 2023	EG	0.30	Email b/w KSV and BLG re Elevate APS purchasers contact info; emails b/w KSV and CMLS re docs and info re Elevate; email from Phoenix with info and docs re Elevate (deposits and trades);
October 17, 2023	EG	1.60	Call with KSV and Chad re status and next steps; call from EQ re status; emails b/w CMLS and KSV re documents; call with CMLS re same and status; email b/w Graham and

Date
October 31, 2023

Invoice No.
779573

280

File No.
205172-0001

-4-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			KSV re same; email b/w BLG and KSV re same; review file re APS contact info; attempts to contact broker;
October 17, 2023	CK	1.80	Prepare for and attend on call regarding next steps, site security, roof issues, funding, and documents required for completion of appraisal; receipt and review of spreadsheet documents to ascertain information for purchasers; discuss notice to creditors and to condo unit purchasers;
October 18, 2023	EG	0.50	Communications with KSV re doc/info status; emails b/w KSV and CMLS re same; call with CMLS re same; emails to and from SL re scheduling stay motion; email to Court re same; emails with KSV re purchaser info from file; emails to Phoenix re same;
October 19, 2023	EG	1.40	Email from and to CMLS re APS's and contacts; emails with KSV re same; email from and to SL re Chambers date re stay motion; emails to and from stakeholders re same; email from and to KSV re costs estimates for sealing up building and security; review and revise Receiver's notice; emails to counsel for Elevate re docs/info required;
October 19, 2023	SW	0.40	Telephone call with E. Golden regarding receivership of development project, ascertaining list of unit purchasers and strategy with respect to communication with them;
October 20, 2023	EG	2.80	Call from John Weir (counsel for Elevate re APS's); email to same re same; call with Mitch re next steps; review CBRE draft appraisal as of Oct 1 , 2023; review Westmount documents and email/call with Mitch re same and relation to notice letter to purchasers; communications with S. Wolfson re same; emails from Graham re deposit and APS details; emails with EQ re construction/winterization required and funding; emails with CL re Nov 17th Chambers; emails with Mitch re mortgages priorities including Westmount;

Date
October 31, 2023

Invoice No.
779573

281

File No.
205172-0001

-5-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
October 23, 2023	EG	1.60	Emails from CMLS re Westmount advances under FA; emails from and to and call with S. Wolfson re Tarion/Westmount insurance and revisions to KSV APS purchaser letter; call with same; revise APS purchaser letter; emails with KSV re same; emails b/w MSV and Westmount counsel re same; call from counsel for COR re potential offer to be made; email from KSV with draft broker RFP; communications with Kopach re same;
October 23, 2023	SW	0.80	Reviewing and revising proposed letter to unit purchasers; emails with E. Golden regarding same;
October 24, 2023	EG	0.80	Communications with Wolfson re proposed purchaser response from Westmount; emails from and to KSV re same; email from John Weir re his firm's Elevate accounts; emails with Torsys re Tarion; email from Gentai re CBRE appraisal;
October 26, 2023	SJ	0.50	Emails from and to C. Kopach; review broker letter and appendices;
October 27, 2023	EG	0.50	Call with Torsys re Tarion; emails with KSV same and purchaser info;
October 27, 2023	CK	2.30	Prepare for and attend on calls with O'Connor Electric counsel and HC Matcon counsel regarding request for payout of holdback, and backup documents required for same; discussion regarding possible motion in mid-November to determine entitlement, if required subject to challenge by stakeholders; correspondence with receiver regarding funding;
October 30, 2023	EG	0.20	Communications with KSV re funding and status of notification to APS purchasers of receivership;

OUR FEE HEREIN:
FEE HST:

\$25,396.00
\$3,301.48

<u>Lawyer</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Steven Jeffery	Partner	0.50	\$800.00	\$400.00

Date
October 31, 2023

Invoice No. **282**
779573

File No.
205172-0001

-6-

<u>Lawyer</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Eric Golden	Partner	19.40	\$800.00	\$15,520.00
Shawn Wolfson	Partner	1.20	\$700.00	\$840.00
Chad Kopach	Partner	14.00	\$600.00	\$8,400.00
Hiuy Chan	Clerk	0.80	\$295.00	\$236.00

TOTAL FEES AND DISBURSEMENTS:	\$25,396.00
TOTAL HST:	<u>\$3,301.48</u>

TOTAL AMOUNT DUE:	<u>\$28,697.48</u>
-------------------	--------------------

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.

We accept payment by cheque, Wire, VISA, Mastercard and AMEX.
To pay by Visa, Mastercard or Amex please [Click here to pay](#)
To pay by Wire: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR
**Please ensure our invoice number, account number and/or file
number is quoted on all forms of payment.**
Contact email clientservices@blaney.com

This is Exhibit "C" referred to in the Affidavit of Chad Kopach sworn September 18, 2024.

A handwritten signature in blue ink that reads "K. Vickers".

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
KSV Advisory
220 Bay Street, 13th Floor
P.O. Box 20
Toronto ON M5J 2W4

Date
December 12, 2023

Invoice No.
782377

File No.
205172-0001

Attention: Mr. Noah Goldstein

RE: Elevate Condominiums

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended November 30, 2023 as more particularly described below.

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
November 1, 2023	EG	0.10	Email and vm from Cor counsel re offer;
November 2, 2023	EG	0.50	Review COR proposals re construction and mediation; communications with KSV re same; emails to and from COR re same;
November 2, 2023	CK	1.80	Receipt and preliminary review of material from HC Matcon counsel regarding claim to trust funds; prepare for and attend on call with FB regarding Stubbe's Precast claim, and regarding winterization work to be done; review claim from Stubbe's;
November 3, 2023	EG	0.70	Email from Cor proposing mediation; call with KSV re status and next steps; call with Chad re same; emails b/w KSV and syndicate re same; email to syndicate re same;
November 3, 2023	CK	1.70	Prepare for and attend on call with Receiver regarding COR offer; receipt of correspondence from former lien claimants regarding trust claims in respect of SR Law funds;
November 5, 2023	EG	0.80	Review prior Erik Inspektor litigation; call with counsel re same; communications with Gentai, A&B, Bennett Jones and KSV re Cor offers;

Date
December 12, 2023

Invoice No.
782377

285

File No.
205172-0001

-2-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
November 6, 2023	EG	0.50	Emails with Bennett Jones re issued AO and registering it on title; arrange to have AO registered on title; email from and to Maria Ruberto re Nov 17 Chambers attendance for stay motions, and SR Law holdback distribution;
November 6, 2023	DK	0.60	Receipt of request for updated property parcel register; confirm court order was not yet registered on title; review court order; prepare electronic application to register court order as instructed and prepare acknowledgment and direction for execution by client authorizing electronic completion of application;
November 7, 2023	EG	0.80	Communications with KSV re funding status; email to COR lawyer re its proposals; communications with KSV, Bennett Jones, A&B and Kopach re same;
November 7, 2023	JMW	0.10	Sign e-reg application to register court order against property
November 7, 2023	DK	0.50	Receipt of executed authorization; finalize application to register court order and attend to electronic registration; obtain copy of registered instrument and updated property parcel register; confirm same to E. Golden;
November 8, 2023	EG	2.20	Call with Mitch re COR proposals and funding; emails with A&B re same; email to and from COR re same; review litigation searches v. Inspektor and Kaptor;
November 10, 2023	EG	0.10	Email from Gowlings re its CMLS retainer;
November 10, 2023	CK	0.90	Correspondence from Receiver regarding funding and list of tasks to be completed by Gillam for winterization; review proposal from shoring engineer RWH to continue monitoring services for existing Tower 2 and 3 excavations;
November 13, 2023	EG	1.40	Communications with KSV re Nov 17 stay motion Chambers attendance; call with counsel for syndicate re stay motion; communications with Kopach and KSV re Gillam, Stubbes and engineer, and next steps;

Date
December 12, 2023

Invoice No.
782377

File No.
205172-0001

286

-3-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
November 13, 2023	CK	3.50	Receipt and review CCDC 5B document from Gillam; revisions to draft supplementary conditions; review Engineer proposal to investigate and report on excavation and supports required for same given period of Receiver's mandate; correspondence to Receiver regarding issues with contract and need to address precast concrete freeze/thaw issue; correspondence to Gillam regarding same and request for CCDC 5B to permit revision of same;
November 13, 2023	HC	0.50	Retrieved documents from teraview.
November 14, 2023	EG	1.50	Email from BLG re status and Nov 17 Chambers; email to same re same; email from and to COR defendants re response to COR; letter from Genrai counsel re same; email to Derek re COR Claim and Dean Lane claim; reporting to KSV; emails from KSV and Gillam re constructions issues and communications with Kopach re same;
November 14, 2023	CK	1.20	Follow-up correspondence to Gillam regarding revisions to CCDC and sup conds; attend call with SR (Gillam) regarding same; receipt and preliminary review of revisions, including removal of professional liability coverage; correspondence exchanged with receiver regarding revisions to draft CCDC document, sup conds, and timing issues;
November 14, 2023	RP	0.10	Provide advice on stop order searches and provide instructions on obtaining same;
November 14, 2023	AS	0.20	Communications with Kitchener Building Department re stop work order search request;
November 14, 2023	AS	0.20	Obtaining PIN Map; Preparing building search request letter, e-mailing to Kitchener Building Dpt.;
November 15, 2023	EG	0.50	Email to COR counsel re stay motions; communications with Kopach and KSV re construction issues; email from Dean Lane counsel re stay motions and lien settlement trust payout funds;

Date
December 12, 2023

Invoice No.
782377

File No.
205172-0001

287

-4-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
November 15, 2023	CK	5.70	Call with AG regarding need for Prof Liab coverage; attend on call with Gillam (SR) regarding options to address need for coverage to address any possible error in winterization plan; receipt and review of Stubbe's estimate, and discussions regarding same with Gillam; correspondence to Stubbe's regarding request for particulars of work, and written proposal; correspondence from lawyers for COR and Dean Lane regarding stay issue; correspondence exchanged with lawyer for HC Matcon regarding timing for motion regarding release of SR Law funds; attend on call with lawyer for RWH regarding historical records of site monitoring (Phases 2 and 3), and delivery of same;
November 16, 2023	EG	0.40	Emails with KSV and communications with Chad re next steps construction;
November 16, 2023	EG	1.30	Status update to syndicate re stay motions; email from COR counsel to stakeholders re same; call with COR counsel re same: email to stakeholders re same; emails from Dean Lane counsel re same; email to Court re adjournment of Chambers tomorrow
November 16, 2023	CK	1.80	Attend on calls with FM and with Stubbe's; receipt and review of draft Stubbe's contract; revisions to same; correspondence exchanged with lawyers for holdback trust claimants regarding timing for return of motion during week of December 4; correspondence with receiver regarding Gillam refusal to remove limitation of liability; attend on calls with SR (Gillam) regarding same;
November 17, 2023	EG	1.80	Email to Cavanagh J re Chambers today; call with KSV and Chad re construction and various related issues; calls with Chad re same; calls with Chad and Elm; communications with KSV re same;
November 17, 2023	CK	5.50	Prepare for and attend on call with Receiver regarding options in light of Gillam position on liability; correspondence with ES (Elm); prepare for and attend on call with Elm;

Date
December 12, 2023

Invoice No.
782377

File No.
205172-0001

288

-5-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			correspondence regarding arranging site visit; review and revisions to updated contract with Stubbe's; attend on call with lawyer for HC Matcon regarding reports on monitoring of excavation site; receipt and preliminary review of same;
November 17, 2023	AS	0.20	Receipt and review of City order search reply; Obtaining permit details;
November 18, 2023	EG	1.20	Emails with Chad re construction issues; call with KSV and Elm and Chad re same;
November 18, 2023	CK	1.50	Prepare for and attend on call with Elm following site visit; instructions to clerk regarding receipt of reports and production to Elm;
November 20, 2023	EG	0.80	Communications with and between Kopach, KSV and Elm re Elm contract and Stubbe's contract; communications with KSV and Kopach re trust funds from lien settlement in spring 2023, and payouts;
November 21, 2023	EG	1.20	Communications with Kopach and KSV re construction contracts and issues; review draft Elm contract; communications with KSV re realtor proposals to BLG;
November 21, 2023	CK	4.00	Further review/revise and finalize Stubbe's contract; status update to client on Elm contract discussion; attend on call with MV regarding addressing Gillam work to date; correspondence exchanged with counsel to Enercare regarding meeting to discuss notice of security interest;
November 22, 2023	EG	0.50	Update to EQ; communications with Chad and KSV re finalization of constructions contracts;
November 22, 2023	CK	2.80	Correspondence with FM regarding issues to be addressed identified by Elm; discussions with Elm regarding terms of CCDC 5B; receipt and review of revised task/priority list, and costs of same; attend on calls with ES (Elm) regarding draft contract; revisions to draft Stubbe's contract; attend on call with JS (Stubbe's) regarding scope of work and

Date
December 12, 2023

Invoice No.
782377

File No.
205172-0001

289

-6-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			revisions to contract; confirmation of wire transfer from Receiver to Stubbe's for deposit;
November 23, 2023	EG	0.50	Communications with Kopach and KSV re construction issues/contracts and start; further update to EQ;
November 23, 2023	CK	3.90	Review and revise CCDC 5B terms; attend on call with ES and Elm in-house counsel regarding same; correspondence with Stubbe's regarding power requirements for weep holes; coordinate with security regarding attendance on site; attend on call with electrician to confirm power and location; coordination between Stubbe's and security to arrange for access on November 24; attend on call with architect regarding potential retainer as consultant; status update to receiver regarding protection activities;
November 24, 2023	EG	0.60	Emails with KSV re APS deposit interest; call with S. Wolfson re same;
November 24, 2023	CK	4.80	Confirm coordination with security in respect of Stubbe's attendance, and discussion with Stubbe's worker confirming attendance on site; receipt of finalized contract; attend on call with ES (Elm) regarding mobilization on Monday morning; status update to Receiver regarding execution version of contract, Stubbe's attendance, and upcoming discussion with Enercare counsel and with Metergy; further status update to Receiver regarding O'Connor proposal, fully executed Elm contract, and draft correspondence to Gillam; attend on call with CVD regarding observations from site visit and timing for report;
November 25, 2023	EG	0.10	Emails with KSV re security issues at premises ;
November 27, 2023	EG	0.80	Emails from and to KSV re purchaser inquiries, report/motions and motion date; email re Stubbes and call with Chad re same and other construction issues;
November 28, 2023	EG	3.30	Review and revise first report; emails with KSV re same and next steps; communications with

Date
December 12, 2023

Invoice No.
782377

File No.
205172-0001

290

-7-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			Kopach re same; emails with court re Chambers date for stay motion scheduling; arrange for COR mortgage docs to be pulled from title; emails with COR re status;
November 28, 2023	CK	4.80	Correspondence from Receiver with results of engineer's review of shoring and monitoring results; prepare for and attend on call with Elm regarding first day on site, anticipated costing to stabilize and winterize excavation, Stubbe's scope of work and anticipated completion date, and O'Connor Electric's proposal regarding temporary power; attend on call with architect of record regarding proposal to act as consultant; commence draft of report regarding escrow funds;
November 29, 2023	EG	3.20	Communications with Chad re report and construction issues/stay issues; email to stakeholders re status, receiver's report and Chambers stay motion scheduling; communications with Chad and KSV re return date; further review of KSV report following Kopach revisions; email to KSV with draft report;
November 29, 2023	CK	6.80	Attend on call with Elm (JD) regarding outcome of site visit with engineer, and pricing for next steps to winterize excavation; revisions to draft report (x2); commence draft of section on escrow agreement and related holdback agreement arising from forbearance agreement and lien settlement; receipt of notices of termination from EllisDon counsel and from O'Connor Electric counsel; review concern regarding possible advance in face of lien; attend on call with lawyer for O'Connor and lawyer for HC Matcon regarding same; attend on call with Elm (ES) regarding potential overtime given earlier than anticipated winter conditions, and regarding pricing for winterization of excavation;
November 29, 2023	DK	0.20	Attend to Land Registry records and obtain copy of registered charge in favour of Corfinancial Corp.; obtain copy of updated property parcel register;

Date
December 12, 2023

Invoice No.
782377

File No.
205172-0001

291

-8-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
November 30, 2023	EG	2.20	Conference call with KSV and Chad re status, construction issues, report, NOM and next steps; review FM analysis of Elm proposal; revise stay section of Report; email from KSV re Heather and Bruce Greenberg docs; communications with Chad re Notice to lien trust monies claimants and steps to release those funds; review CBRE listing agreement and communications with KSV re CBRE fees for listing agreement; emails with A&B re marketing and sales process motion;
November 30, 2023	CK	5.90	Prepare for and attend on call with Receiver regarding SH bidder, proposal from Elm for winterization work suggested by RWH, and review by FM; draft summary of COR and Dean-Lane claims regarding stay; commence draft of notice of motion; attend on call with Elm regarding RWH recommended work; correspondence and VM to FM regarding analysis of costing;

OUR FEE HEREIN: \$56,422.50
FEE HST: \$7,334.93

<u>Lawyer</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Eric Golden	Partner	27.00	\$800.00	\$21,600.00
Chad Kopach	Partner	56.60	\$600.00	\$33,960.00
Jeffrey M. Warren	Partner	0.10	\$595.00	\$59.50
Roman Pekaruk	Partner	0.10	\$550.00	\$55.00
Dawn Kearns	Clerk	1.30	\$335.00	\$435.50
Hiuy Chan	Clerk	0.50	\$295.00	\$147.50
Ana Santos	Clerk	0.60	\$275.00	\$165.00

<u>Disbursements</u>	<u>Amount</u>
Registration Fees* - Non-Taxable	\$69.95
Computer Searches - R.E. (Teraview) * -	\$48.75
Agent's Fees & Disbursements	\$130.00
Municipal Inquiries* - Non-Taxable	\$65.00
Registration Fees	\$11.65
Computer Searches - R.E. (Teraview)	\$206.60

TOTAL DISBURSEMENTS: \$531.95
*HST is not charged

Date
December 12, 2023

Invoice No. **292**
782377

File No.
205172-0001

-9-

DISBURSEMENT HST: \$45.27

TOTAL FEES AND DISBURSEMENTS: \$56,954.45
TOTAL HST: \$7,380.20

TOTAL AMOUNT DUE: \$64,334.65

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.

We accept payment by cheque, Wire, VISA, Mastercard and AMEX.
To pay by Visa, Mastercard or Amex please [Click here to pay](#)
To pay by Wire: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR
**Please ensure our invoice number, account number and/or file
number is quoted on all forms of payment.**
Contact email clientservices@blaney.com

This is Exhibit "D" referred to in the Affidavit of Chad Kopach sworn September 18, 2024.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive, flowing style.

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL

KSV Advisory
220 Bay Street, 13th Floor
P.O. Box 20
Toronto ON M5J 2W4

Date

December 29, 2023

Invoice No.

782947

File No.

205172-0001

Attention: Mr. Noah Goldstein

RE: Elevate Condominiums

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended December 29, 2023 as more particularly described below.

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
December 1, 2023	EG	3.30	Review FM analysis of construction costs ; communications with KSV and Chad re construction issues; revise NOM; communications with KSV re report; further revisions to report; call from counsel for COR re status and next steps; emails with Court re Dec 12 hearing date; email to stakeholders re same; email to McCarthys re [REDACTED]
December 1, 2023	CK	4.20	Revisions to draft report regarding stay of COR and Dean-Lane claims; continue draft of notice of motion; attend on call with FM regarding anticipated costs of Elm proposed work; review correspondence to RWH regarding scope of work; receipt and preliminary review of Geotech report on excavation, and impact of erosion on footings; status update regarding Stubbe's weep hole work, and completion of same; attend on call with Gillam (SR) regarding invoice for services rendered at outset of receivership, and confirmation of no funds received from COR;
December 2, 2023	EG	1.50	Final proof of first report; email to KSV re same;

Date
December 29, 2023

Invoice No.
782947

File No.
205172-0001

295

-2-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
December 4, 2023	EG	3.50	Communications with Bennett Jones and A&B re next motion; communications with KSV re finalizing report; review and revise email to lien holders re lien settlement trust monies; communications with KSV and Kopach re status of construction issues; Final review and revision Notice of Motion; instructions to Kopach re Motion Record; emails with COR counsel re Dec 12 hearing date; instructions to Kopach re CL hearing request form and motion date; email to relevant stakeholders re same; communications with KSV re CBRE commission and fee structure; communications with KSV re [REDACTED] email to counsel for [REDACTED]
December 4, 2023	CK	3.80	Finalize correspondence to holdback claimants regarding advance issue; receipt of revisions to draft notice of motion and finalize same; finalize first report; instructions to clerk regarding compilation of motion record; service of same on service list; attend on call with Elm regarding timing of change order; receipt and comment on draft change order citation history;
December 5, 2023	EG	0.50	Review Inspektor/Kaptor claims and instructions to clerk to pull certain pleadings and affidavits from Court file of relevant ones;
December 5, 2023	EG	1.40	Emails from lien lawyers to Chad re release of funds from trust; communications with Chad re same; review documents/info requests from [REDACTED] emails with McCarythys re same; call with McCarthys re same; communications with KSV re same; communications with same and Chad re construction issues; review COR NOM:
December 5, 2023	CK	1.40	Correspondence exchanged with lawyers for holdback trust claimants; correspondence from Elm regarding draft CO, and call with MV regarding addition of RWH documents to contract documents; request to ABA regarding form of supplementary conditions; receipt and review of Gillam contract with monitoring

Date
December 29, 2023

Invoice No.
782947

File No.
205172-0001

296

-3-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			company, and correspondence to Elm regarding terms/assignment of same;
December 6, 2023	EG	1.50	Call with COR counsel re potential procedural settlement of COR and Dean Lane motions on \$1M issue; email from same to stakeholders re proposed settlement; emails from syndicate re same; email to same re same; communications with Chad re constructions issues and review and revise status construction email to KSV; review Dean Lane Notice of Motion;
December 6, 2023	CK	1.90	Update to KSV regarding status of construction, change order regarding shoring and geotech reports, proposed change order regarding structural report, and completion of Stubbes' work; correspondence regarding anticipated funding requirements for Elm; prepare for and attend on call with holdback trust claimants regarding position on issue of advance of funds from SR Law trust account given liens currently registered on title;
December 7, 2023	EG	1.80	Communications with KSV and Chad re construction issues; email to CGY and Ruberto re their proposal re stay motions; emails from and to counsel for Westmount re same; emails b/w stakeholders on lift stay motion re same; attend Chambers before Kimmel J re scheduling lift stay motions;
December 7, 2023	CK	1.10	Correspondence regarding timing for delivery of FM report; correspondence regarding settling terms of adjournment of stay motion to Dec 12; review continued negotiations regarding terms of stay motion resolution; attend on calls with Elm regarding costing for roof work and comments by FM; exchange of emails with Stubbes regarding timing for discussion on final billing for completed work;
December 8, 2023	EG	1.60	Email to and from McCarthys re [REDACTED] [REDACTED] communications with Chad and KSV re constructions issues [REDACTED] review and amend CBRE fee schedule;

Date
December 29, 2023

Invoice No.
782947

297

File No.
205172-0001

-4-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
December 10, 2023	CK	2.50	Correspondence to KSV regarding status of construction, potential retainer of ABA, and timing of Elm draw request; commence draft of sale approval and funding increase order;
December 11, 2023	SJ	0.30	Email from E. Golden; review court materials and listing agreement; email to E. Golden;
December 11, 2023	EG	4.50	Email from Bennett Jones to lift stay moving parties re status; emails to, from and between stakeholders re same and motion tomorrow; review and revise proposed draft order for motion tomorrow; communications with KSV and Kopach re construction issues; communications with Shawn Wolfson re HCRA; review HCRA request in detail; email to KSV re draft response to HCRA; communications with Steve Jeffery re APA; emails b/w [REDACTED] and KSV re [REDACTED] [REDACTED] communications with KSV re same and MRs process; instructions to Kopach re confidential MR to Cavanagh J and draft order to SL: communications with Kopach re Enercare/Metergy issue raised by its counsel; email from and to counsel for unit holder 812 re status and next steps;
December 11, 2023	CK	5.30	Draft and revise order given responses from stakeholders; correspondence to Cavanagh J. regarding status of matter, expected to proceed unopposed, and providing confidential motion record; correspondence to service list; status update to KSV regarding construction issues, Kitchener Utilities issue, and correspondence from lawyer for Enercare and Metergy; attend on call with KSV (MV) regarding status and interest from potential purchaser; attend on calls with Elm (JD and ES) and with ABA Architects (MS) regarding stabilization and winterization work;
December 12, 2023	SJ	5.40	Emails from E. Golden; prepare draft APS;
December 12, 2023	EG	3.60	Review COR aide memoire; review COR and Dean Lane claims in detail and prepare for and attend motion re M&S process and lift stay scheduling; emails b/w [REDACTED]

Date
December 29, 2023

Invoice No.
782947

File No.
205172-0001

298

-5-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			[REDACTED] communications with KSV re same; email from KSV to syndicate with CBRE launch brochure and review same;
December 12, 2023	CK	3.80	Prepare for and attend on call with ABA and with Elm (JD) regarding temporary roof install methodology, and possible use of roof drains going forward; communication from Elm regarding need to proceed with roof drain install as part of temp roofing works; follow up with FM regarding roof drain costing review by mid-day; receipt and review of FM commentary on roof drain and instructions to Elm; upload material to caselines for pending motion; attend on call with counsel for O'Connor, regarding pending motion and anticipated date for SR Law funds release; attend on call with counsel for HC Matcon regarding same; attend on call with representative from HGL Electrical regarding purpose of pending motion; receipt and review of issued sale process approval order and related endorsement; correspondence to SL regarding same; correspondence from interested party regarding costing inquiries;
December 13, 2023	SJ	0.90	Email to E. Golden with draft APS; complete draft APS;
December 13, 2023	EG	0.20	Emails b/w KSV and FM re cost report; communications with KSV re same and [REDACTED]
December 13, 2023	CK	1.10	Correspondence exchanged with FM regarding timing of costing report; attend on call with Elm and with ABA regarding next steps; correspondence with Stubbes regarding scheduling time for call to discuss backup for payment given scope of work required, and assignment of contract to Elm;
December 14, 2023	CK	1.60	Attend on calls with Elm (JD and ES) regarding timing of payment application, barricade and fencing issues, and return of existing material to Gillam; review Gillam response regarding response to request for options to purchase fencing and barricades; correspondence from

Date
December 29, 2023

Invoice No.
782947

File No.
205172-0001

299

-6-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			counsel to lien claimant regarding perfection and need to serve claim;
December 15, 2023	EG	0.80	Emails b/w KSV and [REDACTED] communications with KSV and Kopach re same; email to McCarthys re same;
December 15, 2023	CK	2.30	Correspondence from Elm regarding status of construction; correspondence regarding testing results (shoring monitoring); correspondence regarding additional information required to bid, and upload of material to data room; discussion with Architect (MS at ABA) regarding mock-up testing of windows, and reports issued during installation; correspondence regarding expected experts retained by bidder, and information required for same;
December 16, 2023	EG	0.30	Email from [REDACTED] communications with KSV and Kopach re same;
December 18, 2023	EG	0.50	Email from [REDACTED] communications with clerk re updated Service List; email to KSV re same; communications between KSV re syndicate [REDACTED] and b/w KSV and McCarhys re same; communications with KSV re same; communications with Kopach re additional architect documents;
December 19, 2023	EG	0.30	Review FM draft project budget;
December 20, 2023	EG	1.50	Discussion with Dorr Capital re potential transaction for property; call with KSV re same; call with FM and KSV re FM costs report; call with KSV re same; communications with Kopach re further architect documents for data room;
December 20, 2023	CK	0.90	Review draft ABA contract; suggest revisions to same to tie review of Elm contract specifically into ABA agreement; receipt and preliminary review of ABA reports, including window reports; correspondence to Receiver

Date
December 29, 2023

Invoice No. **300**
782947

File No.
205172-0001

-7-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			regarding same; update from Receiver on status of funding;
December 24, 2023	EG	0.10	Email to and from KSV re HCRA status;

OUR FEE HEREIN:	\$44,740.00
FEE HST:	\$5,816.20

<u>Lawyer</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Steven Jeffery	Partner	6.60	\$800.00	\$5,280.00
Eric Golden	Partner	26.90	\$800.00	\$21,520.00
Chad Kopach	Partner	29.90	\$600.00	\$17,940.00

<u>Disbursements</u>	<u>Amount</u>
Filing Fees* - Non-Taxable	\$339.00

TOTAL DISBURSEMENTS:	\$339.00
*HST is not charged	
DISBURSEMENT HST:	<u>\$0.00</u>

TOTAL FEES AND DISBURSEMENTS:	\$45,079.00
TOTAL HST:	<u>\$5,816.20</u>

TOTAL AMOUNT DUE:	<u>\$50,895.20</u>
-------------------	--------------------

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.

We accept payment by cheque, Wire, VISA, Mastercard and AMEX.
To pay by Visa, Mastercard or Amex please [Click here to pay](#)
To pay by Wire: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR
**Please ensure our invoice number, account number and/or file
number is quoted on all forms of payment.**
Contact email clientservices@blaney.com

This is Exhibit "E" referred to in the Affidavit of Chad Kopach sworn September 18, 2024.

A handwritten signature in blue ink that reads "K. Vickers".

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
KSV Advisory
220 Bay Street, 13th Floor
P.O. Box 20
Toronto ON M5J 2W4

Date
January 31, 2024

Invoice No.
787128

File No.
205172-0001

Attention: Mr. Noah Goldstein

RE: Elevate Condominiums

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended January 31, 2024 as more particularly described below.

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
December 17, 2023	EG	0.30	Email to McCarthy's [REDACTED] communications with KSV re same; emails from KSV to syndicate re same; email from FM re development costs details;
December 27, 2023	EG	0.10	Communications with clerk re status of Inspektor/Kaptor court files to be requisitioned;
January 1, 2024	EG	0.10	Email from lien claimant re release of trust funds; communications with Kopach re same;
January 2, 2024	EG	0.10	Emails with KSV re APA for data room;
January 5, 2024	EG	0.20	Call from Rob G. of EQ re status;
January 8, 2024	EG	3.20	Communications with S. Jeffery re his draft APS questions; review and revise APS; detailed email to KSV re same and outstanding issues; email to from KSV and to Kopach re Conestoga claim; communications with Chad re ABA contract; email from Elm re status of Elevate construction; review title re municipal agreements registered; emails with counsel for borrower re LC's and registered agreements on title re municipal agreements; communications with Kym Stasiuk re schedules to APA/eventual AVO and security

Date
January 31, 2024

Invoice No.
787128

File No.
205172-0001

303

-2-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			opinion
January 8, 2024	CK	0.80	Correspondence to Receiver regarding draft ABA contract for consultancy/inspection services, and regarding cost for testing/inspections re-establish gas connection; correspondence to Elm regarding approval of gas costs;
January 9, 2024	SJ	0.10	Emails from and to E. Golden and K. Stasiuk regarding APS and security opinion;
January 9, 2024	EG	1.40	Emails from and to KSV re APA terms and questions/issues: call with same; communications with S. Jeffery re same; communications with Chad re trust holdback email; revise email to lien holders from FA with trust claim re same;
January 9, 2024	CK	2.40	Review comments on APS; draft correspondence to counsel to mortgagees and to lien claimants regarding funds held by SR Law in trust, and release of same to holdback claimants; receipt and review FM comments on draft ABA contract;
January 9, 2024	DK	0.30	Attend to subsearch of title; obtain and review property parcel register; obtain copies of registered instruments as instructed;
January 10, 2024	EG	0.30	Email to and from Phoenix re LC's and muni agreements; communications with S. Jeffery re same; email from borrower lawyer on Elevate APS's re his APS fee arrears and fees for assistance provided to Receiver; communications with KSV re same;
January 10, 2024	CK	1.20	Attend on call with counsel for O'Connor; continue draft of correspondence regarding release of SR law funds; correspondence exchanged with ABA regarding terms of retainer;
January 10, 2024	KS	0.40	Email correspondence with S. Jeffery regarding security opinion; reviewing court documents; instructing clerk regarding title search;

Date
January 31, 2024

Invoice No.
787128

File No.
205172-0001

304

-3-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 11, 2024	EG	0.60	Call from Brian Dorr re Aviva offer; communications with KSV re revisions to APA for data room; emails b/w Weir law firm and KSV re claim for Weir AR on Elevate APS's and costs Weir incurred since receivership;
January 11, 2024	CK	0.30	Communications with lawyer for OConnor regarding SR Law funds;
January 11, 2024	KS	0.20	Email correspondence with S. Li and R. Hawkins regarding searches and draft opinion; telephone correspondence with R. Hawkins regarding same;
January 11, 2024	RHawk	1.60	Review of court proceedings and documents in preparation for drafting of security opinion;
January 11, 2024	SLi	1.00	Conducting title searches and saving to directory;
January 12, 2024	SJ	1.10	Telephone calls with E. Golden; review comments of KSV on draft APS; revise APS and email to E. Golden;
January 12, 2024	EG	0.30	Call with Steve re APA and emails with KSV re same;
January 12, 2024	KS	0.20	Email correspondence with clerk regarding title summary report;
January 12, 2024	RHawk	0.20	Ordered and reviewed corporate searches;
January 12, 2024	JK	0.80	Conducted Corporate/LP, Bankruptcy, Bank Act, Executions and PPSA searches against 1776411 Ontario Ltd. and on 1333 Weber Street Kitchener LP;
January 12, 2024	SLi	0.50	Reviewing corporate searches results; preparing search results as schedule B of the opinion;
January 12, 2024	SLi	3.60	Reviewing title search results; preparing title search summary; emailing K. Stasiuk for review;
January 15, 2024	EG	0.20	Review potential Dorr proposal;
January 15, 2024	RHawk	2.30	Reviewed and revised draft schedules to security opinion; prepared security opinion; review of existing security package;

Date
January 31, 2024

Invoice No.
787128

File No.
205172-0001

305

-4-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 15, 2024	RHawk	0.20	Review of court documents re security opinion;
January 15, 2024	SLi	0.90	Reviewing PPSA searches results; preparing summary as schedule C of the opinion;
January 16, 2024	KS	2.50	Reviewing court documents; email correspondence with R. Hawkins regarding same; reviewing and revising draft opinion; instructing R. Hawkins regarding security review;
January 16, 2024	RHawk	0.40	Reviewed and revised security opinion and schedules; correspondence with K. Stasiuk re same;
January 17, 2024	KS	0.20	Email correspondence with R. Hawkins regarding security review;
January 17, 2024	RHawk	0.60	Prepared security review for security opinion; correspondence with K. Stasiuk re same;
January 18, 2024	CK	1.10	Review revisions to draft agreement with architect; correspondence exchanged with GM (FM) regarding contract documents required for review of Elm invoicing;
January 19, 2024	CK	0.50	Prepare for and attend on call with Stryker (ABA) regarding retainer to inspect completed Elm work, and to respond to inquiries;
January 22, 2024	EG	1.40	Communications with Kopach re disbursing holdback amounts for FA lien claimants; review and revise updated email to lien holders and mortgagees re same; letter from [REDACTED] review same and communications with KSV, Kopach and Elm re same; arrange for names search, corporate searches and internet searches against same;
January 22, 2024	CK	3.20	Correspondence to FM (GM) regarding request for Elm contract; attend on call with same regarding overtime, overhead fee calculated as percentage of budget, and other issues arising from pending review of invoicing; follow up with ABA regarding revisions to draft contract; revisions to draft email to stakeholders regarding SR Law trust

Date
January 31, 2024

Invoice No.
787128

File No.
205172-0001

306

-5-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			funds, and to add request for backup documents given expected offers per sale process; communications to SR Law (DM) regarding confirmation of funds received and disbursed;
January 22, 2024	KS	0.10	Email correspondence with E. Golden regarding matter status and security opinion;
January 23, 2024	EG	2.60	Communications with Kopach re lien analysis in anticipation of APA Jan 30 deadline to determine holdback amounts; review search results in Rockwater including previous receivership involving COR: communications with KSV re same and Jan 30 APA deadline issues; review [REDACTED] [REDACTED] communications with KSV re same; [REDACTED]
January 23, 2024	CK	2.40	Finalize correspondence to SR Law fund stakeholders; attend on call with Receiver regarding same; correspondence from Maria Ruberto regarding clients' position; correspondence exchanged with lawyer for O'Connor regarding same; receipt of [REDACTED] regarding additional searches; revisions to draft response; receipt of FM email comments on Elm invoicing;
January 23, 2024	KS	1.60	Reviewing and revising security opinion; email correspondence with R. Hawkins regarding same; instructing S. Li regarding title summary;
January 23, 2024	RHawk	0.60	Reviewed and revised security opinion; correspondence with K. Stasiuk re same;
January 23, 2024	DK	0.10	Attend to subsearch of title and obtain property parcel register;
January 23, 2024	JK	0.50	Conducted Corporate search [REDACTED]
January 23, 2024	SLi	0.30	Preparing schedule D to opinion letter; emailing K. Stasiuk for review;

Date
January 31, 2024

Invoice No.
787128

File No.
205172-0001

307

-6-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 24, 2024	EG	2.90	Draft response to [REDACTED] communications with Kopach and KSV re same; call with syndicate and KSV re same; further revisions to response and communications with KSV re same; finalize response and email to SL re same;
January 24, 2024	CK	2.10	Review FM comments on Elm invoicing; attend on call with GM regarding same; comments from Receiver (MV) on issue of items included in budget, and correspondence responding to same; correspondence from Maria R. regarding timing for delivery of backup documents for lien; confirmation from Gentai counsel regarding consent to release of SR Law trust funds; correspondence from [REDACTED] and instructions to clerk regarding personal bankruptcy search given [REDACTED]
January 24, 2024	KS	2.30	Reviewing and revising security opinion; email correspondence with S. Jeffery regarding same; email correspondence with R. Hawkins and S. Li regarding same;
January 24, 2024	JK	0.20	Conducted Bankruptcy search against [REDACTED]
January 25, 2024	EG	0.70	Email from KSV re material/equipment on-site and APS; communications with Kopach re same; [REDACTED] communications with KSV and Kopach re same; email from KSV re costs schedule to date;
January 25, 2024	CK	1.80	Correspondence from counsel to COR regarding [REDACTED] correspondence from MV regarding material located on site; review CCDC 17 precedent to confirm no provision added to automatically deem debtor to be owner of material upon delivery; correspondence to MV regarding same, and regarding APS questions from broker; correspondence exchanged with Gillam

Date
January 31, 2024

Invoice No.
787128

File No.
205172-0001

308

-7-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			regarding invoice from fence contractor; status update from Elm regarding RWH attendance;
January 26, 2024	EG	0.30	Communications with Kym re status of security opinion and schedules for APA; communications with Kopach re status of lien analysis re holdback and docs/info from lien claimants;
January 26, 2024	CK	1.30	Receipt and preliminary review of Pallett Valo material regarding backup documents to prove quantum and lienability; correspondence to lien claimants' counsel regarding delivery of backup documentation prior to end of day Jan 29;
January 26, 2024	RHawk	0.40	Review of municipal agreements on title re security opinion;
January 28, 2024	CK	1.40	Receipt and preliminary review of documentation from counsel to lien claimants regarding proof of liens, including holdback claimed;
January 29, 2024	SJ	0.90	Emails from E. Golden; prepare response to Y. Li regarding s. 6.5 of APS; telephone call from L. Gazzola; email to M. Vinitsky;
January 29, 2024	EG	1.00	Call from Elliot re project status; communications with Mitch re same and outstanding issues/questions re potential APS's; email from Mitch [REDACTED] [REDACTED] communications with S. Jeffery re same; email b/w same and KSV re same; email from Mitch [REDACTED] [REDACTED] communications with Kopach re status of lien production of docs/info from lien claimants;
January 29, 2024	CK	7.90	Revision to draft ABA contract; correspondence regarding same and regarding RWH; receipt and review of documents for lien claims of roofing, flooring, drywall, electrical, fire safety, mechanical and concrete suppliers; correspondence to counsel regarding additional documents required to review holdback; correspondence to counsel to CMLS regarding follow-up questions on issues of Holdback Trust Claimants' entitlement to

Date
January 31, 2024

Invoice No.
787128

File No.
205172-0001

309

-8-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			release of funds from SR Law;
January 30, 2024	SJ	2.30	Email from L. Gazzola; email from K. Stasiuk - review and revise security opinion and title material; prepare schedule C and D to AVO and schedule C to APS and emails to and from L. Gazzola; review PIN; emails from and to M. Vininsky; emails from and to S. Frum;
January 30, 2024	CK	6.90	Receipt of additional backup documents from counsel to lien claimants; prepare for and attend on call with Receiver (MV and BL) regarding inquiries from potential purchaser; draft correspondence to remaining lien claimants regarding need to bring motion to compel production of documents proving lien claims if not forthcoming; attend on calls with counsel to Gillam, HGL, Pearson and Greentech regarding documents, and anticipated timing for delivery of same; continue draft of lien claim analysis and summary of holdback claims; receipt and review of offer summaries; correspondence from lenders regarding offers;
January 30, 2024	KS	0.30	Email correspondence with S. Jeffery and E. Golden regarding matter status; email correspondence with S. Jeffery regarding revised opinion; email correspondence with E. Golden regarding same; email correspondence with R. Hawkins regarding same;
January 30, 2024	RHawk	0.30	Review of security opinion;
January 30, 2024	DK	0.20	Attend to subsearch of title and obtain updated property parcel register and copy of registered easement;

OUR FEE HEREIN:
FEE HST:

\$44,166.00
\$5,741.58

<u>Lawyer</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Steven Jeffery	Partner	4.40	\$800.00	\$3,520.00
Eric Golden	Partner	15.70	\$800.00	\$12,560.00
Chad Kopach	Partner	33.30	\$600.00	\$19,980.00
Kym Stasiuk	Partner	7.80	\$525.00	\$4,095.00
Rob Hawkins	Associate	6.60	\$325.00	\$2,145.00

Date
January 31, 2024

Invoice No. **310**
787128

File No.
205172-0001

-9-

<u>Lawyer</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Dawn Kearns	Clerk	0.60	\$335.00	\$201.00
John Kroupis	Clerk	1.50	\$270.00	\$405.00
Sherry Li	Law Clerk	6.30	\$200.00	\$1,260.00

<u>Disbursements</u>	<u>Amount</u>
Filing Fees* - Non-Taxable	\$64.00
Search - Corporate* - Non-Taxable	\$72.70
Computer Searches - R.E. (Teraview) * -	\$82.45
Cyberbahn Agent Service Fee	\$122.90
Search - Corporate	\$12.00
Computer Searches - R.E. (Teraview)	\$308.90

TOTAL DISBURSEMENTS: \$662.95

*HST is not charged

DISBURSEMENT HST: \$57.69

TOTAL FEES AND DISBURSEMENTS: \$44,828.95

TOTAL HST: \$5,799.27

TOTAL AMOUNT DUE: \$50,628.22

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.

We accept payment by cheque, Wire, VISA, Mastercard and AMEX.
To pay by Visa, Mastercard or Amex please [Click here to pay](#)
To pay by Wire: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR
**Please ensure our invoice number, account number and/or file
number is quoted on all forms of payment.**
Contact email clientservices@blaney.com

This is Exhibit "F" referred to in the Affidavit of Chad Kopach sworn September 18, 2024.

A handwritten signature in blue ink that reads "K. Vickers".

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
KSV Advisory
220 Bay Street, 13th Floor
P.O. Box 20
Toronto ON M5J 2W4

Date
April 30, 2024

Invoice No.
794406

File No.
205172-0001

Attention: Mr. Noah Goldstein

RE: Elevate Condominiums

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended April 30, 2024 as more particularly described below.

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
January 30, 2024	EG	2.40	Call with KSV and Chad re status and next steps re outstanding construction; review and reive draft KSV email re same to syndicate; communications with KSV and S.Jeffery re LC's and permitted encumbrances schedule [REDACTED] review CBRE summary of offers to date; communications with Stasiuk re security opinion and related schedules; communications with Kopach re notice to remaining five lien claimants re release of FA holdback; email from Dorr with its offer;
January 31, 2024	EG	0.90	Communications with KSV re offers; review [REDACTED] review updated CBRE offer summary;; email from KSV re costs update;
February 1, 2024	CK	1.20	Follow up correspondence with lien claimants (x3) regarding backup documents and information required for analysis of liens and holdback claims; telephone communications with Holdback Claimant counsel regarding status of stakeholders' positions on release of funds from SR Law;
February 1, 2024	RHawk	0.80	Review of municipal agreements on title and

Date
April 30, 2024

Invoice No.
794406

File No.
205172-0001

313

-2-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			supporting letters of credit; correspondence with K. Stasiuk re same;
February 2, 2024	EG	0.10	Communications with KSV re SISP status;
February 5, 2024	EG	0.20	Communications with Kopach re lien analysis; email to KSV re same;
February 6, 2024	EG	2.20	Communications with Kopach re lien analysis and positions of lien claimants; call with Mitch re same and next steps; review and revise emails to 3 lien claimants and to KSV; emails from agent re arrival of kaptor/Inspektor files from storage; email from Dorr group with updated offer;
February 6, 2024	CK	8.20	Review material from counsel to lien claimants and prepare analysis of same, including holdback exposure; attend on calls with counsel to Metal and Phased 2 Electrical contractor; correspondence to counsel to lien claimants regarding non-delivery of material to site, and impact on lien claim; receipt and review of offer;
February 7, 2024	SJ	1.80	Email from E. Golden with offer from Gentai; review and email to E. Golden with comments; review Dorr offer and email to E. Golden with comments;
February 7, 2024	EG	2.80	Communications with Kopach re lien priority email to Gentai and EQ counsel; review and revise same; communications with S. Jeffery re Dorr offer; review comments from same re same; communications with KSV re same; email from [REDACTED] [REDACTED] with S. Wolfson re same; emails b/w EQ and KSV re funding status; review Gentai offer and communications with S. Jeffery re same; review comments from same re same and communications with KSV re same; communications with KSV re status update to Aviva;
February 7, 2024	CK	2.20	Continue draft of analysis regarding lien claims and holdback portion of same; draft status update to receiver, and draft to certain secured

Date
April 30, 2024

Invoice No.
794406

File No.
205172-0001

314

-3-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			claimants regarding holdback exposure, with link to documents delivered by lien claimants;
February 8, 2024	SJ	1.30	Telephone calls from E. Golden; conference telephone call with M. Vininsky, E. Golden, R. English, J. Chau et al; conference telephone call with M. Vininsky, E. Golden, S. Zweig; conference telephone call with M. Vininsky and E. Golden;
February 8, 2024	EG	2.50	Email from Dorr with revised offer; communications with KSV re same; communications with S. Jeffery re Gentai and Dorr offers; call with EQ and KSV re APAs submitted; call with Chad and KSV and Elliott re building status and next steps, call with Sean Zweig re status and next steps; review various claims re payout amount required to satisfy mortgagee claims; emails with KSV re Werner request for debtor minute books; emails b/w KSV and EQ re next steps;
February 8, 2024	CK	0.90	Attend on call with lawyer for OConnor regarding status of lien review and Holdback Claimant entitlement; correspondence from Stryker (ABA) regarding execution of contract for review/certification of Elm contract;
February 8, 2024	CK	1.10	Receipt and review of memorandum from Elm regarding impact of freeze-thaw cycle on exterior of building; attend on call with Elm and Receiver regarding strategy for addressing same, including retainer of envelope consultant to review and recommend strategy for mitigation;
February 9, 2024	EG	0.70	Communications with KSV re waterfall and APAs; communications with Kopach re construction issues;
February 9, 2024	CK	2.60	Correspondence from Receiver regarding request for minute books; status update regarding offer to purchase and next steps in sale process; update to Receiver regarding ABA retainer, and revisions to contract to address FM comments; review status update from Elm regarding outcome of site

Date
April 30, 2024

Invoice No.
794406

File No.
205172-0001

315

-4-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			walkthrough with envelope consultant;
February 10, 2024	EG	0.20	Emails with Bennett Jones and KSV re Feb 15 attendance re COR claim;
February 11, 2024	EG	1.90	Email from and to KSV re Dean Lane and COR claims; review same; email to same re same; email to Bennett Jones re status and next steps; email to purchaser Kallweit's counsel re insurance on APS;
February 12, 2024	EG	0.30	Emails from KSV re status of SISP and from KSV and Elm re condition of building/next steps;
February 13, 2024	EG	1.60	Call with Mitch re SISP status and Thursday COR case conference; emails from and to Gowlings, BJ and AB re status of same; call with Gowlings re same; call with COR counsel re same; communication with Kopach re latest construction issues; emails b/w KSV, EQ Gentai re APA;
February 13, 2024	CK	1.30	Correspondence to Elm regarding roof anchors, and identification of roof anchor subcontractor to enable use in solution proposed by envelope engineer; correspondence from lawyer for CMLS regarding status of sale process;
February 14, 2024	EG	1.50	Communications with KSV re Dorr offer; emails with COR counsel re tomorrow's Chambers attendance; communications with KSV and counsel for CMLS, EQ and Gentai re same; email to Court cancelling case conference;
February 15, 2024	EG	0.10	Email from Elm with most recent invoices; communications with Kopach re same;
February 15, 2024	CK	1.80	Receipt and review of proposal from envelope expert; receipt and review of accounting from Elm on second round of invoices; receipt of stakeholder responses on Holdback Claimants' entitlement to SR Law trust funds; correspondence to counsel for Conestoga Roofing regarding client's position on SR Law trust funds, including caution regarding cost

Date
April 30, 2024

Invoice No.
794406

File No.
205172-0001

316

-5-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			consequences should motion be required;
February 15, 2024	GBans	2.50	Research on failure to comply with the requirements of section 27.1 holdbacks under Construction Act;
February 16, 2024	CK	1.10	Receipt of confirmation from lawyer for Conestoga Roofing that client will not oppose release of SR Law funds to Holdback Claimants; compile correspondence from stakeholders regarding Holdback Claimants; receipt of correspondence from lawyer for secured lender regarding holdback calculation, and questions regarding same;
February 20, 2024	EG	0.80	Email and call from Elm re condo construction issues; communications with Chad re lien holdback release; updated offer from Dorr group; briefly review same and communications with KSV, SJ and EQ re same;
February 20, 2024	EG	0.30	Email to agent re inspection of Inspektor/Kaptor court files; communications with KSV re APAs and AVO motion;
February 21, 2024	SJ	1.10	Review revised offer from Gentai/Elm/Dorr; conference telephone call with M. Vininsky, B. Luder and E. Golden; telephone call with E. Golden; conference telephone call with R. English, J. Chau, R. Gartner, M. Vininsky, B. Luder and E. Golden;
February 21, 2024	EG	1.30	Call with KSV and SJ re Dorr APA: call with EQ and A&B and KSV re same; email from A&B re lien priority questions; review and revise Kopach email to A&B re lien analysis; revise and revise email to COR re release of SR Law trust funds to lien claimants
February 21, 2024	CK	3.90	Correspondence to counsel to Cor regarding position on release of SR Law funds; draft correspondence to counsel to senior secured lenders regarding lien analysis, quantification of holdback, questions as to timeliness, and discharge/vacating of liens in spring of 2023; confirmation from SR Law regarding quantum held in trust for Holdback Claimants;

Date
April 30, 2024

Invoice No.
794406

File No.
205172-0001

317

-6-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			correspondence from counsel to HC Matcon and O'Connor Electric regarding timing of release of SR Law funds;
February 22, 2024	SJ	2.30	Emails to and from J. van Gent regarding latest offer; compare latest offer to previous offer; emails from M. Vininsky; revise APS and email to M. Vininsky;
February 22, 2024	EG	0.30	Communications with Kopach re distributions form SR Law now that COR has consented; review and revise email to lien claimants in SR trust account;
February 22, 2024	EG	0.80	Revised APA from Dorr group; communications with S. Jeffery re same; review Steve Jeffery comments re same;
February 22, 2024	CK	0.60	Receipt and preliminary review of invoices from Elm regarding subsequent payment applications;
February 23, 2024	SJ	0.60	Email from M. Vininsky with comments on APS; revise APS; email to M. Vininsky;
February 23, 2024	EG	0.10	Emails b/w KSV and S. Jeffery re additional comments to updated Dorr APA;
February 23, 2024	KS	0.10	Telephone correspondence with S. Jeffery regarding matter status;
February 26, 2024	EG	0.50	Communications with KSV, Dorr and Elm re revised APA; emails b/w KSV and EQ re same;
February 27, 2024	EG	1.50	Communications with Chad and KSV re Elm invoices and FM review; call with Mitch re Dorr; call with counsel for Dorr offer re same; email from Elm re rational for Dorr offer; call with Elm re same; email to KSV re same ;communications with Kopach re SR Law refusal to disburse trust funds, and response to same;
February 27, 2024	CK	1.30	Correspondence from SR Law regarding request for appointment order and authority to authorize release of funds; draft correspondence to DM at SR Law regarding same; receipt and review of invoices from Elm

Date
April 30, 2024

Invoice No.
794406

File No.
205172-0001

318

-7-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			regarding second draw request; correspondence to receiver regarding FM comments on Elm invoicing and backup;
February 28, 2024	EG	0.30	Emails b/w EQ and KSV re Dorr APA; review and revise email from Chad to SR Law re release of trust funds to lien claimants;
February 28, 2024	CK	1.00	Attend on call with lawyer for Troy Fire regarding status of lien claims, next steps in lien claims process, and timing for perfection; correspondence from SR Law regarding review of appointment order and receiver's position on authorization of release of funds from trust;
March 1, 2024	EG	0.10	Email from Dorr Group with updated APA; emails b/w KSV and FM re construction costs;
March 4, 2024	EG	0.20	Communications with Kopach re SR law position on release of trust funds; review and revise email to same;
March 5, 2024	CK	0.80	Receipt and review of envelope review report and comments from Elm regarding work required under same; exchange of correspondence with SR Law representative (DM) regarding holdback claimant release of funds;
March 6, 2024	EG	0.20	Communications with Kopach re SR law continued refusal to release trust funds; review and revise next email to SR law; communications with Kopach re Elm costs and FM reviews;
March 6, 2024	EG	0.20	Communications with Kopach and KSV re Door group due diligence requests;
March 6, 2024	CK	2.20	Attend on calls with lawyers for holdback claimants regarding SR Law refusal to release funds; further correspondence to DM regarding same; exchange with Elm regarding envelope work and caulking required;
March 7, 2024	EG	0.30	Communications with Elm and KSV re due diligence requests; emails b/w KSV and mortgagees re funding; review latest KSV

Date
April 30, 2024

Invoice No.
794406

File No.
205172-0001

319

-8-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			costs update;
March 7, 2024	CK	2.00	Attend on calls with FM and Receiver; correspondence exchanged with DM; receipt and review of costing for envelope work;
March 11, 2024	EG	0.30	Communications with Mitch re status and outstanding issues, as well as Elm due diligence; call with Chad re same;
March 13, 2024	CK	0.40	Review FM comments following Elm investigation; correspondence exchanged with Receiver regarding same;
March 15, 2024	EG	0.10	Communication with Chad re Elm construction billings and Metergy equipment inquiries;
March 18, 2024	CK	1.30	Review further FM comments regarding invoicing from Elm; correspondence to Receiver regarding suggested approach, given quantum of amounts at issue; correspondence from lien counsel regarding status of review of lien documents;
March 19, 2024	EG	0.30	Communication with Kopach re response to further inquiry from Metergy/Enercare; email from purchaser group re status of due diligence;
March 19, 2024	CK	0.50	Attend on call with JD (Elm) regarding subcontracting of curtain wall work, need for limited supervision from Elm, and costs of same, and regarding sump pump costing from recent payment application; status update to receiver regarding same;
March 21, 2024	CK	1.70	Correspondence exchanged with Elm regarding quote for caulking work, and request change order for execution of same; receipt and preliminary review of quote from Elm and draft CO #2;
March 22, 2024	EG	0.30	Call from Brian Dorr re status of APA due diligence; call with KSV re same; emails from Elm and b/w Elm and Chad/KSV re billing issues;
March 25, 2024	CK	0.30	Correspondence to Receiver regarding comments on draft CO, and inquiry into status

Date
April 30, 2024

Invoice No.
794406

File No.
205172-0001

320

-9-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			of FM costing review;
March 26, 2024	EG	0.20	Communications with Kopach re Troy lien, and finalization of lien analysis;
March 26, 2024	CK	1.10	Correspondence to FM regarding recommendations for caulking to address exterior precast panel water issues, and Elm costing for same; correspondence exchanged with lawyer for Troy Fire regarding perfection of lien, and acceptance of service of same; status update to Receiver;
March 27, 2024	EG	0.30	Status update from lending group and review latest Elm DD memo; communications with KSV and b/w KSV and EQ re same;
April 1, 2024	EG	0.10	Emails b/w KSV and EQ re status of APA;
April 2, 2024	SJ	0.50	Emails from and to E. Golden regarding extension of APS; review APS regarding due diligence condition;
April 2, 2024	EG	0.70	Communications with S. Jeffery and KSV re extension of APA; briefly review APA and extension; emails b/w KSV, BJ/gentai and EQ re same;
April 2, 2024	SOdes	1.00	Correspondence re amendment to agreement of purchase and sale; Attendance to drafting amendment to agreement of purchase and sale;
April 3, 2024	SJ	0.30	Emails from and to KSV and E. Golden regarding extension of due diligence date; emails to and from S. Zweig and J. van Gent;
April 3, 2024	EG	0.20	Emails b/w Chad, Elm, cost consultant and KSV re construction issues; emails with KSV re extension of APA;
April 3, 2024	CK	0.40	Correspondence regarding extension of PA term to April 8 to allow for time to draft formal extension;
April 3, 2024	SOdes	0.50	Correspondence re amendment to agreement of purchase and sale; Prepared email agreement extending the due diligence date to April 8, 2024;

Date
April 30, 2024

Invoice No.
794406

File No.
205172-0001

321

-10-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
April 5, 2024	EG	0.30	Emails from Elm re Rego realty inquiries and response;
April 8, 2024	EG	0.20	Email from KSV re proposed extension amendments to Door group APA; emails b/w KSV EQ and Gentai counsel re same and extension;
April 9, 2024	EG	0.10	Communications with KSV re Dorr group proposed 60 day extension;
April 10, 2024	SJ	0.10	Emails from and to KSV and J. van Gent regarding further extension;
April 10, 2024	EG	0.10	Communications from Gentai, EQ and KSV re further extension of Dorr APA to April 12;
April 12, 2024	SJ	0.50	Emails from M. Vininsky and J. van Gent; revise amendment to APS; emails to and from M. Vininsky; email to J. van Gent; emails from and to J. Kim with executed amendment;
April 12, 2024	EG	0.40	Communications with KSV and SJ re third extension to Dorr APA: email from Elm/KSV re [REDACTED]
April 16, 2024	EG	0.30	Review Elm DD memo March 28-April 15; emails with KSV re same;
April 19, 2024	EG	0.20	Communications with KSV re potential disclaimer of APS's; call with Brian Dorr re same;
April 22, 2024	EG	0.30	Email from and to KSV re purchaser inquiries re APS's for project; review latest DD update from Elm;
April 23, 2024	EG	1.00	Emails with KSV and call with same re potential disclaimers; review recent cases on condo disclaimers where settlement struck with APS holders;
April 24, 2024	EG	0.20	Emails b/w KSV and Dorr and from KSV re disclaimers;
April 25, 2024	CK	1.40	Correspondence exchanged with ABA and with Elm regarding inspection of Elm work for completeness, and anticipated timing for same; attend on call with purchaser group and receiver regarding existing APS issue;

Date
April 30, 2024

Invoice No.
794406

File No.
205172-0001

322

-11-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>		
			discussion with receiver regarding notice of delay to Tower B purchasers;		
OUR FEE HEREIN:					\$59,625.00
FEE HST:					\$7,751.25
<u>Lawyer</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>	
Steven Jeffery	Partner	8.50	\$850.00	\$7,225.00	
Eric Golden	Partner	29.90	\$850.00	\$25,415.00	
Chad Kopach	Partner	39.30	\$650.00	\$25,545.00	
Kym Stasiuk	Partner	0.10	\$525.00	\$52.50	
Rob Hawkins	Associate	0.80	\$375.00	\$300.00	
Shaun Odes	Associate	1.50	\$350.00	\$525.00	
Gurwinder Bansal	Student	2.50	\$225.00	\$562.50	
TOTAL FEES AND DISBURSEMENTS:					\$59,625.00
TOTAL HST:					<u>\$7,751.25</u>
TOTAL AMOUNT DUE:					<u>\$67,376.25</u>

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.

We accept payment by cheque, Wire, VISA, Mastercard and AMEX.
To pay by Visa, Mastercard or Amex please [Click here to pay](#)
To pay by Wire: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR
Please ensure our invoice number, account number and/or file number is quoted on all forms of payment.
Contact email clientservices@blaney.com

This is Exhibit "G" referred to in the Affidavit of Chad Kopach sworn September 18, 2024.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive, flowing style.

Commissioner for Taking Affidavits (or as may be)

KELLY VICKERS (P13560)

HST REGISTRATION # R119444149

PRIVATE AND CONFIDENTIAL
KSV Advisory
220 Bay Street, 13th Floor
P.O. Box 20
Toronto ON M5J 2W4

Date
August 31, 2024

Invoice No.
803058

File No.
205172-0001

Attention: Mr. Noah Goldstein

RE: Elevate Condominiums

TO ALL PROFESSIONAL SERVICES RENDERED on your behalf in connection with the above noted matter for the period ended August 31, 2024 as more particularly described below.

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
April 25, 2024	EG	0.40	Call with KSV, Gentai and Brian Dorr re disclaimers;
April 26, 2024	EG	0.10	Communications with KSV re costs tracker;
April 29, 2024	EG	0.30	Call with KSV and Bennett Jones re APA issues;
April 30, 2024	EG	0.50	Communications with KSV re costs tracker for receivership; emails with and b/w KSV and Bennett Jones re CBRE commission on Dorr APA;
May 3, 2024	EG	0.20	Emails with KSV re [REDACTED]
May 5, 2024	EG	2.10	Review Rego docs/APS commission schedules and payables; email to KSV re same;
May 6, 2024	SJ	0.10	Email from J. van Gent regarding waiver of due diligence condition;
May 6, 2024	EG	0.30	Emails from and to KSV re broker commissions; email from BJ re syndicate waiver of due diligence; email from Elm with May 6 DD memo;
May 6, 2024	CK	0.30	Correspondence regarding agent commission purportedly owing; attend on call with FB

Date
August 31, 2024

Invoice No.
803058

325

File No.
205172-0001

-2-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			(counsel to Stubbes) regarding status of sales process and anticipated dates for next steps; follow-up with Stryker regarding review of Elm work completed to date;
May 8, 2024	EG	1.80	Review additional documents re Rego and email to KSV re opinion on same;
May 9, 2024	EG	0.20	Call with Mitch re Rego;
May 10, 2024	EG	1.20	Email to BJ re Rego commissions;
May 10, 2024	EG	0.30	Email from Dorr re APS purchaser proposal in the Syndicate APA; communications with KSV re same;
May 13, 2024	SJ	0.10	Emails from S. Zweig and M. Vininsky; emails from and to J. van Gent and M. Vininsky regarding extension of due diligence;
May 13, 2024	EG	0.50	Review updated costs tracker and email to KSV re same; emails with KSV re CBRE listing agreement; emails with KSV and b/w KSV and EQ re APA extension; communications with S. Jeffery re extension agreement; email from Dorr re disclaimer/assumption of APS' s;
May 13, 2024	EG	0.50	Email from Bennett Jones re extension request; emails with KSV and S. Jeffery re same; email from and to KSV re costs tracker and increased borrowings; emails with KSV re CBRE position on commission;
May 14, 2024	SJ	0.50	Emails from and to M. Vininsky and J. van Gent regarding extension; instructions to S. Odes;
May 14, 2024	EG	0.10	Communications with Chad re 85K surplus held by SR law;
May 14, 2024	CK	0.40	Receipt and review of summary from ABA/Stryker regarding completion level of roofing membrane and other elements billed for in last round of Elm invoicing;
May 14, 2024	SOdes	1.10	Email correspondence re due diligence date extensions and second amendment; Drafted second amendment to the agreement of purchase and sale;

Date
August 31, 2024

Invoice No.
803058

326

File No.
205172-0001

-3-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
May 15, 2024	SJ	0.30	Emails from and to M. Vininsky; instructions to S. Odes regarding second amendment to APS; emails from and to J. van Gent;
May 15, 2024	EG	0.10	Emails with Bennett Jones and KSV [REDACTED]
May 15, 2024	SOdes	0.10	Email from J. Kim re executed amendment;
May 15, 2024	SOdes	0.20	Emails to and from J. Van Gent re further revisions to second amendment and confirming amendment is settled;
May 15, 2024	SOdes	0.10	Email from M. Vininsky re confirming form of amendment is acceptable;
May 15, 2024	SOdes	0.40	Attendance to revising second amendment;
May 21, 2024	EG	0.70	Communications with Chad re 85K surplus re lien payments in FA; instructions to same re position to take with SR Law re same; revise email to KSV re same; communications with Chad re outstanding construction invoices;
May 21, 2024	CK	1.70	Correspondence to Receiver (MV) regarding status of CCDC work and pending review by Elm to determine timing for completion; review FA regarding advance of funds, and correspondence on issue of \$85k remaining in trust with SR Law; status update to Receiver regarding SR Law trust funds;
May 22, 2024	EG	3.20	Communications with Wolfson re APS and units extension notices: review relevant schedules to APS; further communications with Wolfson and Chad re unit extension deadlines and stay; emails to and from and calls with KSV re same; emails with Bennett Jones re same; emails with KSV re disclaimer or assumption of unit holders APS in proposed Dorr et al APA;
May 22, 2024	EG	0.10	Letter from counsel for [REDACTED] re status and May 31 closing;
May 23, 2024	EG	0.50	Communications with KSV and Elm re APA purchaser's intention to disclaim/assume Unit APS's , and related notices; email from BJ re same;

Date
August 31, 2024

Invoice No.
803058

File No.
205172-0001

327

-4-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
May 24, 2024	EG	2.40	Detailed email to Elm re occupancy dates; emails with KSV re same; email from Elm re same; call with Weir re APS occupancy information; call with KSV re same; email to Wolfson and call with same re buyer remedies; review Wolfson analysis of buyer remedies; emails with KSV re same;
May 24, 2024	SW	1.40	Telephone calls and emails with E. Golden regarding condo occupancy key dates and impact if improper or no notice of extensions of occupancy dates provided to purchasers; discussion and emails with J. Trung regarding same;
May 24, 2024	CK	0.20	Communications with SR Law regarding trust funds, and purported requirement that funds be returned if not used;
May 24, 2024	JTrun	2.10	Review of Agreement of Purchase and Sale and applicable legal sources to confirm remedies available to purchasers due to delayed occupancy;
May 27, 2024	EG	0.40	Letter from and email to APS purchaser re occupancy dates in purchaser APS's;
May 28, 2024	EG	0.20	Update from Brian Dorr to EQB re status of Elm/Dorr APA; emails with KSV re same;
May 29, 2024	EG	0.30	Communications with Kopach re outstanding construction issues and Gillam issues;
May 29, 2024	CK	1.80	Attend on call with DM (SR Law) regarding trust funds held by SR Law, and payment out to Receiver; attend on call with CD (O'Connor) regarding temporary power claim; attend on call with Elm (JD) regarding timing for completion of caulking work, and methodology issues for completion; status update to Receiver regarding timing of caulking work; correspondence to ABA Architects (consultant) regarding site visit to confirm completion;
May 30, 2024	EG	0.30	Communications with Kopach re SR Law trust funds; review and revise email to counsel for mortgagees and CMLS;

Date
August 31, 2024

Invoice No.
803058

328

File No.
205172-0001

-5-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
May 30, 2024	CK	0.60	Draft and finalize correspondence to all lender counsel regarding SR Law trust funds, and request for approval for SR Law to deliver funds to Receiver;
May 31, 2024	EG	0.50	Emails b/w Chad and Gowlings and from KSV re release of SR law funds; communications with Kopach re Gillam issues; review relevant emails from Gillam; review and revise Kopach response to Gillam;
May 31, 2024	CK	2.20	Receipt and review correspondence from Gillam regarding inquiry into status of trade contracts; receipt and review bonding information; draft correspondence to Gillam regarding suspension of trade contracts and timing for receiver's determination on addressing same; receipt of correspondence from lawyer for CMLS regarding SR Law trust funds, and prepare reply;
June 6, 2024	CK	1.70	Receipt of correspondence from lawyer for O'Connor regarding temporary lighting; attend on call with Elm regarding temporary lighting and regarding ABA site visit to confirm status of work; review O'Connor contract regarding temporary lighting pricing;
June 7, 2024	EG	0.10	Email from KSV to EQB/Gentai re status of APA conditions; update from EQB re Elm group APA;
June 7, 2024	CK	0.60	Coordinate site visit (ABA-Elm); correspondence exchanged with O'Connor lawyer regarding lighting claim;
June 10, 2024	EG	0.10	Email from EQ re extension to APA; instructions to S. Jeffery re further APA extension;
June 10, 2024	CK	0.40	Confirmation of ABA attendance on site on June 13; correspondence exchanged with counsel for O'Connor and for EllisDon regarding conference calls to discuss status of sale process;
June 11, 2024	SJ	0.10	Email from E. Golden regarding extension of due diligence; email to M. Vininsky;

Date
August 31, 2024

Invoice No.
803058

329

File No.
205172-0001

-6-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
June 11, 2024	EG	0.10	Emails with and b/w KSV and S. Jeffery re APA extension;
June 11, 2024	CK	1.20	Attend on call with counsel for O'Connor regarding temporary power issue; receipt and review of further invoicing from Elm and FM comments on level of completion;
June 13, 2024	EG	0.10	Emails from S. Jeffery and EY re third extension;
June 14, 2024	SJ	0.40	Emails from J. van Gent and M. Vininsky; prepare third amendment to APS and emails to and from J. van Gent;
June 14, 2024	EG	0.10	Emails from counsel for proposed purchaser, Steve Jeffery and KSV re third extension; review same;
June 17, 2024	CK	1.00	Prepare for and attend on call with M. Ruberto, lawyer for certain lien claimants, regarding request for status update and next steps in proceeding;
June 20, 2024	SJ	0.30	Emails from and to M. Vininsky; prepare draft fourth amendment to APS; email to J. van Gent;
June 20, 2024	EG	0.30	Emails with and b/w KSV, S. Jeffery and BJ next APA re extension agreement; email from Bill Friedman advising he has been retained by a potential investor; emails b/w SR Law La and KSV re trust refund;
June 24, 2024	EG	0.10	Communications b/w Blaneys, KSV and BJ re fourth extension;
June 24, 2024	CK	1.10	Correspondence from Elm regarding status of caulking payments; correspondence exchanged with ABA regarding results of site review and level of completion of caulking;
June 26, 2024	EG	0.20	Email from KSV re further extension request; email from and to same re LC as part of lender security package;
June 26, 2024	CK	0.50	Receipt of confirmation from ABA regarding completion level of caulking work; correspondence to Receiver regarding

Date
August 31, 2024

Invoice No.
803058

330

File No.
205172-0001

-7-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			payment of Elm invoice #69; correspondence exchanged with Jason at Elm regarding invoice approval and pending payment;
June 27, 2024	EG	0.10	Emails b/w Blaneys and KSV re latest extension agreement;
June 27, 2024	KS	0.10	Reviewing revised agreement of purchase and sale;
June 27, 2024	SOdes	0.30	Attendance to drafting 5th amendment;
June 27, 2024	SOdes	0.10	Correspondence re draft 5th amendment;
June 28, 2024	EG	0.10	Emails b/w relevant stakeholders re fifth amendment extension;
June 28, 2024	KS	0.10	Email correspondence with S. Odes regarding agreement of purchase and sale amendment;
June 28, 2024	SOdes	0.30	Emails to and from M. Vininsky re draft 5th amendment; Emails to and from J. Van Gent re draft 5th amendment;
July 2, 2024	SOdes	0.10	Email to J. Van Gent providing fully executed 5th amendment;
July 3, 2024	EG	0.10	Email from and to EQ re LC and assignability of site plan agreement/building permits ;
July 3, 2024	CK	1.80	Receipt of request regarding transfer of SPA and building permits; receipt of and review of interim SPA; instructions to clerk to obtain registered SPA; call with RP regarding transfer of SPA; receipt and review of permit documents from Receiver (BL); call with RP regarding nominal fee or new application to change owner on permits with municipality;
July 3, 2024	RP	0.30	Review and discussion in relation to inquiry on assignability of Site Plan and Building Permits;
July 5, 2024	CK	0.50	Prepare for and attend on call with FB (lien claimant counsel) regarding inquiry into status of sale process;
July 8, 2024	EG	0.10	Email from and to KSV re potential replacement LC';
July 9, 2024	EG	0.50	Email from and to Friedman re potential payout; emails with KSV re same; email from

Date
August 31, 2024

Invoice No.
803058

File No.
205172-0001

331

-8-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			KSV re LC and communications with S. Jeffery re same;
July 10, 2024	EG	1.30	Emails from and to [REDACTED] review same from [REDACTED]; call with same and KSV re same; emails with KSV and EQ re same; [REDACTED]
July 10, 2024	CK	1.50	Attend on call with counsel to debtors (BF) regarding purported plan to pay out receivership; review purported lender; correspondence with existing lenders and with receiver regarding purported new lender; confirm extension date for due diligence period;
July 11, 2024	SJ	0.30	Emails from and to E. Golden regarding responding to questions from EQ on sale process and disclaimer of existing APSs;
July 11, 2024	EG	1.80	Email from EQ with various questions re next steps; draft detailed email to same re same; communications with S. Jeffery re same; emails to and from KSV re same and call with KSV re same;
July 12, 2024	EG	0.70	Emails from and to KSV re further revisions to email re EQ inquiries; email to EQ re same;
July 15, 2024	EG	0.10	Emails with KSV re new APA extension request;
July 17, 2024	SJ	0.20	Email from J. van Gent regarding further extension; emails to and from M. Vininsky; instructions to S. Odes; review draft sixth amendment and email to J. van Gent;
July 17, 2024	EG	0.10	Emails b/w Blaneys, KSV and stakeholders re sixth extension agreement, and additional funding;
July 17, 2024	SOdes	0.50	Correspondence re sixth amendment; Drafted sixth amendment;
July 19, 2024	EG	0.10	Communications between purchaser group and KSV re further extension;
July 19, 2024	SOdes	0.10	Correspondence re amendments to sixth amendment to further extend due diligence

332

File No.
205172-0001

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			date;
July 22, 2024	SJ	0.20	Emails from and to J. van Gent and M. Vininsky regarding extension to end of week;
July 22, 2024	EG	0.10	Emails b/w stakeholders re email extension of APA for 1 additional week;
July 22, 2024	SOdes	0.20	Correspondence re extension of due diligence date and sixth amendment;
July 23, 2024	EG	0.10	Email from EQB re further extension to August 30;
July 24, 2024	SJ	0.10	Emails from E. Golden and M. Vininsky regarding further extension; instructions to S. Odes regarding amending agreement;
July 24, 2024	SOdes	0.40	Correspondence re draft sixth amendment; Revised draft sixth amendment;
July 25, 2024	SOdes	0.10	Correspondence re fully executed sixth amendment;
July 30, 2024	CK	1.10	Receipt and review of list of equipment from O'Connor regarding temporary power; attend on call with Elm (J. D'Elia) regarding [REDACTED] [REDACTED] receipt of document regarding extension of due diligence period to end of August;
July 31, 2024	CK	0.20	Correspondence exchanged with [REDACTED] [REDACTED] t during week of August 5;
August 1, 2024	EG	0.10	Email from and to BLG re status of sale process;
August 6, 2024	EG	0.20	Email from and to KSV re waiver of conditions and timing;
August 6, 2024	CK	1.30	Attend on call with Elm (J.D'Elia) regarding [REDACTED] [REDACTED]

Date
August 31, 2024

Invoice No.
803058

333

File No.
205172-0001

-10-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
August 7, 2024	EG	1.20	Call with KSV re status and next steps; emails between KSV and EQ and BJ re closing; review security opinion and lien analysis to date; email to KSV re same; emails from and to court re dates Elevate AVO motion; emails with KSV re same;
August 8, 2024	CK	0.70	Prepare for and attend on call with K. Gill (Lien Claimant Conestoga Roofing);
August 9, 2024	EG	0.30	Email from KSV re update to closing timing; with same and BJ re same;
August 13, 2024	EG	2.50	Letter from Friedmans re potential claim v. lenders and potential proposal re redemption; letter from same re inspection; review COR claim re forbearance allegations and previous emails from Friedmans re proposal; email to Friedman responding to his latest letters;
August 14, 2024	EG	0.10	Emails with KSV re response to Friedmans;
August 19, 2024	EG	0.10	Communications with Kopach [REDACTED]
August 19, 2024	CK	1.00	[REDACTED]
August 20, 2024	EG	0.20	Call from EQB re COR claim;
August 20, 2024	CK	0.40	Finalize [REDACTED] correspondence with Receiver regarding Consortia;
August 22, 2024	EG	0.50	Communications from Dorr and Elm re APA; email to and from court re AVO motion date; email to and from lenders' counsel re same; email to Friedman, Ketelaars and Ruberto re same;
August 23, 2024	EG	0.10	Email from and to Court re AVO motion scheduling;
August 25, 2024	EG	0.10	Follow-up to Friedman, Ketelaars and Ruberto re AVO date and next steps;

Date
August 31, 2024

Invoice No.
803058

334

File No.
205172-0001

-11-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
August 26, 2024	EG	0.20	Emails b/w KSV and Elm re billings and AR; email from Court confirming Sep 25 AVO date; email from and to Ketelaars re AVO motion;
August 26, 2024	CK	1.20	Receipt and review of accounts from Elm; review correspondence with counsel for Cor and for Dean Lane regarding scheduling AVO motion, and how to address pending claim (currently stayed) against lenders;
August 27, 2024	EG	1.30	Call from KSV re costs estimates; emails from counsel for Dean Lane and COR re AVO motion and their clients' claims; detailed email to same re same and next steps/conference call; email to BLG, A&B and BJ re same/conference call;
August 28, 2024	EG	1.50	Call with Rob G re status and claims; review COR and Dean Lane claims; email to KSV re outstanding issues [REDACTED]
August 29, 2024	SJ	0.10	Emails from S. Zweig, M. Vininsky and E. Golden regarding extension; instructions to S. Odes;
August 29, 2024	EG	0.50	Emails with KSV re costs estimates through closing; emails from Bennett Jones re 7th extension, and emails from KSV and Gentai re same; emails with S. Jeffery re same; emails with KSV re next steps and disclaimer/assumption issues re APS's
August 29, 2024	CK	0.50	Correspondence exchanged with lawyer for [REDACTED] review correspondence regarding timing for waiver of conditions for purchase;
August 29, 2024	SOdes	0.10	Correspondence re draft amendment extending due diligence date to September 9, 2024;
August 30, 2024	EG	0.10	Emails b/w all relevant stakeholders and KSV re 7th extension;
August 30, 2024	CK	0.50	Review correspondence with purchaser group regarding timing for waiver of conditions, and

Date
August 31, 2024

Invoice No.
803058

335

File No.
205172-0001

-12-

<u>Date</u>	<u>Lawyer</u>	<u>Time</u>	<u>Description</u>
			timing for determination of position on disclaimer;
August 30, 2024	KS	0.10	Email and telephone correspondence with S. Odes regarding amending agreement;
August 30, 2024	SOdes	0.10	Compiled seventh amendment;
August 30, 2024	SOdes	0.10	Email from M. Vininsky re draft amendment;
August 30, 2024	SOdes	0.10	Email from J. Kim providing signatures for seventh amendment;
August 30, 2024	SOdes	0.10	Email to M. Vininsky re draft amendment;
August 30, 2024	SOdes	0.20	Email to and from purchaser's counsel re draft amendment, confirming draft is settled, and status of signatures;
August 30, 2024	SOdes	0.50	Drafted seventh amendment;
August 30, 2024	SOdes	0.10	Email to S. Zweig providing draft seventh amendment for signature;

OUR FEE HEREIN:	\$49,835.00
FEE HST:	\$6,478.55

<u>Lawyer</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Steven Jeffery	Partner	2.70	\$850.00	\$2,295.00
Eric Golden	Partner	32.50	\$850.00	\$27,625.00
Shawn Wolfson	Partner	1.40	\$800.00	\$1,120.00
Chad Kopach	Partner	24.40	\$650.00	\$15,860.00
Roman Pekaruk	Partner	0.30	\$575.00	\$172.50
Kym Stasiuk	Partner	0.30	\$575.00	\$172.50
Shaun Odes	Associate	5.30	\$350.00	\$1,855.00
Jennifer Trung	Associate	2.10	\$350.00	\$735.00

<u>Disbursements</u>	<u>Amount</u>
Computer Searches - R.E. (Teraview) * -	\$12.00
Agent's Fees & Disbursements	\$130.00
TOTAL DISBURSEMENTS:	\$142.00
*HST is not charged	
DISBURSEMENT HST:	\$16.90

TOTAL FEES AND DISBURSEMENTS:	\$49,977.00
TOTAL HST:	\$6,495.45

Date
August 31, 2024

Invoice No. **336**
803058

File No.
205172-0001

-13-

TOTAL AMOUNT DUE: \$56,472.45

BLANEY McMURTRY LLP

Eric Golden
E. & O.E

Fees may include charges for services provided by Lawco Limited.
Details are available upon request.

We accept payment by cheque, Wire, VISA, Mastercard and AMEX.
To pay by Visa, Mastercard or Amex please [Click here to pay](#)
To pay by Wire: TD Canada Trust, Bank No. 004, Transit No. 10252,
General Account No. 0680-5215022 Swift Code: TDOMCATTOR
**Please ensure our invoice number, account number and/or file
number is quoted on all forms of payment.**
Contact email clientservices@blaney.com

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

and

1776411 ONTARIO LTD. et al.
Respondents

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

Proceeding commenced at Toronto

AFFIDAVIT OF CHAD KOPACH

BLANEY McMURTRY LLP

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

Eric Golden (LSO #38239M)
(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

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

and

1776411 ONTARIO LTD. et al.
Respondents

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

Proceeding commenced at Toronto

**MOTION RECORD OF KSV RESTRUCTURING INC.,
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER
(Returnable October 8, 2024)**

BLANEY McMURTRY LLP

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

Eric Golden (LSO #38239M)
(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