

**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 THE RECEIVER, KSV RESTRUCTURING INC.
(Returnable December 12, 2023)**

December 4, 2023

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in its capacity as Court-appointed Receiver

TO: SERVICE LIST

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TAB 1

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

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

**NOTICE OF MOTION
(Sale Process Approval)**

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”) and 1333 Weber Street Kitchener LP (the “**Partnership**”, and together with 177, 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 12th day of December, 2023 at 12:00 p.m., or as soon after that time as the motion can be heard, at 330 University Avenue in Toronto.

PROPOSED METHOD OF HEARING: The Motion is to be heard by judicial video conference via Zoom co-ordinates to be established by the Court prior to the motion date.

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 the activities and proposed activities described in the Receiver's first report dated December 4, 2023 (the "**First Report**");
3. approving the proposed marketing and sale process for the property municipally known as 1333 Weber Street East in Kitchener, Ontario (the "**Real Property**"), as described in the First Report;
4. 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;
5. 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); and,
6. such further and other relief as counsel may advise and this Honourable Court may permit;

THE GROUNDS FOR THE MOTION ARE:

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**");

Background – the Project

2. prior to the Receivership Order, the Debtors had been in the process of constructing phase 1 of a four-phase residential condominium project on the Real Property (the "**Project**"), though work on the Project had been stalled since early-August, 2023;
3. each of the four-phases of the Project involved the construction of a condominium tower;
4. phase 1 of the Project is a partially-completed 15-story, 177 unit tower known as "Tower A". Phases 2 and 3 of the Project (Towers B and C) have not progressed past the below-grade excavation, and temporary shoring is currently in place in the excavation pit for Towers B and C;

Registered Security

5. the construction of Tower A was being financed by a syndicate of lenders consisting of the applicant, Genesis Mortgage Investment Corp. ("**GMIC**"), the junior secured lender, 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**");

6. as of September 13, 2023, the Partnership owed GMIC approximately \$19.6 million and CMLS/Computershare approximately \$44.7 million. Additionally, \$2.7 million is outstanding in respect of a letter of credit facility provided by CMLS/Computershare;
7. Westmount Guarantee Services Inc. (“**Westmount**”) holds a second-ranking mortgage over the Real Property, registered in the amount of \$50 million. 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 phases 1 and 2 of the Project;
8. 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 Urban Contractor Inc. (“**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;
9. the Receiver’s understanding is that COR has not paid Gillam under this promissory note;
10. in addition to the three mortgages referenced above, 15 trade contractors have registered 22 construction liens totalling \$17,664,878 against the Real Property;

The Receiver's Powers

11. the Receivership Order authorizes the Receiver to, among other things:
 - a. take possession of and exercise control over the Property (including the Real Property) and any and all proceeds, receipts and disbursements arising out of or from the Property;
 - b. receive, preserve, and protect the Property;
 - c. 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;
 - d. undertake any construction at the Property necessary to bring the Property into compliance with applicable laws and building codes;
 - e. 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; and,
 - f. 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;

Securing the Real Property and Commencement of Stabilization and Winterization Work

12. security monitoring had been discontinued prior to the Receivership Order, with minor instances of theft and vandalism evident upon inspection of the Project. The Receiver has arranged for on-site nightly security and 24/7 remote video monitoring;
13. the Receiver and its counsel attended numerous calls with certain of the trades, including the former construction manager (Gillam), the shoring engineer and one of the cost consultants. The Receiver has engaged Elm Developments Corp. (“**Elm**”) as a construction manager to prioritize and address site deficiencies and to prepare the site for winter, including addressing the incomplete roof on top of Tower A and on the fifth-floor podium of Tower A, the exposed upper-floors (where no windows have been installed), and issues that have been identified by the shoring engineer as requiring immediate attention prior to the onset of freezing temperatures;
14. prior to the retainer of Elm, the Receiver had also identified an urgent issue with the hollow-core slabs installed throughout Tower A. The Receiver directly retained a trade to install weep holes in the hollow-core slabs to drain the buildup of water that, if left in place, would damage the concrete if it froze and then thawed. This work is scheduled to be completed by December 4, 2023;

Cost of Winterization and Stabilization, and Increase in Borrowing Limit

15. the Receiver’s borrowing limit pursuant to paragraph 21 of the Receivership Order is currently \$500,000. As of the date of the Receivership Order, there were nominal funds in the Debtors’ accounts, and no source of capital. The expenses associated with the

stabilization, winterization, security measures, insurance, utilities, consultants, advisors and professional costs will exceed \$1 million, increasing monthly until a transaction for the Real Property is completed;

16. to avoid a further motion solely to deal with funding, the Receiver seeks to increase the borrowing limit to \$2 million in order to allow for additional costs and contingencies;

Cost to Complete the Project

17. Tower A has been estimated to be approximately 80% complete. That estimate is being reviewed by a cost consultant retained by the Receiver;
18. several factors weigh against the Receiver seeking to complete construction of Tower A, and closing on the pre-sold units. The factors include:
 - a. complexities associated with resumption of construction for Tower A, including time and weather delays (at least a year is required to complete), whether the trade contractors (who are also lien claimants) would be willing to resume activities, or whether alternative contractors would be required, and whether the work could be warranted, regardless of who completes it;
 - b. funding of construction, which is expected to require at least \$30 million in financing, with any lender requiring its advances to rank in priority to existing registrations (this is not supported by the First Mortgagees);
 - c. the professional costs of a receivership to complete Tower A, which would materially erode recoveries; and,

- d. the First Mortgagees' position, which is to support the commencement of a sale process for the Project to determine its value on an "as is" basis;

Marketing and Sales Process

19. the Receivership Order includes provisions from the Commercial List's model order giving the Receiver the power to market and sell the Property, including the Real Property;
20. the Receiver invited five national real estate brokerages to submit listing proposals for the marketing and sale of the Real Property, and received three proposals (the "**Broker RFP**"). The Receiver has prepared a schedule comparing the key terms of the proposals, which is attached as Confidential Appendix "1" to the First Report;
21. the Receiver and representatives of the First Mortgagees met with two of the brokerages, and 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:
 - a. CBRE's knowledge of the Real Property;
 - b. CBRE's familiarity with the Kitchener market;
 - c. CBRE's proposed marketing process and its fee to do so; and,
 - d. the experience of CBRE's team;
22. The Receiver and CBRE prepared a sale process for the Real Property (the "**Sale Process**"). The key terms of the Sale Process are described in section 3.2 of the First Report. Assuming the Sale Process can commence by December 14, 2023, a bid deadline is expected for the end of January, 2024, with a sale approval motion potentially as early as mid-March, 2024;

23. The Receiver is of the view that the Sale Process is appropriate for the following reasons, among others as set out in the First Report:
 - a. the Receiver will retain an experienced and well-recognized commercial brokerage firm to sell the Real Property; and
 - b. the Sale Process has optimized the chance of securing the best possible price for the Real Property;
24. Confidential Appendix “1” to the First Report includes information regarding the indications of value provided by the realtors in the Broker RFP (the “**Confidential Information**”). If made public at this stage, the Confidential Information could potentially negatively affect the realizations of the Real Property;
25. the salutary effects of sealing the Confidential Information outweighs the deleterious effects of doing so;
26. section 249 of the *Bankruptcy and Insolvency Act*,
27. Rules 2.03, 3.02, 37 and 41.05 of the *Rules of Civil Procedure*; and,
28. 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 and the appendices attached thereto; and
2. such further and other evidence as counsel may advise and this Honourable Court may permit.

December 4, 2023

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Lawyers for KSV Restructuring Inc.,
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TO: SERVICE LIST

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

GENESIS MORTGAGE INVESTMENT CORPORATION
Applicant

and

1776411 ONTARIO LTD. et al.
Respondents

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

Proceeding commenced at Toronto

**NOTICE OF MOTION
(Sale Process Approval)**

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in its capacity as Court-appointed Receiver

TAB 2



**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

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

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

B E T W E E N:

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RESPONDENTS

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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.

1.1 Purposes of this Report

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

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		
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		
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"> ○ total consideration (cash and assumed liabilities); ○ form of consideration being offered, including the value of any carried interest; ○ third-party approvals required, if any; ○ conditions, if any; and ○ 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

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.
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”.

5.3 Stay of Proceedings

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

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 “A”

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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

GENESIS MORTGAGE INVESTMENT CORP.

Applicant

- and -

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Respondents

**ORDER
(Appointing Receiver)**

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

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;

- (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

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

- (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;

- (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

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

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

NO PROCEEDINGS AGAINST THE RECEIVER

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

NO PROCEEDINGS AGAINST THE DEBTOR OR THE PROPERTY

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

NO EXERCISE OF RIGHTS OR REMEDIES

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

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

NO INTERFERENCE WITH THE RECEIVER

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

CONTINUATION OF SERVICES

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

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

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

RECEIVER TO HOLD FUNDS

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

EMPLOYEES

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

PIPEDA

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

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

LIMITATION ON ENVIRONMENTAL LIABILITIES

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

LIMITATION ON THE RECEIVER'S LIABILITY

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

RECEIVER'S ACCOUNTS

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

FUNDING OF THE RECEIVERSHIP

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

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

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

SERVICE AND NOTICE

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

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

CRITICAL PAYMENTS

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

DEPOSITS

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

GENERAL

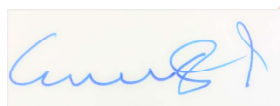
29. THIS COURT ORDERS that the Receiver may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

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

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

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

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

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

DATED the ____ day of _____, 20__.

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

Per: _____
Name:
Title:

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

**GENESIS MORTGAGE INVESTMENT
CORP.**

and

1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP

Applicant

Respondents

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

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

Proceedings commenced in Toronto

**ORDER
(October 12, 2023)**

BENNETT JONES LLP

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

Sean Zweig (LSO# 57307I)

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.

Order to issue in form of Order signed by me.



Digitally signed by
Mr. Justice
Cavanagh

Appendix “B”



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 “C”



Ben Luder
kvs restructuring inc.
220 Bay Street, Suite 1300
Toronto, Ontario, M5J 2W4
T +1 416 953 9421
F +1 416 932 6266
bluder@ksvadvisory.com

ksvadvisory.com

October 30, 2023

DELIVERED BY E-MAIL

CBRE Limited
Land Services Group
2005 Sheppard Avenue East
Suite 800
Toronto, ON M2J 5B4

CBRE Limited
Land Services Group
2005 Sheppard Avenue East
Suite 800
Toronto, ON M2J 5B4

Attention: Mike Czestochowski

Attention: Lauren White

Dear Mr. Czestochowski and Ms. White:

Re: 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (together, the “Partnership”)

Pursuant to an order made by the Ontario Superior Court of Justice (Commercial List) dated October 12, 2023 (the “Receivership Order”), KSV Restructuring Inc. was appointed the receiver and manager (the “Receiver”) of the Partnership’s real property located at 1333 Weber Street East, Kitchener (the “Real Property”) and all the other property, assets and undertaking of the Partnership (together with the Real Property, the “Property”).

A copy of the Receivership Order and other materials filed in the receivership proceeding is available on the Receiver’s case website at <https://www.ksvadvisory.com/experience/case/1776411ontario> (the “Website”).

The Partnership is a developer of a four-tower residential condominium development known as “Elevate”, which is under construction on the Real Property. Information concerning the Property and this proceeding can be found on the Website.

The Receiver is inviting you to submit a proposal to market the Real Property. **Proposals must be submitted to the Receiver by 5:00 p.m. (Toronto time) on November 13, 2023.** Details of the process and the content to be included in your proposal are attached as Appendix “A”. A confidentiality agreement is attached as Appendix “B”.

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

Yours very 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**

Ben Luder

Per: Ben Luder
encl.

Appendix A

Request for Proposals for REAL ESTATE BROKER SERVICES

Re: 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (together, the “Partnership”)

Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the “Court”) made on October 12, 2023, KSV Restructuring Inc. was appointed the receiver and manager (the “Receiver”) of the Partnership’s real property located at 1333 Weber Street, Kitchener, Ontario (the “Real Property”), and all the other property, assets and undertaking of the Partnership relating to the Real Property.

A. Background

- The Receiver is inviting you to provide real estate broker services to assist the Receiver in conducting a sale process for the Real Property (the “Sale Process”).
- Proposals must be submitted by email to Ben Luder, Manager (bluder@ksvadvisory.com), by 5:00 p.m. (Toronto time) on November 13, 2023.
- Copies of Court materials relating to these proceedings are available on the Receiver’s website at: <https://www.ksvadvisory.com/experience/case/1776411ontario>.
- Information related to the Real Property will be provided in a data room that has been established for this proceeding (the “Data Room”). Realtors can obtain access to the Data Room once they sign the confidentiality agreement provided in Appendix “B”.
- The terms of the Sale Process are subject to Court approval.

B. Realtor’s Role

- Working with the Receiver, the Realtor's role will include, among other things:
 - developing a marketing process, including timelines for the Sale Process;
 - establishing an estimated value for the Real Property;
 - preparing marketing materials;
 - advertising the Real Property at the agent's expense;
 - obtaining and negotiating confidentiality agreements with interested parties;
 - showing the Real Property to interested parties and working with the Receiver to maintain the data room to facilitate the Sale Process;
 - qualifying interested parties from a financial perspective, to the extent necessary;
 - assisting interested parties with their diligence;
 - assisting to assess offers submitted and with the negotiation strategy;

- providing Sale Process updates to the Receiver on a weekly basis (or such other frequency as agreed with the Selected Broker), detailing the parties contacted, feedback received, the parties performing due diligence at any point in time and the quality of each of the potential bidders, to the extent possible;
- providing a report to the Receiver at the conclusion of the Sale Process summarizing the Sale Process carried out for the Real Property, including the rationale for selecting the best offer; and
- assisting to close one or more transactions.

C. Proposal Content

- The Proposal must contain the following:
 - Work Plan: proposals shall include a detailed work plan.
 - Value Estimate: proposals shall provide an estimate of the value of the Real Property, together with supporting assumptions, including a discussion of the highest and best use for the Real Property on the basis that the existing agreements of purchase and sale for the condominium units are assumed or terminated.
 - Firm Background and Staff Experience: proposals shall provide background information concerning their firm, including the experience of their staff who will be working on this assignment (including résumés for the lead agents).
 - Liability Insurance Certificate: a copy of your liability insurance certificate is to be included.
 - Compensation Structure: proposals shall detail the proposed compensation structure for the Real Property.
 - Conflict of Interest Statement: all proposals shall certify the disclosure of any professional or personal financial interests that could be a possible conflict of interest. In addition, any arrangements to derive additional compensation shall also be disclosed and certified.

D. Proposal Considerations

- The factors on which each Proposal will be considered include the following:
 - the marketing plan;
 - experience selling similar real estate (including the location of the Real Property);
 - experience acting in Court-supervised situations;
 - compensation structure; and
 - other factors, in the Receiver's sole discretion.

Note: please limit the proposal to no more than 25 pages, if possible.

* * *

For more information or questions, please contact Ben Luder at the email address noted above.

Appendix B

CONFIDENTIALITY AGREEMENT

KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

Email: bluder@ksvadvisory.com
Attention: Ben Luder

To Whom It May Concern:

Re: 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP (together, the “Partnership”)

WHEREAS this agreement (the “Confidentiality Agreement”) is being executed between the Receiver and the Broker (terms as defined below), as entered into as of the date on the last page hereto, for the purpose of providing real estate brokerage services concerning the Partnership’s real property (the “Real Property”) together with any and all other related property, assets undertaking of the Partnership (collectively with the Real Property, the “Property”).

AND WHEREAS We/I as undersigned (hereinafter referred to as the “Broker”) requests that KSV Restructuring Inc., in its capacity as receiver and manager (the “Receiver”) of the Property appointed pursuant to an order of the Ontario Superior Court of Justice made on October 12, 2023, provide the Broker with certain confidential information relating to the Real Property.

NOW THEREFORE for good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged) and in consideration of the Receiver agreeing to provide the Broker with certain or all of the Information (as defined below), the Broker hereby undertakes and agrees as follows:

- a) To treat and maintain confidentially, such information and any other information that the Receiver or any of its advisors furnish to the Broker, whether furnished before or after the date of this Agreement, whether furnished orally or in writing or otherwise recorded or gathered, and regardless of whether specifically identified as “confidential”, including any documents or copies (paper, electronic or otherwise) and communications thereof contained (collectively, the “Information”).
- b) Not to use any of the Information for any purpose other than for the exclusive purpose of evaluating the possibility of submitting a listing proposal for the Real Property. The Broker agrees that the Information will not be used in any way detrimental to the Partnership, the Property, and/or the Receiver in the performance of its appointment concerning the Property, and that such Information will be kept confidential by the Broker, its directors, officers, employees and representatives (collectively, the “Representatives”) and these Representatives shall be informed by the Broker of the confidential nature of such information and shall be directed to treat such information confidentially.
- c) To be held responsible for any breaches of this Confidentiality Agreement by its Representatives, and to advise the Representatives of the confidential nature of the Information, and to provide to those Representatives to which or to whom the Information is provided a copy of this Confidentiality Agreement, and if such Representative is not otherwise bound by restrictions on disclosure and use similar to the obligations hereunder, to have such Representatives agree to be bound by this Confidentiality Agreement.
- d) To transmit, where required, the Information only to those Representatives who need to know the Information for the purposes described herein, who shall be informed by the Broker of the confidential nature of the Information and who agree to be bound by the provisions of this Confidentiality Agreement. On request, the Broker shall promptly notify the Receiver of the identity of each Representative to whom any Information has been delivered or disclosed.

- e) To not supply or disclose any data, communications or documents included in the Information or any Information included therein or any Information hereinafter obtained in the course hereof or with respect hereto to any corporation, company, partnership or individual or any combination of one or more of the foregoing (any of which are hereby defined as a "Person") other than the Broker and its Representatives, unless the prior written consent of the Receiver has been obtained, in advance.
- f) The Broker and its Representatives will not, without the prior written consent of the Receiver, disclose to any Person that this solicitation for proposal is taking place nor disclose of any of the terms, conditions or other facts with respect to any such possible transaction, including the status thereof.
- g) That any time, at the request of the Receiver, the Broker agrees to promptly return or destroy, without any right of compensation or indemnity, all Information without retaining any copies thereof or any notes relating thereto or reproductions or any part thereof in its possession without regards to the form or format. The Broker will certify as to the return or destruction of all Information and related notes and copies of such information and that no Person has a copy of the Information.
- h) That in the event the Broker is required or requested by legal process to disclose any of the Information, the Broker will provide the Receiver with prompt written notice of such requirement or request so that the Receiver may take such actions as it considers appropriate.
- i) That the Broker agrees that the Receiver makes no representations or warranties as to the accuracy or completeness of the Information. The Broker further agrees that neither the Receiver, nor any other author of, or Person providing, Information, shall have any liability to the Broker or any of its Representatives arising from the use of the Information by the Broker or its Representatives.
- j) The Broker represents and warrants that it shall be responsible for any costs associated with its review of the Information. Any consultants, real estate agents/brokers, and/or advisors retained by the Broker shall be required to execute, and to be bound by, this Confidentiality Agreement. The Broker shall retain a copy of such executed Confidentiality Agreement and will provide it to the Receiver immediately following its request.
- k) The Broker and its Representatives acknowledge that the Receiver is acting strictly in its capacity as Receiver and that it shall have no liability for any action, omission, statement, misstatement, representation, or warranty made within the Information. The Broker and its Representatives further acknowledge that the Receiver shall have no liability for any action, omission, statement, misstatement, representation, or warranty made by itself or its employees to the Broker and its Representatives, absent fraud or willful misconduct.
- l) The Broker shall indemnify the Receiver, any of its employees, and its counsel against any loss, cost, damage, expense, legal fees or liability suffered or incurred by any of them as a result of or in connection with any breach by the Broker or any of its Representatives to whom the Broker discloses Information of any term or provision of this Confidentiality Agreement.
- m) The Broker acknowledges and agrees that the execution and delivery of this Confidentiality Agreement and the delivery of the Information does not give rise to any legal obligation of the Receiver, whether in contract, in negligence or other tort, or by way of fiduciary duty or otherwise. Without limiting the generality of the foregoing, the Broker acknowledges and agrees that the Receiver is not and will not be under any obligation, express or implied, to provide or to continue to provide Information, to entertain any offers or proposals for the purchase or any sale, or to complete a sale or other transaction with the Broker, unless and until a legally binding agreement is delivered and executed which expressly provides for such obligations. Furthermore, the Broker acknowledges and agrees that the Receiver has not and will not give any representations or warranties, either express or implied, concerning the accuracy or completeness of, or otherwise relating in any way to, the Information, and that the Receiver shall not have any liability whatsoever to the Broker or any Representatives for any transaction entered into, or not entered into, or any other act, omission or decision made or taken, relying upon or in any way affected by, the Information.

- n) The Broker agrees that monetary damages would not be a sufficient remedy for any breach of this Agreement by it or its employee or agents and that any court having jurisdiction may enter a preliminary and/or permanent restraining order, injunction or order for specific performance in the event of an actual or threatened breach of any of the provisions of this Agreement, in addition to any other remedy available to the Receiver or the Partnership. In addition to all remedies available to the Receiver, it is agreed that the Receiver shall be entitled to equitable relief if necessary, including an injunction or specific performance in relation to a breach of this Confidentiality Agreement by the Broker and/or its Representatives.
- o) The Broker hereby agrees to observe all the requirements of any applicable privacy legislation including, without limitation, the *Personal Information Protection and Electronic Documents Act* (Canada) with respect to personal information which may be contained in the Information.
- p) The Broker acknowledges and agrees that it has had an opportunity to obtain independent legal advice as to the terms and conditions of this Confidentiality Agreement and has either received same or expressly waived its right to do so.
- q) This Confidentiality Agreement shall be binding upon the parties hereto and their respective successors and permitted assigns. This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Each party hereto irrevocably submits to the exclusive jurisdiction of the Ontario Superior Court of Justice (Commercial List) sitting in Toronto, Ontario, with respect to any matter arising hereunder or related hereto.
- r) This Confidentiality Agreement shall enure to the benefit of the Receiver and its successors and assigns. Any party may deliver an executed copy of this Confidentiality Agreement by facsimile or email. This Confidentiality Agreement may be executed and delivered in any number of counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.
- s) This Confidentiality Agreement shall have a term of two (2) years from the date written below.

DATED at _____ this _____ day of _____, 2023

("Broker")

Corporate Name (Please Print)

By (Authorized Signing Officer's Signature)

(Officer's Name and Title)

(Broker's Address)

(Telephone Number)

(Email Address)

Appendix “D”



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.~~

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~~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

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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

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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

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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

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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

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“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”.

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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.

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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,

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- (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

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(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.

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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.

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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

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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.

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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”).

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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*.

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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

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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 22500 - 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 c/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 2023/08/30 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 Signed 2023 07 07
Suite 300 Applicant(s)
Mississauga
L5B 1M5

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

PALLETT VALO LLP 77 City Centre Drive, West Tower, 2023 07 07
Suite 300
Mississauga
L5B 1M5

-19-

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

<i>Fees/Taxes/Payment</i>	
<i>Statutory Registration Fee</i>	\$89.00

LRO # 58 Construction Lien
The applicant(s) hereby applies to the Land Registrar.

Received as WR1518912 on 2023 07 07 at 15:23
yyyy mm dd Page 2 of 2

<i>Fees/Taxes/Payment</i>	
<i>Total Paid</i>	\$89.00

<i>File Number</i>	
<i>Claimant Client File Number :</i>	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
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Mississauga, Ontario
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MARIA RUBERTO (LSO # 51148D)
mruberto@pallettvalo.com
Direct Dial/Fax: 289-805-3441

Lawyers for the Plaintiff

Appendix “E”



**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

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-judgment 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.

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

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.

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

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.

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M4P 2Y3

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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

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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 THE RECEIVER
(Returnable December 12, 2023)**

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