

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

BETWEEN:

**GENESIS MORTGAGE INVESTMENT CORPORATION**

Applicant

-and-

**1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP**

Respondents

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

**MOTION RECORD OF KSV RESTRUCTURING INC.,  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER  
(Receiver's Motion for Distribution, Approvals and Discharge Order)**

May 29, 2026

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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  
(COMMERCIAL LIST)**

BETWEEN:

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-and-

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

**NOTICE OF MOTION  
(Receiver's Motion for Distribution, Approvals and Discharge Order)**

**KSV RESTRUCTURING INC.** (“KSV”, or the “Receiver”), in its capacity as receiver and manager of the undertaking, assets and properties of the Respondents, 1776411 Ontario Ltd. (“**177 Ontario**”) and 1333 Weber Street Kitchener LP (the “**1333 Weber LP**”, and together with 177 Ontario, the “**Debtors**” or the “**Partnership**”), 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 a date to be fixed on Tuesday the 2<sup>nd</sup> day of June, 2026, at 10:00 a.m., at 330 University Avenue in Toronto.

**PROPOSED METHOD OF HEARING:** The Motion is to be heard by judicial video conference via Zoom 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. an Order authorizing the Receiver to assign the Debtors into bankruptcy and appoint KSV as trustee in bankruptcy;
3. approving the activities and proposed activities described in the Receiver's supplement to the second report dated October 4, 2024 (the "**Supplemental Second Report**"), and the third report dated May 28, 2026 (the "**Third Report**");
4. subject to the Fee Accrual (defined below), authorizing and directing the Receiver to pay to Bennett Jones, in trust (counsel to the Purchasers, defined below), any remaining surplus proceeds from any funds the Receiver has received or may receive in respect of the receivership administration;
5. approving and accepting the Receiver's Interim Statement of Receipts and Disbursements for the period from October 12, 2023, to May 27, 2026, as set out at Appendix "I" to the Third Report;
6. approving the fees and disbursements of the Receiver for the period from September 1, 2024, to April 30, 2026, and the fees and disbursements of the Receiver's counsel, Blaney McMurtry LLP ("**Blaney**"), for the period from September 1, 2024, to March 31, 2026;

7. discharging KSV from the powers, duties and obligations attendant to its appointment as Receiver (the “**Discharge Order**”), upon KSV filing a certificate with the Court (the “**Receiver’s Discharge Certificate**”), authorizing the Receiver to complete certain administrative matters following the discharge of the Receiver, and releasing the Receiver from any and all liability that KSV now has or may hereafter have by reason of, or in any way arising out of its acts and omissions while acting in its capacity as Receiver pursuant to the Receivership Order (defined below), save and except for any gross negligence or willful misconduct on the part of KSV in its capacity as Receiver;
8. approving the Fee Accrual (as defined below) for the Receiver and its counsel pending the Receiver’s discharge; and
9. such further and other relief as counsel may advise and this Honourable Court may permit.

**THE GROUNDS FOR THE MOTION ARE:**

**Background**

1. by way of the Order of Justice Cavanagh dated October 12, 2023 (the “**Receivership Order**”), on application of Genesis Mortgage Investment Corp. (“**GMIC**”), KSV was appointed receiver and manager of (i) the property municipally known as 1333 Weber Street East, Kitchener (the “**Real Property**”), (ii) all of the right, title and interest of the Debtors in the personal property arising from, pertaining to, located on, or used in the operation or maintenance of the Real Property, and all proceeds therefrom, and (iii) all of the Debtors’ rights and interests in, to, under and in respect of all material agreements, leases, documents, permits, approvals, licenses and instruments in respect of the Real Property and all monies

or proceeds payable thereunder (collectively with (i) and (ii), the “**Property**”);

2. 177 Ontario was the registered owner of the Real Property;
3. prior to the Receivership Order, the Debtors had been in the process of constructing Tower A of a four-phase residential condominium project on the Real Property (the “**Project**”). Tower A of the Project was a partially-completed 15-story, 177 unit tower. Phases 2 and 3 of the Project (Towers B and C) had not progressed past the below-grade excavation and a partially completed foundation and underground parking area. No portion of Tower D had yet been constructed;
4. as well, all 177 units of Tower A, and 325 units of Towers B and C, were sold prior to the Receivership Order pursuant to pre-construction agreements of purchase and sale (the “**Pre-Construction APSs**”);

### **Registered Security**

5. the construction of Tower A was financed by a syndicate of lenders consisting of GMIC as the junior secured lender, and two senior secured lenders. The loan facilities are secured by a first mortgage in the principal amount of \$82 million, registered on title to the Real Property on August 17, 2021 (the “**First Mortgage**”) in the names of GMIC, and the two senior secured lenders, CMLS Financial Ltd. (“**CMLS**”) and Computershare Trust Company of Canada (“**Computershare**”, and together with GMIC and CMLS, the “**First Mortgagees**”);
6. Westmount Guarantee Services Inc. (“**Westmount**”), the servicer for Aviva Insurance Company of Canada (“**Aviva**”), held a second-ranking mortgage over the Real Property in the principal amount of \$50 million registered on November 24, 2020, as increased pursuant

to a notice registered on May 8, 2023. Westmount/Aviva provides condominium purchaser deposit insurance, and the Receiver understands that approximately \$12.5 million is presently owing to Westmount/Aviva, representing deposits released from escrow regarding Towers A and B of the Project, and claims made and paid pursuant to a Deposit Return Protocol (defined below);

7. CORFinancial Corp. (“**COR**”), a financial advisor that had been engaged by the Debtors in or about December, 2022, registered a third mortgage against the Real Property on May 8, 2023, in the principal amount of \$3.5 million. COR’s third mortgage is in connection with a transaction whereby: (i) the Debtors and COR entered into a commitment letter wherein COR agreed to pay certain outstanding construction costs owing by the Debtors to Gillam 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;
8. the Receiver’s understanding is that COR has not paid Gillam under this promissory note;
9. in addition to the three mortgages referenced above, 15 trade contractors and subcontractors (collectively, the “**Lien Claimants**”), had registered 22 construction liens against the Real Property totalling \$17,664,878. Among other things, the Lien Claimants sought priority over the First Mortgage to the extent of any deficiency in the holdbacks required to be retained by the owner of the Real Property under the *Construction Act*. R.S.O. 1990, c. C.30 (the “**Construction Act**”);

## The Sale of the Project and Distribution of Proceeds

10. The Receiver's second report dated September 27, 2024 (the "**Second Report**") and the Supplemental Second Report set out, among other things, the sale process for the Real Property, the Receiver's negotiation of an agreement of purchase and sale dated March 4, 2024, as amended (the "**Elevate APS**"), with GMIC, Elm Acquisitions Corp. ("**Elm Acquisitions**") and Dorr Capital Corporation ("**Dorr**"), as purchasers (collectively, the "**Purchasers**"), the Receiver's analysis of the Lien Claimants' *Construction Act* priority claims (the "**Lien Priority Claims**"), and a protocol (the "**Deposit Return Protocol**") permitting condominium unit purchasers ("**Condo Purchasers**") whose Pre-Construction Unit APSs were terminated to submit claims for the return of deposits that were paid pursuant to the Pre-Construction Unit APSs, which allowed the transaction under the Elevate APS (the "**Transaction**") to close on October 29, 2024, following the issuance of an approval and vesting Order for the Elevate APS issued October 8, 2024;
11. upon the closing of the Transaction, and pursuant to the Distribution and Ancillary Relief Order of Justice Kimmel dated October 8, 2024 (the "**Ancillary Order**"), the Receiver made the following distributions:
  - a. \$2,835,721.83 to thirteen of the fifteen Lien Claimants in respect of their Lien Priority Claims; and,
  - b. \$66,824,699 to the First Mortgagees, which represented the full amount owing under the First Mortgage as of October 29, 2024;
12. pursuant to the Ancillary Order, one of the Lien Claimants' liens was deemed to be fully satisfied following the distributions, two Lien Claimants' liens were declared invalid, and

the distributions to the remaining twelve Lien Claimants was in full satisfaction of their Lien Priority Claims, the net effect of which was to reduce the Lien Claimants' claims to \$14,859,277.17, made up of secured lien claims in the amount of \$10,657,884.02, and unsecured claims of \$4,201,393.15. However, as set out below, there are no funds or property for the secured lien claims to attach to. Accordingly, following payment of the Lien Claimants' Lien Priority Claims pursuant to the Ancillary Order, the total of the Lien Claimants' remaining claims, being the amount of \$14,859,277.17, is unsecured;

### **Proposed Distributions to the Purchaser**

13. the Receiver currently has \$730,428 in its trust account from the proceeds of sale of the Transaction. These funds are not available for distribution to Westmount/Aviva or COR under their respective mortgages, or to the Lien Claimants, as any excess funds remaining in the Receiver's trust account are to be distributed to Bennett Jones LLP, in trust, and treated as an adjustment to the Transaction's purchase price, pursuant to subsection 4.5(4) of the Elevate APS:

(4) Notwithstanding anything to the contrary contained in this Article 4, all monies held by the Receiver at the end of the receivership, which for greater certainty shall be net of any funds required by the Receiver for receivership costs, shall be held in trust for the Purchaser, endorsed (without recourse) in favour of the Purchaser and the Receiver is hereby irrevocably directed to pay any such amount, when determined, to Bennett Jones LLP, the Purchaser's solicitor, in trust, in accordance with the wire instructions attached hereto as Schedule "D".

14. pursuant to subsection 4.5(4) of the Elevate APS, the Receiver recommends that it be authorized and directed to pay to Bennet Jones, in trust, the remaining proceeds of sale from the Transaction, subject to the Fee Accrual;

**Proposed Bankruptcy**

15. there will be no funds for distribution to Westmount/Aviva under its second mortgage securing approximately \$12.5 million owing to Westmount/Aviva for deposits released from escrow regarding Towers A and B of the Project, and claims made and paid pursuant to the Deposit Return Protocol;
16. the amounts owing by the Debtors to Westmount/Aviva are unsecured claims against the Debtors;
17. similarly, there are insufficient proceeds of sale from the Transaction to make any further payments to the Lien Claimants in respect of their non-priority lien claims. Accordingly, those Lien Claimants' claims are also unsecured claims against the Debtors. The total of the Lien Claimants' remaining unsecured claims is \$14,859,277.17;
18. in addition, the Debtors owe approximately \$5.266 million to their remaining unsecured creditors (over and above the indebtedness to Westmount/Aviva and the Lien Claimants), excluding unliquidated claims;
19. the Debtors are insolvent;
20. the Debtors meet the test to be adjudged bankrupt in that:
  - a. each Debtor owes more than \$1,000 to its creditors, and the value of the Debtors' property, after accounting for secured claims, will result in a material shortfall (exceeding \$1,000) to the Debtors' creditors; and

- b. within the six months preceding the filing of this Notice of Motion, the Debtors committed an act of bankruptcy by ceasing to meet their liabilities generally as they became due, having failed to pay their obligations to unsecured creditors;
- 21. a bankruptcy of the Debtors will allow the trustee to maximize recovery for their creditors to the extent any assets remain, and provide for an orderly wind up of the Debtors;
  - 22. KSV is a person qualified to act as trustee of the property of the Debtors, and has agreed to act as such;

### **Discharge of the Receiver**

- 23. the Receiver is presently dealing with various minor sundry matters, including (a) preparing to execute a release and termination agreement under the Deposit Return Protocol, (b) preparing to file the Receiver's final report pursuant to Section 246 of the *Bankruptcy and Insolvency Act* (the "**BIA**"), and (c) preparing to assign the Debtors into bankruptcy, if authorized by the Court (collectively, the "**Remaining Duties**");
- 24. upon completion of the Remaining Duties, it would be appropriate for the Receiver to be discharged;
- 25. the proposed Discharge Order includes a proviso that KSV may perform such incidental duties as may be required by it as Receiver to complete its obligations pursuant to its appointment as Receiver. This proviso avoids the costs of making a further motion to the Court to obtain the Receiver's discharge;

26. the Receiver and its legal counsel will incur additional fees and disbursements to complete the administration of the Receivership proceeding, and are requesting a reserve in the amount of \$100,000, plus HST and disbursements (the “**Fee Accrual**”). The Receiver requests that the Court approve the Fee Accrual, which the Receiver will only draw upon based on actual time and disbursements incurred;

### **Receipts and Disbursements, Payment of Professional Fees**

27. the Interim Statement of Receipts and Disbursements of the Receiver attached as Appendix I to the Receiver’s Third Report is a fair and accurate representation of the funds received and disbursed directly by the Receiver since the date of the Receivership Order. It sets out actual receipts over disbursements of approximately \$730,428;
28. the Receiver has retained Blaney as its counsel for legal matters that have arisen in respect of the Receivership;
29. the fees and disbursements of the Receiver and of Blaney that are sought to be approved on this motion are fair and reasonable in the circumstances;
30. section and 68 of the *Construction Act*;
31. sections 183, 243 and 249 of the *Bankruptcy and Insolvency Act*;
32. sections 100 and 101 of the *Courts of Justice Act*;
33. Rules 2.03, 3.02, 37 and 41.05 of the *Rules of Civil Procedure*; and,
34. such further and other grounds as counsel may advise and this Honourable Court may permit.

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

1. the First Report of the Receiver dated December 4, 2023;
2. the Second Report of the Receiver dated September 27, 2024;
3. the Supplement to the Second Report of the Receiver dated October 4, 2024;
4. the Third Report of the Receiver dated May 28, 2026; and
5. such further and other evidence as counsel may advise and this Honourable Court may permit.

May 29, 2026

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Proceeding commenced at Toronto

**NOTICE OF MOTION  
(Distribution, Approvals and Discharge Order)**

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

# TAB 2



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

May 28, 2026

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

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THIRD REPORT OF  
KSV RESTRUCTURING INC.  
AS RECEIVER AND MANAGER

MAY 28, 2026

## 1.0 Introduction

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

5. The Receiver executed an agreement of purchase and sale for the Project with GMIC, Elm Acquisitions Corp. and Dorr Capital Corporation (collectively, the “**Purchaser**”) on March 4, 2024, with several amendments thereafter (the “**Project APS**”). The Purchaser assigned the Project APS to GFD 1333W Limited Partnership (the “**Assignee**” or “**GFD LP**”), and the Real Property vested in 1333W Lands Ltd. The Project APS closed on October 29, 2024, following Court approval. A copy of the Project APS, including amendments and extensions, is provided at **Appendix “B”**.
6. On October 8, 2024, the Court issued the following Orders:
  - i. an Approval and Vesting Order (the “**AVO**”) which, among other things:
    - approved the Project APS and authorized the Receiver to complete the transaction for the sale of the Real Property (the “**Transaction**”);
    - authorized the Receiver, on or following closing of the Transaction, to terminate and disclaim all the existing pre-construction agreements of purchase and sale (the “**Pre-Construction Unit APSs**”) related to Tower B (as defined below);
    - authorized the Receiver, following closing of the Transaction, with notice to be provided by the Assignee to the Receiver within 120 days of the closing of the Transaction (the “**Notice Period**”), to terminate and disclaim the Pre-Construction Unit APSs related to Tower A (as defined below) not being assumed by the Assignee; and
    - approved a protocol (the “**Deposit Return Protocol**”) permitting condominium unit purchasers (“**Condo Purchasers**”), whose Pre-Construction Unit APSs were terminated, to submit claims for the return of deposits that were paid pursuant to the Pre-Construction Unit APSs;
  - ii. an Ancillary Order which, among other things:
    - approved distributions totalling \$2,835,722 to 13 lien claimants (the “**Lien Claimants**”), in full and final satisfaction of their priority claims that ranked in priority to the First Mortgagees (as defined below);
    - approved a distribution to the First Mortgagees up to the balance owing to them by the Partnership at the time;
    - increased the Receiver’s borrowing limit to \$2.5 million;
    - approved the Receiver’s Second Report to Court dated September 27, 2024 (the “**Second Report**”), and the Receiver’s activities as set out in the Second Report; and
    - approved the fees of the Receiver and the Receiver’s counsel, Blaney McMurtry LLP (“**Blaney**”), from the commencement of these receivership proceedings to August 31, 2024.
7. The AVO and Ancillary Order are attached as **Appendices “C” and “D”**, respectively.

8. On February 20, 2025, GFD LP brought a motion seeking to amend the Notice Period set out in the AVO to June 30, 2025. Subsequently, on June 26, 2025, GFD LP brought a further motion to extend the Notice Period to August 19, 2025. On both occasions, the Court granted an Order approving the requested extensions (the “**AVO Amendment Orders**”). The AVO Amendment Orders are attached as **Appendix “E”**.
9. On June 17, 2025, GFD LP brought a motion in respect of irrevocable directions signed by Tower A Condo Purchasers whose Pre-Construction Unit APSs were disclaimed and who had entered into new agreements with GFD LP for units in Tower A (each a “**New Tower A Unit APS**”), authorizing GFD LP or its representatives to deliver irrevocable directions to Aviva Insurance Company of Canada (“**Aviva**”) and MNP Ltd. (“**MNP**”), the deposit insurer and its financial advisor, respectively, regarding payments under the Deposit Return Protocol (the “**Irrevocable Directions**”), and requiring Aviva and MNP to abide by and act on the terms of the Irrevocable Directions (the “**Direction of Proceeds Motion**”), even if these Tower A Condo Purchasers then issued a direction for payment pursuant to the Deposit Return Protocol that was different from the Irrevocable Directions. Pursuant to the Endorsement of Justice Kimmel dated June 17, 2025, the Direction of Proceeds Motion was adjourned *sine die*. Justice Kimmel’s June 17, 2025 Endorsement is attached as **Appendix “F”**.
10. Counsel to GFD LP has advised the Receiver that it does not intend to bring the Direction of Proceeds Motion back on for a hearing.
11. This third report (the “**Third Report**”) is filed by KSV in its capacity as Receiver.

## 1.1 Purposes of this Third Report

1. The purposes of this Third Report are to:
  - a) provide background information about this proceeding;
  - b) provide an update on the Deposit Return Protocol;
  - c) summarize the Receiver’s activities since the date of its Second Report;
  - d) summarize the fees of the Receiver from September 1, 2024 to April 30, 2026 and Blaney from September 1, 2024 to March 31, 2026;
  - e) set out the rationale for the Receiver to be authorized to assign 1333 Weber LP and 177 Ontario into bankruptcy;
  - f) recommend that this Court issue Orders authorizing the Receiver to assign both 1333 Weber LP and 177 Ontario into bankruptcy, and naming KSV or another licensed insolvency trustee as trustee to administer each of the bankruptcies (the “**Bankruptcy Orders**”); and
  - g) recommend that this Court issue an Order (the “**Discharge Order**”):
    - approving the Supplement to the Second Report dated October 4, 2025 (the “**Supplementary Second Report**”), this Third Report, the R&D (as defined below) and the Receiver’s activities, as set out in the Supplementary Second Report and in this Third Report;

- approving the fees of the Receiver and Blaney, including an accrual of \$100,000 plus disbursements and HST to the completion of this mandate (the “**Fee Accrual**”), as set out in Section 7 of this Third Report;
- subject to the Fee Accrual, authorizing and directing the Receiver to pay to Bennett Jones, in trust (lawyers for GFD LP), any remaining surplus proceeds from any funds the Receiver has received or may receive in respect of the receivership administration (the “**Surplus Distribution**”); and
- discharging the Receiver upon filing a certificate with the Court confirming that all receivership matters have been completed (the “**Discharge Certificate**”).

## 1.2 Restrictions

1. In preparing this Third Report, the Receiver has relied upon: (i) discussions with various stakeholders in these proceedings, including the First Mortgagees; (ii) discussions with MNP, the firm engaged by Tarion Warranty Corporation (“**Tarion**”), and Aviva to administer the Deposit Return Protocol; and (iii) the Receivership Application materials and other documentation provided by the First Mortgagees, (collectively, the “**Information**”).
2. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that complies with Canadian Auditing Standards (“**CAS**”) pursuant to the Chartered Professional Accountants of Canada Handbook. Accordingly, the Receiver expresses no opinion or other form of assurance as contemplated under the CAS in respect of the Information. Any party wishing to place reliance on the Information is required to perform its own diligence.

## 2.0 Background

1. The Partnership intended to develop the Project, which was marketed as “Elevate”. At the time the Receivership Order was issued, the first phase of the four-phase Project was a 177-unit residential building (“**Tower A**”) that had been estimated to be 80% complete at the time the Receivership Order was granted. The second and third phases of the site consisted of a large open pit with a partially completed foundation and underground parking area (“**Tower B**” and “**Tower C**”, respectively, and collectively “**Towers B and C**”). The fourth phase was raw land (“**Tower D**”).
2. Prior to the commencement of these receivership proceedings, all 177 units of Tower A and 325 units of Towers B and C were sold pursuant to Pre-Construction Unit APSS. Pursuant to a letter dated October 25, 2023, the Receiver advised the Condo Purchasers of the receivership proceeding and the status of their condominium transactions. The Receiver sent a further letter to the Condo Purchasers on September 27, 2024 (the “**Condo Purchaser Letter**”) providing an update on the Transaction and explaining the Deposit Return Protocol. A copy of the Condo Purchaser Letter is provided as **Appendix “G”**.
3. As of the date of the Receivership Order, the Partnership had under \$300 in its bank accounts. Accordingly, all funding in respect of this mandate was provided by one of the First Mortgagees pursuant to Receiver Certificates up until closing of the Transaction.

4. Background information regarding the Partnership and the reasons for which GMIC sought the appointment of the Receiver is set out in the affidavit of Michael Yeung, an officer of GMIC, sworn on October 2, 2023 (the “**Yeung Affidavit**”), in support of GMIC’s Notice of Application issued September 26, 2023. A copy of the Yeung Affidavit and other Court materials filed to-date in these proceedings are available on the Receiver’s website at: <https://www.ksvadvisory.com/experience/case/Elev8>.

## 2.1 Secured Creditors

1. The following summarizes the creditors that had registrations against the Real Property and their outstanding balances prior to the Transaction:
  - a) GMIC was a junior secured lender in a syndicate of lenders consisting of itself and two senior secured lenders (the “**Senior Secured Lenders**”). The loan facilities were secured by a first mortgage in the principal amount of \$82 million granted by 177 Ontario and registered against title to the Real Property on August 17, 2021, as Instrument No. WR1367209, in favour of GMIC, and in favour of CMLS and Computershare Trust Company of Canada (“**Computershare**”, and together with GMIC and CMLS, the “**First Mortgagees**”);
  - b) Westmount Guarantee Services Inc. (“**Westmount**”), the servicer for Aviva, which provides condominium purchaser deposit insurance, registered a charge against the Real Property securing \$50 million in connection with deposits paid by the Condo Purchasers (the “**Westmount Second Mortgage**”). Approximately \$17 million was owing to Westmount/Aviva, representing the deposits released from escrow regarding phases one and two of the Project. The Westmount Second Mortgage was 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 in connection with this transaction; and
  - d) In addition to the three mortgages over the Real Property, 15 suppliers registered 22 separate construction liens against the Real Property totalling approximately \$17.7 million.
2. A discussion of the lien claims and the legal opinion on the validity of the security held by the First Mortgagees is included in the Second Report, a copy of which is provided, without appendices (save for the Receiver’s lien analysis at Appendix K to the Second Report), as **Appendix “H”**.

## 2.2 Transaction and Distributions

1. As discussed above, the Transaction closed on October 29, 2024 (the “**Closing Date**”). The Transaction is more fully summarized in the Second Report and is not repeated herein.
2. Upon the closing of the Transaction, and pursuant to the Ancillary Order, two of the fifteen lien claims were declared invalid, and the Receiver made the following distributions:
  - a) \$2,835,722 to thirteen Lien Claimants (incl. HST); and
  - b) \$66,824,699 to the First Mortgagees, which represented the full amount owing under the First Mortgage Charge as of the Closing Date.
3. Of the thirteen Lien Claimants who received distributions pursuant to the Ancillary Order, one lien was deemed to be fully satisfied following the distributions. The distributions to the remaining twelve Lien Claimants were in full satisfaction of those Lien Claimants’ priority claims for holdback, including their priority claims pursuant to section 78 of the *Construction Act*, but not in satisfaction of their non-priority lien claims.
4. The following chart sets out the remaining balance of each Lien Claimant’s claim, and whether the claim is in respect of a secured (but non-priority) claim for lien, or, if applicable, an unsecured claim:

No.	Lien Claimant	Registered Lien Amount(s)	Distribution Paid	Remaining Lien Claim – Secured (but no priority)	Remaining Unsecured Claim
1.	Classic Tile Contractors Limited	\$591,923	\$0		\$591,923
2.	2868791 Ontario Corp. o/a HGL Electrical	\$3,123,088	\$0		\$3,123,088
3.	ABA Architects Inc.	\$432,315	\$43,231.50	\$389,083.50	
4.	Aluminum Window Designs Ltd.	\$1,662,600	\$245,111.48	\$1,417,488.52	
5.	Conestoga Roofing & Sheet Metal Ltd.	\$311,562	\$60,787.01	\$250,774.99	
6.	Dean Lane Contractors Inc.	\$2,157,415	\$549,251.98	\$1,608,163.02	
7.	Gillam Urban Constructors Inc.	\$5,089,130	\$480,495.51	\$4,580,216.86 <sup>1</sup>	
8.	Matthews Equipment Limited o/s Herc Rentals	\$85,018.08	\$28,417.63	\$0 <sup>2</sup>	

<sup>1</sup> The payment for \$28,417.63 to Matthews Equipment was deemed to have been a payment in respect of Gillam’s holdback, per para 3(a) of the Ancillary Order. Accordingly, Gillam’s lien was reduced by \$508,913.14.

<sup>2</sup> A partial payment had been made by Gillam to Matthews Equipment prior to the Ancillary Order. Matthews Equipment’s lien was deemed fully satisfied pursuant to paragraph 4 of the Ancillary Order.

9.	Gold Star Drywall Services Inc.	\$787,259	\$165,642.13	\$621,616.87	
10.	Greentech Sealants Inc.	\$220,190	\$48,960.02	\$171,229.98	
11.	O'Connor Electric Ltd.	\$357,510	\$34,495.53	\$323,014.47	
12.	Oxford Builders Supplies Inc.	\$755,948	\$75,595.93	\$680,352.07	
13.	Pearson Metal Inc.	\$647,217	\$103,811.87	\$57,022.98	\$486,382.15 <sup>3</sup>
14.	Stubbe's Precast Inc.	\$1,374,127	\$936,001.85	\$438,125.15	
15.	Troy Life & Fire Safety Ltd.	\$184,715	\$63,919.39	\$120,795.61	
	<b>TOTAL</b>	\$17,780,017.08	\$2,835,721.83	\$10,657,884.02	\$4,201,393.15

5. Pursuant to subsection 4.5(4) of the Project APS, any excess funds remaining in the Receiver's trust account are to be distributed to the Purchaser and treated as an adjustment to the Transaction's purchase price:

(4) Notwithstanding anything to the contrary contained in this Article 4, all monies held by the Receiver at the end of the receivership, which for greater certainty shall be net of any funds required by the Receiver for receivership costs, shall be held in trust for the Purchaser, endorsed (without recourse) in favour of the Purchaser and the Receiver is hereby irrevocably directed to pay any such amount, when determined, to Bennett Jones LLP, the Purchaser's solicitor, in trust, in accordance with the wire instructions attached hereto as Schedule "D".

6. Accordingly, while 12 of the Lien Claimants have secured claims totalling more than \$10.6 million, there are no funds or property which could attach to their security. In the circumstances, the total of the Lien Claimants' claims, being approximately \$14.9 million, is unsecured.
7. As of the date of this Third Report, the Receiver has \$730,428 in its trust account as reflected in the statement of receipts and disbursements (the "R&D") provided as **Appendix "I"**.

## 3.0 Deposit Return Protocol

### 3.1 Tower A

1. As discussed above, the AVO Amendment Orders provided a deadline of August 19, 2025, by which GFD LP was required to notify the Receiver which Tower A Pre-Construction Unit APSs it was not assuming. GFD LP provided such notice to the Receiver on August 8, 2025, confirming that 24 of the 177 Tower A Pre-Construction Unit APSs were to be disclaimed and terminated. The Receiver understands that these 24 Condo Purchasers entered into New Tower A Unit APSs with GFD LP, which included the Irrevocable Directions that instructed and directed Aviva and MNP ( the deposit insurer and its financial advisor), to direct the deposits from their Tower A Pre-

<sup>3</sup> Only a portion of this lien was valid, per the Receiver's lien analysis at Exhibit K to the Second Report.

Construction Unit APSs to Garfinkle Biderman LLP (“**Garfinkle**”), GFD LP’s condominium legal counsel.

2. On August 22, 2025, the Receiver sent a notice (the “**Notice of Termination and Disclaimer**”) to the 24 Condo Purchasers whose Pre-Construction Unit APSs were not being assumed by GFD LP which formally terminated and disclaimed their Pre-Construction Unit APSs. A sample Notice of Termination and Disclaimer, redacted to remove personally identifying information, is attached as **Appendix “J”**.
3. Through discussions with MNP, as of the date of this Third Report, the Receiver understands that all Tower A Condo Purchasers whose Pre-Construction Unit APSs were terminated and disclaimed have submitted the required documents under the Deposit Return Protocol. The Receiver also understands that MNP has transferred the deposits from the 24 Tower A Pre-Construction Unit APSs to Garfinkle in accordance with the Directions.

### 3.2 Tower B

1. Pursuant to the Transaction, all Tower B Pre-Construction Unit APSs were terminated and disclaimed. Through discussions with MNP, the Receiver understands that all, but one Tower B Condo Purchaser, have submitted the required documents under the Deposit Return Protocol, and that deposits from the Tower B Pre-Construction Unit APS’s have been returned to all Tower B Condo Purchasers other than that one.
2. In accordance with the Deposit Return Protocol, once the remaining Tower B Condo Purchaser submits the required documents to MNP, the Receiver will execute a Release and Termination Agreement, after which the deposit will be returned. Both the Receiver and MNP have advised the remaining Tower B Condo Purchaser of its requirement to complete the required documents several times. The Receiver intends to send a final notice to this party and advise that if the documentation is not provided with 10 days from the date of the final notice, the Release and Termination Agreement will be completed and this party may forfeit its right to the deposit.

### 3.3 Tower C

1. Pursuant to the Transaction, all Tower C Pre-Construction Unit APSs were assumed by the Purchaser. Accordingly, the Deposit Return Protocol did not include Tower C Condo Purchasers.

## 4.0 Litigation, Case Management, and Enrolment Fee Motion

### 4.1 Transfer and Case Management of Project Proceedings

1. At the Receiver’s request, a case conference took place before Justice Kimmel on April 14, 2026 (the “**April 2026 Case Conference**”), to address the prosecution and procedural management of four outstanding proceedings related to the Project (the “**Four Project Proceedings**”), with two issued before the Receivership Order was made, and two issued afterwards in April 2025 and November 2025.

2. In Her Honour's Endorsement dated April 14, 2026 (the "**April 2026 Endorsement**"), Justice Kimmel directed that three of the Four Project Proceedings be transferred and be informally managed by a Judge sitting on the Commercial List in Toronto (the "**Case Management Direction**"). The April 2026 Endorsement is attached as **Appendix "K"**.
3. Subsequent to the April 2026 Case Conference and the release of Justice Kimmel's April 2026 Endorsement, a fifth proceeding related to the Project was issued on May 8, 2026, being a Third Party Claim by the defendants in one of the Four Project Proceedings, who are also the guarantors of the Partnership's indebtedness to the First Mortgagees (the "**Guarantors**"), and who are now also claiming over against the First Mortgagees in respect of an action against these Guarantors by the deposit sureties issued on November 25, 2025. The pleadings in the deposit sureties' proceeding are attached as **Appendix "L"**.
4. Counsel for these Guarantors attended the April 2026 Case Conference and did not raise the possibility of their Third Party Claim at that time, even though the Guarantors had also previously issued on April 28, 2025, a similar proceeding against the First Mortgagees that was one of the Four Project Proceedings, and which is attached as **Appendix "M"**.

#### 4.2 Enrolment Fee Motion

1. Justice Kimmel's April 2026 Endorsement also scheduled for June 2, 2026, a motion (the "**Enrolment Fee Motion**") brought by GFD LP seeking a refund of the fees paid by the Partnership to Tarion in respect of the enrolment of Tower B (the "**Tower B Enrolment Fees**") in the *Ontario New Home Warranties Plan Act* ("**ONHWPA**").
2. The Receiver understands that the Tower B Enrolment Fees total approximately \$168,000, and that motion is being opposed by the Guarantors.
3. Among other things, GFD LP's position on the Enrolment Fee Motion is that the Tower B Enrolment Fees constitute "Levies" that had been paid pre-Receivership to Tarion as a "Governmental Authority", as those terms are defined in the Project APS. GFD LP's position further appears to be that Tarion is a regulatory authority, and the Tower B Enrolment Fees constitute Levies because they had to be paid to Tarion before Tarion would enroll Tower B in ONHWPA (with enrolment in ONHWPA being a precondition to any building permits being issued for that tower). Levies are included in the definition of Purchased Assets, and GFD LP's position is that it is entitled to any refund of the Levies, as the Levies are its property.
4. The Receiver understands that Tarion's position is that it will issue a refund of the Tower B Enrolment Fees pursuant to a Court Order that it do so.
5. The Receiver supports GFD LP's position on the Enrolment Fee Motion and its interpretation.

## 5.0 Proposed Bankruptcy

1. Pursuant to subsection 4.5(4) of the Project APS, there is no security against which the Lien Claimants' secured claims can attach, and following the proposed distributions sought by the Receiver, the Lien Claimants will have unsecured claims against the Partnership in the amount exceeding \$14.8 million.
2. The sureties' claim in respect of the Project deposits is for \$12,561,718, and while it is only against the Guarantors, it is an indemnity claim in respect of obligations of the Partnership and is secured by the Westmount Second Mortgage. There were insufficient proceeds of sale from the Transaction to make a payment under the Westmount Second Mortgage, and accordingly, Aviva has an unsecured claim against the Partnership in the amount of \$12,561,718.
3. Following its appointment, the Receiver prepared a preliminary list of creditors as of October 12, 2023, a copy of which is attached at **Appendix "N"**. The creditors highlighted in the list of creditors are the Lien Claimants whose revised and updated claims are set out in the chart at paragraph 2.24, above. While the list of creditors sets out amounts owing to the First Mortgagees, and an unknown amount owing to Westmount/Aviva, the indebtedness to the First Mortgagees on closing was paid out (as set out in paragraph 2.2.2, above), and Westmount/Aviva's claim is \$12,561,718 (Appendix "L"). In addition, the Partnership owes approximately \$5.266 million to its remaining unsecured creditors (over and above the indebtedness to Westmount/Aviva and the Lien Claimants).
4. In the April 2026 Endorsement, Justice Kimmel also included a timetable as per below for the Senior Secured Lenders to advise counsel for the guarantors of their positions on: (i) a bankruptcy of the Partnership; and (ii) the guarantees in respect of the Partnership's indebtedness to the Senior Secured Lenders:
  - a. The secured lenders agreed to confirm within 30 days whether they intend to bring a bankruptcy application in respect of any of the respondents or to seek a bankruptcy order in connection with the discharge of the Receiver.
  - b. The secured lenders also agreed to provide their respective positions within 30 days regarding whether they have any claims that remain subject to the guarantees.
5. The Senior Secured Lenders complied with the timetable by way of emails dated April 14, 2026, setting out their position on the guarantees, and advising that while they would not be bringing a bankruptcy application, they supported the Receiver seeking authorization to assign the Partnership into bankruptcy. The emails from counsel for the Senior Secured Lenders to the Guarantors' counsel are attached as **Appendix "O"**.
6. In emails between the Receiver's counsel and the Guarantors' counsel between April 15, 2026, and May 26, 2026, the Receiver advised the Guarantors' counsel of the basis for Receiver's motion for the bankruptcy relief. The emails between the Receiver's counsel and the Guarantors' counsel are attached as **Appendix "P"**.

7. For the reasons set out in the Blaney email dated May 26, 2026 (Appendix “P”), the Receiver recommends that the Court authorize it to assign 1333 Weber LP and 177 Ontario into bankruptcy.

## 6.0 Receiver’s Activities

1. In addition to the activities described above, the Receiver’s activities since the date of its Second Report have included, among other things, the following:
  - a) corresponding with CBRE Limited, the listing brokerage for the Project, regarding the closing of the Transaction;
  - b) corresponding with the Partnership’s insurance agents to cancel coverage;
  - c) corresponding with Borden Ladner Gervais LLP, counsel to Westmount, and Torys LLP, counsel to Tarion, regarding the Deposit Return Protocol;
  - d) corresponding with MNP regarding the administration of the Deposit Return Protocol;
  - e) responding to inquiries from Condo Purchasers regarding their deposits and the Transaction;
  - f) filing the Partnership’s HST returns with Canada Revenue Agency;
  - g) responding to inquiries from the Partnership’s creditors;
  - h) dealing with counsel to the Senior Secured Lenders regarding the Enrollment Fee Motion;
  - i) preparing an Interim Report of the Receiver pursuant to Subsection 246(2) of the BIA; and
  - j) preparing this Third Report.

## 7.0 Fee Approval

1. The fees of the Receiver from September 1, 2024 to April 30, 2026 total \$204,417.25 and the fees of Blaney from September 1, 2024 to March 31, 2026 total \$335,890.50, excluding disbursements and HST. Fee affidavits and accompanying invoices for the Receiver and Blaney are provided as **Appendices “Q”** and **“R”**, respectively.
2. The activities of the Receiver are detailed in the Receiver’s invoices, the Supplementary Second Report, and this Third Report.
3. The average hourly rate for the Receiver and Blaney for the referenced billing period was \$609.12 and \$670.57, respectively.
4. The Receiver is of the view that the hourly rates charged by Blaney are consistent with rates charged by law firms practising in restructuring and insolvency in the downtown Toronto market, and that the fees charged are reasonable and appropriate in the circumstances.

5. The Receiver also believes that the Fee Accrual is reasonable in the circumstances and will allow the Receiver and Blaney to conduct the incidental duties required (as discussed below) prior to the termination of these receivership proceedings.

## 8.0 Receiver's Discharge

1. The Receiver believes it is appropriate for it to be discharged, as there are no known outstanding matters that would require the receivership proceedings to continue.
2. In addition to making the Surplus Distribution, the Receiver intends to:
  - a) pay any outstanding professional fees in these proceedings;
  - b) prepare and file the Receiver's final report pursuant to Section 246 of the *Bankruptcy and Insolvency Act*; and
  - c) deal with any sundry issues not specified above (collectively, the "**Remaining Duties**").
3. Once the Receiver has completed its Remaining Duties, and subject to Court approval, the Receiver intends to file the Discharge Certificate.

## 9.0 Conclusion

1. Based on the foregoing, the Receiver respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 1.1(1)(f) and (g) of this Third 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 <sup>th</sup>
	)	
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 6<sup>th</sup>, 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

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**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 12<sup>th</sup> 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  
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Lawyers for the Applicant



## SUPERIOR COURT OF JUSTICE

**COUNSEL SLIP**COURT 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
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EMILY DURST	Counsel ABA Architects Inc.	<a href="mailto:edurst@millerthomson.com">edurst@millerthomson.com</a>

### **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”

**AGREEMENT OF PURCHASE AND SALE**

**BETWEEN**

**KSV RESTRUCTURING INC.,**

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

- and -

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

collectively in trust for a corporation to be incorporated

Dated: March 4, 2024

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**AGREEMENT OF PURCHASE AND SALE**

**THIS AGREEMENT** made this 4<sup>th</sup> day of March, 2024.

**BETWEEN:**

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

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

- and -

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

(the “**Purchaser**”)

**WHEREAS** pursuant to an order of The Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on October 12, 2023 (the “**Receivership Order**”), KSV Restructuring Inc. (“**KSV**”) was appointed as the Receiver, without security, of the Purchased Assets (as defined herein);

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

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

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

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

## ARTICLE 1 DEFINED TERMS

### 1.1 Definitions.

In this Agreement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Encumbrances**” means all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“**Property**” means collectively the Lands and the Buildings;

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

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

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

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

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

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

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

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

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

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

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

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

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

## **ARTICLE 2 SCHEDULES**

### **2.1 Schedules.**

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

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

## **ARTICLE 3 AGREEMENT TO PURCHASE**

### **3.1 Purchase and Sale of Purchased Assets.**

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

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

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

### **3.2 Excluded Assets.**

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

### **3.3 Excluded Liabilities.**

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

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

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

#### **ARTICLE 4**

#### **PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE**

##### **4.1 Purchase Price.**

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

##### **4.2 Deposit.**

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

##### **4.3 Satisfaction of Purchase Price.**

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

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

#### **4.4 Allocation of Purchase Price.**

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

#### **4.5 Adjustment of Purchase Price.**

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

#### **4.6 Property Tax Refunds and Rebates**

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

### **ARTICLE 5 TAXES**

#### **5.1 Taxes.**

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

### **ARTICLE 6 CLOSING ARRANGEMENTS**

#### **6.1 Closing and Closing Procedure.**

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

#### **6.2 Tender.**

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

#### **6.3 Receiver’s Closing Deliverables.**

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

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

#### **6.4 Purchaser's Closing Deliverables.**

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

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

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

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

## 6.5 Replacement Security

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

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

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

## **6.6 Receiver's Certificate.**

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

## **6.7 Electronic Registration.**

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

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

## **6.8 Registration Costs.**

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

## **6.9 Tender.**

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

# **ARTICLE 7 CONDITIONS PRECEDENT TO CLOSING**

## **7.1 Conditions in Favour of the Receiver.**

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

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

## **7.2 Conditions in Favour of Receiver Not Fulfilled.**

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

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

## **7.3 Conditions in Favour of the Purchaser.**

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

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

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

#### **7.4 Conditions in Favour of Purchaser Not Fulfilled.**

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

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

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

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

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

#### **7.6 Conditions in favour of both Parties not Fulfilled.**

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

### **ARTICLE 8 REPRESENTATIONS & WARRANTIES OF THE RECEIVER**

#### **8.1 Representations and Warranties of the Receiver.**

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

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

#### **8.2 Survival**

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

**ARTICLE 9**  
**REPRESENTATIONS & WARRANTIES OF THE PURCHASER**

**9.1 Representations and Warranties of the Purchaser.**

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

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

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

## **9.2 Survival.**

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

## **ARTICLE 10 COVENANTS**

### **10.1 Mutual Covenants.**

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

### **10.2 Receiver Covenants.**

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

### **10.3 Purchaser Covenants.**

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

**ARTICLE 11**  
**ACCESS PRIOR TO CLOSING**

**11.1 Project Documents.**

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

**11.2 Examination of Title and Access to the Purchased Assets.**

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

**11.3 Risk**

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

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

## ARTICLE 12

### AS IS, WHERE IS AND ASSUMPTION OF LIABILITIES

#### 12.1 Condition of the Purchased Assets.

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

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

## **12.2 Assumption of Obligations.**

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

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

### **ARTICLE 13 TERMINATION**

#### **13.1 Termination of this Agreement.**

This Agreement may be validly terminated:

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

#### **13.2 Remedies for Breach of Agreement.**

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

### **13.3 Termination If No Breach of Agreement.**

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

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

## **ARTICLE 14 GENERAL CONTRACT PROVISIONS**

### **14.1 Further Assurances.**

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

### **14.2 Survival Following Completion.**

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

### **14.3 Notice.**

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

- (a) to the Receiver:

KSV Restructuring Inc.  
220 Bay Street, Suite 1300

Toronto, ON M5J 2W4

Attention: Mitch Vininsky and Ben Luder  
Email: [mvininsky@ksvadvisory.com](mailto:mvininsky@ksvadvisory.com)  
and [bluder@ksvadvisory.com](mailto:bluder@ksvadvisory.com)

and a copy to the Receiver's counsel to:

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

Attention: Eric Golden and Chad Kopach  
Email: [egolden@blaney.com](mailto:egolden@blaney.com) and [ckopach@blaney.com](mailto:ckopach@blaney.com)

(b) to the Purchaser:

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

Attention: Michael Yeung / James Kim  
Email: [michael.yeung@gentaicapital.com](mailto:michael.yeung@gentaicapital.com) / [james.kim@gentaicapital.com](mailto:james.kim@gentaicapital.com)

and a copy to the Purchaser's counsel to:

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

Attention: Sean Zweig / John van Gent  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com) / [vangentj@bennettjones.com](mailto:vangentj@bennettjones.com)

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

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

**14.4 Waiver.**

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

**14.5 Consent.**

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

**14.6 Governing Law.**

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

**14.7 Entire Agreement.**

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

**14.8 Time of the Essence.**

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

**14.9 Time Periods.**

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

**14.10 Assignment.**

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

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

#### **14.11 Expenses.**

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

#### **14.12 Severability.**

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

#### **14.13 No Strict Construction.**

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

#### **14.14 Cumulative Remedies.**

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

#### **14.15 Currency.**

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

**14.16 Receiver's Capacity.**

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

**14.17 Planning Act.**

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

**14.18 No Third Party Beneficiaries.**

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

**14.19 Number and Gender.**

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

**14.20 Publicity**

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

**14.21 Confidentiality**

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

**14.22 Non-Registration**

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

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

#### **14.23 Counterparts.**

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

***[SIGNATURE PAGE FOLLOWS.]***

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

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

Per: \_\_\_\_\_

Name:

Title:

ACCEPTED by the Purchaser this 4<sup>th</sup> day of March, 2024

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per:   
Name: \_\_\_\_\_  
Title:

**ELM ACQUISITIONS CORP., IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

**DORR CAPITAL CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE A**  
**“Property”**

PIN 22590-0550 (LT)

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

**SCHEDULE B**

**“Approval and Vesting Order”**

Court File No. ●CL

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

THE HONOURABLE	)	<*>DAY, THE <*>
	)	
JUSTICE	)	DAY OF <*>, 2024

B E T W E E N :

**GENESIS MORTGAGE INVESTMENT CORPORATION**

Applicant

- and -

**1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP**

Respondents

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

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property listed on Schedule “B” of the Sale Agreement (as defined below) (the “**Property**”) and all the other assets, undertakings and properties of each of the Respondents, including all the assets held

in trust or required to be held in trust by or for any of the Respondents, or by their lawyers, agents and/or any other person, and all proceeds thereof (together with the Property, the “**Specified Property**”), for an order, *inter alia*, approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and <\*> (the “**Purchaser**”), as purchaser, dated <\*>, 2024 (the “**Sale Agreement**”), a copy of which is attached as Confidential Appendix “<\*>” to the Report of the Receiver dated <\*>, 2024 (the “**Report**”), and vesting in the Purchaser the Purchased Assets (as defined in the Sale Agreement), was heard this day by judicial videoconference via Zoom.

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

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

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

“B” hereto, shall vest absolutely in the Purchaser, free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the “Claims”) including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable • made on •; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule “C”** hereto (all of which are collectively referred to as the “Encumbrances”, which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule “D”**) and, for greater certainty, this Court orders that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets.

3. [THIS COURT ORDERS that immediately after the delivery of the Receiver's Certificate, each of the Existing Agreements of Purchase and Sale and all other Contracts (as each term is defined in the Sale Agreement) identified by the Purchaser to the Receiver as Excluded Assets (as defined in the Sale Agreement) and all of the existing agreements of purchase and sale with respect to the purchase of condominium units within Tower B and Tower C in the Project shall be deemed to have been terminated by the Receiver and any rights or claims thereunder or relating thereto are not continuing obligations effective against the Specified Property or binding on the Purchaser.]

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser as the owner of the subject Property identified in **Schedule “B”** hereto in fee simple, and is hereby directed to delete and expunge from title to the Property all of the Claims listed in **Schedule “C”** hereto.

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

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

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

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

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

the vesting of the Purchased Assets in the Purchaser pursuant to this Order shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Receivership Respondents and shall not be void or voidable by creditors of any of the Receivership Respondents, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* (Canada) or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

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

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

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## Schedule "A" – Form of Receiver's Certificate

Court File No. ●CL

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

B E T W E E N :

**GENESIS MORTGAGE INVESTMENT CORPORATION**

Applicant

- and -

**1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP**

Respondents

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

**RECEIVER'S CERTIFICATE**

**RECITALS**

I. Pursuant to an Order of The Honourable Mr. Justice Cavanagh of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") made on October 12, 2023, KSV Restructuring Inc. ("**KSV**") was appointed as receiver and manager (in such capacity, the "**Receiver**"), without security, of the real property listed on Schedule "B" of the Sale Agreement (as defined below) (the "**Property**") and all the other assets, undertakings and properties of each of the Respondents, including all the assets held in trust or required to be held in trust by or for any of the Respondents, or by their lawyers, agents and/or any other person, and all proceeds thereof (together with the Property, the "**Specified Property**").

II. Pursuant to an Order of the Court dated <\*>, 2024, the Court approved the agreement of purchase and sale between the Receiver, as vendor, and <\*> (the “**Purchaser**”), as purchaser, dated <\*>, 2024 (the “**Sale Agreement**”), and provided for the vesting in the Purchaser of the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Receiver to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Receiver and the Purchaser; and (iii) the Transaction has been completed to the satisfaction of the Receiver.

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

**THE RECEIVER CERTIFIES** the following:

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

A-3

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

Per:

\_\_\_\_\_

Name:

Title:

**Schedule “B” – Legal Description of the Property**

PIN 22590-0550 (LT)

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

**SCHEDULE C**  
**“Permitted Encumbrances”**

**General**

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

**Specific**

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

**FIRST AMENDMENT TO THE AGREEMENT OF PURCHASE AND SALE**

**THIS AMENDMENT** is made as of the 12<sup>th</sup> day of April, 2024.

**BETWEEN:****KSV RESTRUCTURING INC.,**

solely in its capacity as the Court-appointed receiver and manager of the real property described in Schedule "A" of the Purchase Agreement (as hereinafter defined) and all the other assets, undertakings and properties of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP, and not in its personal capacity or in any other capacity

(the "**Receiver**")

OF THE FIRST PART;

- and -

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

collectively in trust for a corporation to be incorporated

(the "**Purchaser**")

OF THE SECOND PART.

**WHEREAS:**

- A. Pursuant to an Agreement of Purchase and Sale dated and accepted March 4, 2024 (the "**Purchase Agreement**") made between the Purchaser, as purchaser, and the Receiver, as seller, the Purchaser agreed to purchase from the Receiver, and the Receiver agreed to sell to the Purchaser the Purchase Assets (as defined in the Purchase Agreement); and
- B. The Purchaser and the Seller wish to amend the Purchase Agreement on the terms set out herein.

**NOW THEREFORE THIS AMENDMENT WITNESSES** that in consideration of the sum of Ten Dollars (\$10.00) paid by the Purchaser to the Seller and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. The recitals herein are true and correct in every respect, may be relied upon by the parties hereto (the "**Parties**") as statements of fact and form an integral part of this Amendment. The Parties shall not assert any facts contrary to the statements of fact set out in the recitals herein.
2. Unless otherwise defined herein, all capitalized terms used but not defined herein shall have the respective meanings given to them in the Purchase Agreement, as amended hereby.

3. The definition of "Due Diligence Date" in section 1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with "'Due Diligence Date" means Monday, May 13, 2024;".
4. Subsections 7.3(e) of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:
  - (e) on or before the applicable date set forth below, the Purchaser having given written notice (each a "**Waiver Notice**") to the Receiver that the Purchaser is satisfied in its sole, absolute and unfettered discretion with:
    - (i) on or before Monday, May 6, 2024, the results of the Purchaser's investigations, assessments, studies, examinations, inspections, reviews, tests and audits relating to the Purchased Assets (including, without limitation, zoning, title to the Purchased Assets and review of the Permitted Encumbrances) and the Transaction provided for herein (collectively referred to herein as the "**Due Diligence**") which the purchaser deems necessary or desirable, the whole subject to all terms and conditions of this Agreement;
    - (ii) on or before the Due Diligence Date, with the debt financing secured by the Purchaser for the acquisition of the Purchased Assets; and
    - (iii) on or before the Due Diligence Date, with the joint venture documents for the acquisition of the Purchased Assets and the development of the Project entered or to be entered into by the Purchaser, Genesis Mortgage Investment Corporation, Elm Acquisitions Corp. and Dorr Capital Corporation, or any of their respective affiliates.
5. Section 10.3 of the Purchase Agreement is hereby deleted in its entirety and replaced with the following:

**"Purchaser Covenants.**

The Purchaser hereby covenants and agrees that:

  - (1) from the date hereof until the Closing Date, it shall take all such actions as are necessary to provide to the Receiver all necessary information in respect of the Purchaser reasonably required to complete, if necessary, the applicable tax elections in accordance with Section 5.1 and to execute all necessary forms related thereto; and
  - (2) without derogating from its other obligations under this Agreement the Purchaser shall act in good faith and use reasonable commercial efforts to satisfy, or cause to be satisfied, the conditions set forth in Section 7.3(e) and shall act in good faith in determining whether or not a condition in its favour has been satisfied.
6. Except as amended and supplemented by this Amendment, all of the terms of the Purchase Agreement are hereby confirmed in all respects, shall otherwise remain unamended (except as may be required to implement this Amendment), and shall continue in full force and effect, with time remaining of the essence. This Amendment amends and supplements the Purchase Agreement and the Purchase Agreement and this

Amendment shall be read and construed as one entire agreement, of which the Purchase Agreement and this Amendment are integral parts thereof.

7. This Amendment may be executed in counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument. The parties agree that the execution and delivery of this Amendment by facsimile or electronic transmission in PDF format, including through DocuSign's digital platform, shall be binding upon the party delivering same, and may be relied upon by the party receiving same, as if it were an originally executed document.

***[Remainder of Page has been Intentionally Left Blank – Signature Page Follows]***

**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per: 

Name: Mitch Vininsky  
Title: Managing Director

*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per: \_\_\_\_\_  
 Name:  
 Title:

*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
 Name: Tina Mu  
 Title: President

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per: \_\_\_\_\_  
 Name: Elliot Steiner  
 Title: ASO

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
 Name: Brian Dorr  
 Title: President & CEO

*I have authority to bind the Corporation.*

**SECOND AMENDMENT TO THE AGREEMENT OF PURCHASE AND SALE**

THIS AMENDMENT is made as of the 15<sup>th</sup> day of May, 2024.

**BETWEEN:**

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

(the "Receiver")

OF THE FIRST PART;

- and -

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

(the "Purchaser")

OF THE SECOND PART.

**WHEREAS:**

- A. Pursuant to an Agreement of Purchase and Sale dated and accepted March 4, 2024 (the "**Original Purchase Agreement**") made between the Purchaser, as purchaser, and the Receiver, as seller, the Purchaser agreed to purchase from the Receiver, and the Receiver agreed to sell to the Purchaser the Purchased Assets (as defined in the Original Purchase Agreement);
- B. The Due Diligence Date was extended to April 10, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 8, 2024;
- C. The Due Diligence Date was further extended to April 12, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 10, 2024;
- D. The Original Purchase Agreement was amended by way of a First Amendment to the Purchase Agreement dated April 12, 2024 to, among other things, amend the definition of "Due Diligence Date" to May 13, 2024 (the "**First Amendment**");
- E. On May 6, 2024, the Purchaser's solicitors delivered to the Receiver a Waiver Notice confirming the satisfaction of the Purchaser with the Due Diligence provided for in subsection 7.3(e)(i) of the Original Purchase Agreement;

- F. The Due Diligence Date was further extended to May 15, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on May 14, 2024;
- G. The Original Purchase Agreement, as amended by the First Amendment and the notices and extensions referred to above, is hereinafter referred to as the "**Purchase Agreement**"; and
- H. The Purchaser and the Receiver wish to further amend the Purchase Agreement on the terms set out herein.

**NOW THEREFORE THIS AMENDMENT WITNESSES** that in consideration of the sum of Ten Dollars (\$10.00) paid by the Purchaser to the Seller and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. The recitals herein are true and correct in every respect, may be relied upon by the parties hereto (the "**Parties**") as statements of fact and form an integral part of this Amendment. The Parties shall not assert any facts contrary to the statements of fact set out in the recitals herein.
2. Unless otherwise defined herein, all capitalized terms used but not defined herein shall have the respective meanings given to them in the Purchase Agreement, as amended hereby.
3. Section 3 of the First Amendment is deleted in its entirety. The definition of "Due Diligence Date" in section 1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with "'Due Diligence Date" means Friday, June 14, 2024;".
4. Section 13.1(5) of the Purchase Agreement is hereby amended by replacing "May 15, 2024" on the second line with "July 31, 2024".
5. Except as amended and supplemented by this Amendment, all of the terms of the Purchase Agreement are hereby confirmed in all respects, shall otherwise remain unamended (except as may be required to implement this Amendment), and shall continue in full force and effect, with time remaining of the essence. This Amendment amends and supplements the Purchase Agreement and the Purchase Agreement and this Amendment shall be read and construed as one entire agreement, of which the Purchase Agreement and this Amendment are integral parts thereof.
6. This Amendment may be executed in counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument. The parties agree that the execution and delivery of this Amendment by facsimile or electronic transmission in PDF format, including through DocuSign's digital platform, shall be binding upon the party delivering same, and may be relied upon by the party receiving same, as if it were an originally executed document.

***[Remainder of Page has been Intentionally Left Blank – Signature Page Follows]***

IN WITNESS WHEREOF the parties hereto have executed this Amendment as of the day and year first written above.

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

Per:   
Name: Mitch Vininsky  
Title: Managing Director

*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*I have authority to bind the Corporation.*

Michael  
Yeung  
EVP, Lending

**ELM ACQUISITIONS CORP., IN TRUST**

Per:   
Name: Elliot Steiner  
Title: ASO

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*I have authority to bind the Corporation.*

**THIRD AMENDMENT TO THE AGREEMENT OF PURCHASE AND SALE**

**THIS AMENDMENT** is made as of the 14<sup>th</sup> day of June, 2024.

**BETWEEN:**

**KSV RESTRUCTURING INC.,**

solely in its capacity as the Court-appointed receiver and manager of the real property described in Schedule "A" of the Purchase Agreement (as hereinafter defined) and all the other assets, undertakings and properties of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP, and not in its personal capacity or in any other capacity

(the "**Receiver**")

OF THE FIRST PART;

- and -

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

collectively in trust for a corporation to be incorporated

(the "**Purchaser**")

OF THE SECOND PART.

**WHEREAS:**

- A. Pursuant to an Agreement of Purchase and Sale dated and accepted March 4, 2024 (the "**Original Purchase Agreement**") made between the Purchaser, as purchaser, and the Receiver, as seller, the Purchaser agreed to purchase from the Receiver, and the Receiver agreed to sell to the Purchaser the Purchased Assets (as defined in the Original Purchase Agreement);
- B. The Due Diligence Date was extended to April 10, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 8, 2024;
- C. The Due Diligence Date was further extended to April 12, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 10, 2024;
- D. The Original Purchase Agreement was amended by way of a First Amendment to the Purchase Agreement dated April 12, 2024 to, among other things, amend the definition of "Due Diligence Date" to May 13, 2024 (the "**First Amendment**");
- E. On May 6, 2024, the Purchaser's solicitors delivered to the Receiver a Waiver Notice confirming the satisfaction of the Purchaser with the Due Diligence provided for in subsection 7.3(e)(i) of the Original Purchase Agreement;

- F. The Due Diligence Date was further extended to May 15, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on May 14, 2024;
- G. The Original Purchase Agreement, as amended by the First Amendment, was further amended by way of a Second Amendment to the Purchase Agreement dated May 15, 2024 to, among other things, amend the definition of "Due Diligence Date" to June 14, 2024 (the "**Second Amendment**");
- H. The Original Purchase Agreement, as amended by the First Amendment, the notices and extensions referred to above and the Second Amendment, is hereinafter referred to as the "**Purchase Agreement**"; and
- I. The Purchaser and the Receiver wish to further amend the Purchase Agreement on the terms set out herein.

**NOW THEREFORE THIS AMENDMENT WITNESSES** that in consideration of the sum of Ten Dollars (\$10.00) paid by the Purchaser to the Seller and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. The recitals herein are true and correct in every respect, may be relied upon by the parties hereto (the "**Parties**") as statements of fact and form an integral part of this Amendment. The Parties shall not assert any facts contrary to the statements of fact set out in the recitals herein.
2. Unless otherwise defined herein, all capitalized terms used but not defined herein shall have the respective meanings given to them in the Purchase Agreement, as amended hereby.
3. The definition of "Due Diligence Date" in section 1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with "'Due Diligence Date" means Monday, June 24, 2024;".
4. Section 13.1(5) of the Purchase Agreement is hereby amended by replacing "July 31, 2024" on the second line with "August 30, 2024".
5. Except as amended and supplemented by this Amendment, all of the terms of the Purchase Agreement are hereby confirmed in all respects, shall otherwise remain unamended (except as may be required to implement this Amendment), and shall continue in full force and effect, with time remaining of the essence. This Amendment amends and supplements the Purchase Agreement and the Purchase Agreement and this Amendment shall be read and construed as one entire agreement, of which the Purchase Agreement and this Amendment are integral parts thereof.
6. This Amendment may be executed in counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument. The parties agree that the execution and delivery of this Amendment by facsimile or electronic transmission in PDF format, including through DocuSign's digital platform, shall be binding upon the party delivering same, and may be relied upon by the party receiving same, as if it were an originally executed document.

**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per:   
Name: Mitch Vininsky  
Title: Managing Director

*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per:   
Name:  
Title:

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per: \_\_\_\_\_  
Name:  
Title:

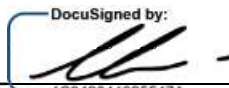
*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per:  \_\_\_\_\_  
Name: **Elliot Steiner**  
Title: **ASO**

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per:  \_\_\_\_\_  
Name: Brian Dorr  
Title: President & CEO

*I have authority to bind the Corporation.*

**FOURTH AMENDMENT TO THE AGREEMENT OF PURCHASE AND SALE**

**THIS AMENDMENT** is made as of the 21<sup>st</sup> day of June, 2024.

**BETWEEN:**

**KSV RESTRUCTURING INC.,**

solely in its capacity as the Court-appointed receiver and manager of the real property described in Schedule "A" of the Purchase Agreement (as hereinafter defined) and all the other assets, undertakings and properties of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP, and not in its personal capacity or in any other capacity

(the "Receiver")

OF THE FIRST PART;

- and -

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

collectively in trust for a corporation to be incorporated

(the "Purchaser")

OF THE SECOND PART.

**WHEREAS:**

- A. Pursuant to an Agreement of Purchase and Sale dated and accepted March 4, 2024 (the "**Original Purchase Agreement**") made between the Purchaser, as purchaser, and the Receiver, as seller, the Purchaser agreed to purchase from the Receiver, and the Receiver agreed to sell to the Purchaser the Purchased Assets (as defined in the Original Purchase Agreement);
- B. The Due Diligence Date was extended to April 10, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 8, 2024;
- C. The Due Diligence Date was further extended to April 12, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 10, 2024;
- D. The Original Purchase Agreement was amended by way of a First Amendment to the Purchase Agreement dated April 12, 2024 to, among other things, amend the definition of "Due Diligence Date" to May 13, 2024 (the "**First Amendment**");
- E. On May 6, 2024, the Purchaser's solicitors delivered to the Receiver a Waiver Notice confirming the satisfaction of the Purchaser with the Due Diligence provided for in subsection 7.3(e)(i) of the Original Purchase Agreement;

- F. The Due Diligence Date was further extended to May 15, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on May 14, 2024;
- G. The Original Purchase Agreement, as amended by the First Amendment, was further amended by way of a Second Amendment to the Purchase Agreement dated May 15, 2024 to, among other things, amend the definition of "Due Diligence Date" to June 14, 2024 (the "**Second Amendment**");
- H. The Original Purchase Agreement, as amended by the First Amendment and the Second Amendment, was further amended by way of a Third Amendment to the Purchase Agreement dated June 14, 2024 to, among other things, amend the definition of "Due Diligence Date" to June 24, 2024 (the "**Third Amendment**");
- I. The Original Purchase Agreement, as amended by the First Amendment, the notices and extensions referred to above, the Second Amendment and the Third Amendment, is hereinafter referred to as the "**Purchase Agreement**"; and
- J. The Purchaser and the Receiver wish to further amend the Purchase Agreement on the terms set out herein.

**NOW THEREFORE THIS AMENDMENT WITNESSES** that in consideration of the sum of Ten Dollars (\$10.00) paid by the Purchaser to the Seller and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. The recitals herein are true and correct in every respect, may be relied upon by the parties hereto (the "**Parties**") as statements of fact and form an integral part of this Amendment. The Parties shall not assert any facts contrary to the statements of fact set out in the recitals herein.
2. Unless otherwise defined herein, all capitalized terms used but not defined herein shall have the respective meanings given to them in the Purchase Agreement, as amended hereby.
3. The definition of "Due Diligence Date" in section 1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with "'Due Diligence Date" means Tuesday, July 2, 2024;".
4. Except as amended and supplemented by this Amendment, all of the terms of the Purchase Agreement are hereby confirmed in all respects, shall otherwise remain unamended (except as may be required to implement this Amendment), and shall continue in full force and effect, with time remaining of the essence. This Amendment amends and supplements the Purchase Agreement and the Purchase Agreement and this Amendment shall be read and construed as one entire agreement, of which the Purchase Agreement and this Amendment are integral parts thereof.
5. This Amendment may be executed in counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument. The parties agree that the execution and delivery of this Amendment by facsimile or electronic transmission in PDF format, including through DocuSign's digital

platform, shall be binding upon the party delivering same, and may be relied upon by the party receiving same, as if it were an originally executed document.

***[Remainder of Page has been Intentionally Left Blank – Signature Page Follows]***

**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per: 

Name: Mitch Vininsky  
Title: Managing Director

*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per: 

Name:  
Title:

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per: 

Name: Elliot Steiner  
Title: ASO

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per: 

Name:  
Title:

*I have authority to bind the Corporation.*

**FIFTH AMENDMENT TO THE AGREEMENT OF PURCHASE AND SALE**

THIS AMENDMENT is made as of the 28th day of June, 2024.

**BETWEEN:**

**KSV RESTRUCTURING INC.,**

solely in its capacity as the Court-appointed receiver and manager of the real property described in Schedule "A" of the Purchase Agreement (as hereinafter defined) and all the other assets, undertakings and properties of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP, and not in its personal capacity or in any other capacity

(the "Receiver")

OF THE FIRST PART;

- and -

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

collectively in trust for a corporation to be incorporated

(the "Purchaser")

OF THE SECOND PART.

**WHEREAS:**

- A. Pursuant to an Agreement of Purchase and Sale dated and accepted March 4, 2024 (the "**Original Purchase Agreement**") made between the Purchaser, as purchaser, and the Receiver, as seller, the Purchaser agreed to purchase from the Receiver, and the Receiver agreed to sell to the Purchaser the Purchased Assets (as defined in the Original Purchase Agreement);
- B. The Due Diligence Date was extended to April 10, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 8, 2024;
- C. The Due Diligence Date was further extended to April 12, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 10, 2024;
- D. The Original Purchase Agreement was amended by way of a First Amendment to the Purchase Agreement dated April 12, 2024 to, among other things, amend the definition of "Due Diligence Date" to May 13, 2024 (the "**First Amendment**");
- E. On May 6, 2024, the Purchaser's solicitors delivered to the Receiver a Waiver Notice confirming the satisfaction of the Purchaser with the Due Diligence provided for in subsection 7.3(e)(i) of the Original Purchase Agreement;

- F. The Due Diligence Date was further extended to May 15, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on May 14, 2024;
- G. The Original Purchase Agreement, as amended by the First Amendment, was further amended by way of a Second Amendment to the Purchase Agreement dated May 15, 2024 to, among other things, amend the definition of "Due Diligence Date" to June 14, 2024 (the "**Second Amendment**");
- H. The Original Purchase Agreement, as amended by the First Amendment and the Second Amendment, was further amended by way of a Third Amendment to the Purchase Agreement dated June 14, 2024 to, among other things, amend the definition of "Due Diligence Date" to June 24, 2024 (the "**Third Amendment**");
- I. The Original Purchase Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment, was further amended by way of a Fourth Amendment to the Purchase Agreement dated June 21, 2024 to, among other things, amend the definition of "Due Diligence Date" to July 2, 2024 (the "**Fourth Amendment**");
- J. The Original Purchase Agreement, as amended by the First Amendment, the notices and extensions referred to above, the Second Amendment, the Third Amendment and the Fourth Amendment, is hereinafter referred to as the "**Purchase Agreement**"; and
- K. The Purchaser and the Receiver wish to further amend the Purchase Agreement on the terms set out herein.

**NOW THEREFORE THIS AMENDMENT WITNESSES** that in consideration of the sum of Ten Dollars (\$10.00) paid by the Purchaser to the Seller and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. The recitals herein are true and correct in every respect, may be relied upon by the parties hereto (the "**Parties**") as statements of fact and form an integral part of this Amendment. The Parties shall not assert any facts contrary to the statements of fact set out in the recitals herein.
2. Unless otherwise defined herein, all capitalized terms used but not defined herein shall have the respective meanings given to them in the Purchase Agreement, as amended hereby.
3. The definition of "Due Diligence Date" in section 1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with "'Due Diligence Date" means Tuesday, July 23, 2024;".
4. Section 13.1(5) of the Purchase Agreement is hereby amended by replacing "August 30, 2024" on the second line with "September 30, 2024".
5. Except as amended and supplemented by this Amendment, all of the terms of the Purchase Agreement are hereby confirmed in all respects, shall otherwise remain unamended (except as may be required to implement this Amendment), and shall continue in full force and effect, with time remaining of the essence. This Amendment amends and supplements the Purchase Agreement and the Purchase Agreement and this


Amendment shall be read and construed as one entire agreement, of which the Purchase Agreement and this Amendment are integral parts thereof.

6. This Amendment may be executed in counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument. The parties agree that the execution and delivery of this Amendment by facsimile or electronic transmission in PDF format, including through DocuSign's digital platform, shall be binding upon the party delivering same, and may be relied upon by the party receiving same, as if it were an originally executed document.

***[Remainder of Page has been Intentionally Left Blank – Signature Page Follows]***

**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per:   
Name: Mitch Vininsky  
Title: Managing Director

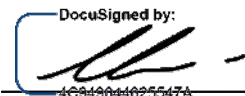
*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per:   
Name:  
Title:

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per:   
Name: Elliot Steiner  
Title: ASO

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per:   
Name:  
Title:

*I have authority to bind the Corporation.*

**SIXTH AMENDMENT TO THE AGREEMENT OF PURCHASE AND SALE**

**THIS AMENDMENT** is made as of the \_\_\_\_\_ day of July, 2024.

**BETWEEN:**

**KSV RESTRUCTURING INC.,**

solely in its capacity as the Court-appointed receiver and manager of the real property described in Schedule "A" of the Purchase Agreement (as hereinafter defined) and all the other assets, undertakings and properties of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP, and not in its personal capacity or in any other capacity

(the "**Receiver**")

OF THE FIRST PART;

- and -

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

collectively in trust for a corporation to be incorporated

(the "**Purchaser**")

OF THE SECOND PART.

**WHEREAS:**

- A. Pursuant to an Agreement of Purchase and Sale dated and accepted March 4, 2024 (the "**Original Purchase Agreement**") made between the Purchaser, as purchaser, and the Receiver, as seller, the Purchaser agreed to purchase from the Receiver, and the Receiver agreed to sell to the Purchaser the Purchased Assets (as defined in the Original Purchase Agreement);
- B. The Due Diligence Date was extended to April 10, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 8, 2024;
- C. The Due Diligence Date was further extended to April 12, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 10, 2024;
- D. The Original Purchase Agreement was amended by way of a First Amendment to the Purchase Agreement dated April 12, 2024 to, among other things, amend the definition of "Due Diligence Date" to May 13, 2024 (the "**First Amendment**");
- E. On May 6, 2024, the Purchaser's solicitors delivered to the Receiver a Waiver Notice confirming the satisfaction of the Purchaser with the Due Diligence provided for in subsection 7.3(e)(i) of the Original Purchase Agreement;

- F. The Due Diligence Date was further extended to May 15, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on May 14, 2024;
- G. The Original Purchase Agreement, as amended by the First Amendment, was further amended by way of a Second Amendment to the Purchase Agreement dated May 15, 2024 to, among other things, amend the definition of "Due Diligence Date" to June 14, 2024 (the "**Second Amendment**");
- H. The Original Purchase Agreement, as amended by the First Amendment and the Second Amendment, was further amended by way of a Third Amendment to the Purchase Agreement dated June 14, 2024 to, among other things, amend the definition of "Due Diligence Date" to June 24, 2024 (the "**Third Amendment**");
- I. The Original Purchase Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment, was further amended by way of a Fourth Amendment to the Purchase Agreement dated June 21, 2024 to, among other things, amend the definition of "Due Diligence Date" to July 2, 2024 (the "**Fourth Amendment**");
- J. The Original Purchase Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, was further amended by way of a Fifth Amendment to the Purchase Agreement dated June 28, 2024 to, among other things, amend the definition of "Due Diligence Date" to July 23, 2024 (the "**Fifth Amendment**");
- K. The Due Diligence Date was further extended to July 26, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on July 22, 2024;
- L. The Original Purchase Agreement, as amended by the First Amendment, the notices and extensions referred to above, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment, is hereinafter referred to as the "**Purchase Agreement**"; and
- M. The Purchaser and the Receiver wish to further amend the Purchase Agreement on the terms set out herein.

**NOW THEREFORE THIS AMENDMENT WITNESSES** that in consideration of the sum of Ten Dollars (\$10.00) paid by the Purchaser to the Seller and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:


1. The recitals herein are true and correct in every respect, may be relied upon by the parties hereto (the "**Parties**") as statements of fact and form an integral part of this Amendment. The Parties shall not assert any facts contrary to the statements of fact set out in the recitals herein.
2. Unless otherwise defined herein, all capitalized terms used but not defined herein shall have the respective meanings given to them in the Purchase Agreement, as amended hereby.

3. The definition of “Due Diligence Date” in section 1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with ““Due Diligence Date” means Friday, August 30, 2024;”.
4. Section 13.1(5) of the Purchase Agreement is hereby amended by replacing “September 30, 2024” on the second line with “October 31, 2024”.
5. Except as amended and supplemented by this Amendment, all of the terms of the Purchase Agreement are hereby confirmed in all respects, shall otherwise remain unamended (except as may be required to implement this Amendment), and shall continue in full force and effect, with time remaining of the essence. This Amendment amends and supplements the Purchase Agreement and the Purchase Agreement and this Amendment shall be read and construed as one entire agreement, of which the Purchase Agreement and this Amendment are integral parts thereof.
6. This Amendment may be executed in counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument. The parties agree that the execution and delivery of this Amendment by facsimile or electronic transmission in PDF format, including through DocuSign’s digital platform, shall be binding upon the party delivering same, and may be relied upon by the party receiving same, as if it were an originally executed document.

***[Remainder of Page has been Intentionally Left Blank – Signature Page Follows]***

**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per:   
Name: Mitch Vininsky  
Title: Managing Director

*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per:   
Name:  
Title:

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per:   
Name:  
Title:

*I have authority to bind the Corporation.*

**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per:  \_\_\_\_\_  
Name: Elliot Steiner  
Title: ASO

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

  
Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**SEVENTH AMENDMENT TO THE AGREEMENT OF PURCHASE AND SALE**

**THIS AMENDMENT** is made as of the 30<sup>th</sup> day of August, 2024.

**BETWEEN:****KSV RESTRUCTURING INC.,**

solely in its capacity as the Court-appointed receiver and manager of the real property described in Schedule "A" of the Purchase Agreement (as hereinafter defined) and all the other assets, undertakings and properties of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP, and not in its personal capacity or in any other capacity

(the "**Receiver**")

OF THE FIRST PART;

- and -

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

collectively in trust for a corporation to be incorporated

(the "**Purchaser**")

OF THE SECOND PART.

**WHEREAS:**

- A. Pursuant to an Agreement of Purchase and Sale dated and accepted March 4, 2024 (the "**Original Purchase Agreement**") made between the Purchaser, as purchaser, and the Receiver, as seller, the Purchaser agreed to purchase from the Receiver, and the Receiver agreed to sell to the Purchaser the Purchased Assets (as defined in the Original Purchase Agreement);
- B. The Due Diligence Date was extended to April 10, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 8, 2024;
- C. The Due Diligence Date was further extended to April 12, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 10, 2024;
- D. The Original Purchase Agreement was amended by way of a First Amendment to the Purchase Agreement dated April 12, 2024 to, among other things, amend the definition of "Due Diligence Date" to May 13, 2024 (the "**First Amendment**");
- E. On May 6, 2024, the Purchaser's solicitors delivered to the Receiver a Waiver Notice confirming the satisfaction of the Purchaser with the Due Diligence provided for in subsection 7.3(e)(i) of the Original Purchase Agreement;

- F. The Due Diligence Date was further extended to May 15, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on May 14, 2024;
- G. The Original Purchase Agreement, as amended by the First Amendment, was further amended by way of a Second Amendment to the Purchase Agreement dated May 15, 2024 to, among other things, amend the definition of "Due Diligence Date" to June 14, 2024 (the "**Second Amendment**");
- H. The Original Purchase Agreement, as amended by the First Amendment and the Second Amendment, was further amended by way of a Third Amendment to the Purchase Agreement dated June 14, 2024 to, among other things, amend the definition of "Due Diligence Date" to June 24, 2024 (the "**Third Amendment**");
- I. The Original Purchase Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment, was further amended by way of a Fourth Amendment to the Purchase Agreement dated June 21, 2024 to, among other things, amend the definition of "Due Diligence Date" to July 2, 2024 (the "**Fourth Amendment**");
- J. The Original Purchase Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, was further amended by way of a Fifth Amendment to the Purchase Agreement dated June 28, 2024 to, among other things, amend the definition of "Due Diligence Date" to July 23, 2024 (the "**Fifth Amendment**");
- K. The Due Diligence Date was further extended to July 26, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on July 22, 2024;
- L. The Original Purchase Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment, was further amended by way of a Sixth Amendment to the Purchase Agreement dated July 25, 2024 to, among other things, amend the definition of "Due Diligence Date" to August 30, 2024 (the "**Sixth Amendment**");
- M. The Original Purchase Agreement, as amended by the First Amendment, the notices and extensions referred to above, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment, is hereinafter referred to as the "**Purchase Agreement**"; and
- N. The Purchaser and the Receiver wish to further amend the Purchase Agreement on the terms set out herein.

**NOW THEREFORE THIS AMENDMENT WITNESSES** that in consideration of the sum of Ten Dollars (\$10.00) paid by the Purchaser to the Seller and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:


- 1. The recitals herein are true and correct in every respect, may be relied upon by the parties hereto (the "**Parties**") as statements of fact and form an integral part of this Amendment. The Parties shall not assert any facts contrary to the statements of fact set out in the recitals herein.

2. Unless otherwise defined herein, all capitalized terms used but not defined herein shall have the respective meanings given to them in the Purchase Agreement, as amended hereby.
3. The definition of "Due Diligence Date" in section 1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with "'Due Diligence Date" means Monday, September 9, 2024;".
4. Except as amended and supplemented by this Amendment, all of the terms of the Purchase Agreement are hereby confirmed in all respects, shall otherwise remain unamended (except as may be required to implement this Amendment), and shall continue in full force and effect, with time remaining of the essence. This Amendment amends and supplements the Purchase Agreement and the Purchase Agreement and this Amendment shall be read and construed as one entire agreement, of which the Purchase Agreement and this Amendment are integral parts thereof.
5. This Amendment may be executed in counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument. The parties agree that the execution and delivery of this Amendment by facsimile or electronic transmission in PDF format, including through DocuSign's digital platform, shall be binding upon the party delivering same, and may be relied upon by the party receiving same, as if it were an originally executed document.

***[Remainder of Page has been Intentionally Left Blank – Signature Page Follows]***


**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per:   
Name: Mitch Vininsky  
Title: Managing Director

*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per:   
Name:  
Title:

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per:   
Name:  
Title:

*I have authority to bind the Corporation.*


**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per: \_\_\_\_\_  
Name:  
Title:

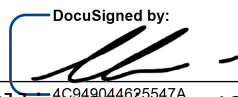
*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per:  \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per:  \_\_\_\_\_  
Name: DocuSigned by: **ELLIOT STEINER, ASO**  
Title:

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**WAIVER AND EIGHTH AMENDMENT TO THE AGREEMENT OF PURCHASE AND SALE**

**THIS WAIVER AND AMENDMENT** is made as of the 23<sup>rd</sup> day of September, 2024.

**BETWEEN:****KSV RESTRUCTURING INC.,**

solely in its capacity as the Court-appointed receiver and manager of the real property described in Schedule "A" of the Purchase Agreement (as hereinafter defined) and all the other assets, undertakings and properties of 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP, and not in its personal capacity or in any other capacity

(the "**Receiver**")

OF THE FIRST PART;

- and -

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

collectively in trust for a corporation to be incorporated

(the "**Purchaser**")

OF THE SECOND PART.

**WHEREAS:**

- A. Pursuant to an Agreement of Purchase and Sale dated and accepted March 4, 2024 (the "**Original Purchase Agreement**") made between the Purchaser, as purchaser, and the Receiver, as seller, the Purchaser agreed to purchase from the Receiver, and the Receiver agreed to sell to the Purchaser the Purchased Assets (as defined in the Original Purchase Agreement);
- B. The Due Diligence Date was extended to April 10, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 8, 2024;
- C. The Due Diligence Date was further extended to April 12, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on April 10, 2024;
- D. The Original Purchase Agreement was amended by way of a First Amendment to the Purchase Agreement dated April 12, 2024 to, among other things, amend the definition of "Due Diligence Date" to May 13, 2024 (the "**First Amendment**");
- E. On May 6, 2024, the Purchaser's solicitors delivered to the Receiver a Waiver Notice confirming the satisfaction of the Purchaser with the Due Diligence provided for in subsection 7.3(e)(i) of the Original Purchase Agreement;

- F. The Due Diligence Date was further extended to May 15, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on May 14, 2024;
- G. The Original Purchase Agreement, as amended by the First Amendment, was further amended by way of a Second Amendment to the Purchase Agreement dated May 15, 2024 to, among other things, amend the definition of "Due Diligence Date" to June 14, 2024 (the "**Second Amendment**");
- H. The Original Purchase Agreement, as amended by the First Amendment and the Second Amendment, was further amended by way of a Third Amendment to the Purchase Agreement dated June 14, 2024 to, among other things, amend the definition of "Due Diligence Date" to June 24, 2024 (the "**Third Amendment**");
- I. The Original Purchase Agreement, as amended by the First Amendment, the Second Amendment and the Third Amendment, was further amended by way of a Fourth Amendment to the Purchase Agreement dated June 21, 2024 to, among other things, amend the definition of "Due Diligence Date" to July 2, 2024 (the "**Fourth Amendment**");
- J. The Original Purchase Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment, was further amended by way of a Fifth Amendment to the Purchase Agreement dated June 28, 2024 to, among other things, amend the definition of "Due Diligence Date" to July 23, 2024 (the "**Fifth Amendment**");
- K. The Due Diligence Date was further extended to July 26, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on July 22, 2024;
- L. The Original Purchase Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment, was further amended by way of a Sixth Amendment to the Purchase Agreement dated July 25, 2024 to, among other things, amend the definition of "Due Diligence Date" to August 30, 2024 (the "**Sixth Amendment**");
- M. The Original Purchase Agreement, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, and the Sixth Amendment was further amended by way of a Seventh Amendment to the Purchase Agreement dated August 30, 2024 to, among other things, amend the definition of "Due Diligence Date" to September 9, 2024 (the "**Seventh Amendment**");
- N. The Due Diligence Date was further extended to September 10, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on September 9, 2024;
- O. The Due Diligence Date was further extended to September 12, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on September 10, 2024;
- P. The Due Diligence Date was further extended to September 17, 2024, by way of email correspondence between the Receiver and Purchaser's solicitor on September 12, 2024;

- Q. The Due Diligence Date was further extended to September 18, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on September 17, 2024;
- R. The Due Diligence Date was further extended to September 19, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on September 18, 2024;
- S. The Due Diligence Date was further extended to September 20, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on September 19, 2024;
- T. The Due Diligence Date was further extended to September 23, 2024, by way of email correspondence between the Receiver's and Purchaser's solicitors on September 20, 2024;
- U. The Original Purchase Agreement, as amended by the First Amendment, the notices and extensions referred to above, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, and the Seventh Amendment is hereinafter referred to as the "**Purchase Agreement**"; and
- V. The Purchaser wished to waive the conditions in its favour as set forth in Section 7.3(e) of the Purchase Agreement, and the Receiver and the Purchaser wish to further amend the Purchase Agreement on the terms set out herein.

**NOW THEREFORE THIS AMENDMENT WITNESSES** that in consideration of the sum of Ten Dollars (\$10.00) paid by the Purchaser to the Seller and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby covenant and agree as follows:

1. The recitals herein are true and correct in every respect, may be relied upon by the parties hereto (the "**Parties**") as statements of fact and form an integral part of this Waiver and Amendment. The Parties shall not assert any facts contrary to the statements of fact set out in the recitals herein.
2. Unless otherwise defined herein, all capitalized terms used but not defined herein shall have the respective meanings given to them in the Purchase Agreement, as amended hereby.
3. The Purchaser hereby confirms that the conditions in favour of the Purchaser contained in Section 7.3(e) of the Purchase Agreement, which conditions are for the exclusive benefit of the Purchaser, have been satisfied, and, for greater certainty, the Purchaser hereby waives all such conditions.
4. The definition of "Closing Date" in section 1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with: "means October 10, 2024, as such date may be extended by written notice from the Purchaser from time to time, in the Purchaser's sole and unfettered discretion, which date shall in no case be later than October 30, 2024;"
5. The definition of "Existing Agreements of Purchase and Sale" in section 1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with ""Existing

Agreements of Purchase and Sale” means all existing agreements of Purchase and Sale with respect to the purchase of condominium units within Tower A and Tower C of the Project;”.

6. Part (e) of the definition of "Excluded Assets" in section 1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with "(e) all Contracts, save and except for those with public utilities or Governmental Authorities and any other Contracts that the Purchaser may advise the Receiver it wishes to assume in advance of Closing;”.
7. Part (g) of the definition of “Excluded Assets” in section 1.1 of the Purchase Agreement is hereby deleted in its entirety and replaced with "(g) the existing agreements of purchase and sale with respect to the purchase of condominium units within Tower B in the Project and any moneys paid to the Receivership Respondents or on their behalf as a deposit or on account of a purchase of a condominium units to be constructed in the Tower B of the Project;”

8. The following is added as a new subsection 4.5(4) of the Purchase Agreement:

"(4) Notwithstanding anything to the contrary contained in this Article 4, all monies held by the Receiver at the end of the receivership, which for greater certainty shall be net of any funds required by the Receiver for receivership costs, shall be held in trust for the Purchaser, endorsed (without recourse) in favour of the Purchaser and the Receiver is hereby irrevocably directed to pay any such amount, when determined, to Bennett Jones LLP, the Purchaser's solicitor, in trust, in accordance with the wire instructions attached hereto as Schedule "D"."

Schedule “A” attached hereto is added as Schedule “D” to the Purchase Agreement”.

9. The following is added as a new section 4.7 of the Purchase Agreement:

#### "4.7 Input Tax Credits

Notwithstanding anything to the contrary contained in this Article 4, if at any time following Closing, the Receiver receives payment of or credit on account of any input tax credits relating to any component of the Purchase Price paid on Closing, it shall hold any such amount in trust for the Purchaser, endorse such amount (without recourse) in favour of the Purchaser and the Receiver is hereby irrevocably directed to pay any such amount from time to time to Bennett Jones LLP, the Purchaser's solicitor, in trust, in accordance with the wire instructions attached hereto as Schedule "A". The Receiver further covenants and agrees to keep the Purchaser informed of any new information regarding such input tax credits, and in any event to provide the Purchaser with updated information relating to same within a reasonable period of time following request by the Purchaser. This Section 4.7 shall not merge but shall survive the completion of the Transaction."

10. The following is added as a new subsection 13.1(7):

(7) automatically, should Closing not have occurred on or prior to October 30, 2024.

11. For the purposes of item (f) in the current definition of "Excluded Assets" in section 1.1 of the Purchase Agreement, the Purchaser hereby confirms that none of the Existing Agreements of Purchase and Sale in respect of Tower A and Tower C shall constitute

Excluded Assets, provided, however, that the foregoing confirmation is subject to the Approval and Vesting Order approving the Purchaser's post-Closing sales plan for the Agreements of Purchase and Sale in respect of Tower A (attached hereto as Schedule "B") including, without limitation, the delayed disclaimer of any or all of such Agreements of Purchase and Sale, in each case in accordance with the terms of the Approval and Vesting Order, and each of the parties hereto hereby acknowledges and confirms same.

12. Except as amended and supplemented by this Waiver and Amendment, all of the terms of the Purchase Agreement are hereby confirmed in all respects, shall otherwise remain unamended (except as may be required to implement this Waiver and Amendment), and shall continue in full force and effect, with time remaining of the essence. This Waiver and Amendment amends and supplements the Purchase Agreement and the Purchase Agreement and this Waiver and Amendment shall be read and construed as one entire agreement, of which the Purchase Agreement and this Waiver and Amendment are integral parts thereof.
13. This Waiver and Amendment may be executed in counterparts, each of which when so executed shall be deemed to be an original and which counterparts together shall constitute one and the same instrument. The parties agree that the execution and delivery of this Waiver and Amendment by facsimile or electronic transmission in PDF format, including through DocuSign's digital platform, shall be binding upon the party delivering same, and may be relied upon by the party receiving same, as if it were an originally executed document.

***[Remainder of Page has been Intentionally Left Blank – Signature Page Follows]***

**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per: 

Name: Mitch Vininsky  
Title: Managing Director

*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per: \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*


**IN WITNESS WHEREOF** the parties hereto have executed this Amendment as of the day and year first written above.

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

Per: \_\_\_\_\_  
Name:  
Title:

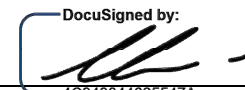
*I have authority to bind the Corporation.*

**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per:  \_\_\_\_\_  
Name:  
Title:

*I have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per:  \_\_\_\_\_  
Name: 4C949044625547A... Elliot Steiner, ASO  
Title:

*I have authority to bind the Corporation.*

**DORR CAPITAL CORPORATION, IN TRUST**

Per:  \_\_\_\_\_  
Name: Brian Dorr  
Title: President & CEO

*I have authority to bind the Corporation.*

## SCHEDULE "A"



Bennett Jones

Bennett Jones LLP  
3400 One First Canadian Place, P.O. Box 130  
Toronto, Ontario, M5X 1A4 Canada  
T: 416.863.1200  
F: 416.863.1716

**Wiring Instructions to Bennett Jones LLP  
CAD Trust Account – Toronto, Ontario**

**Beneficiary Name:** Bennett Jones LLP, in trust  
3400 One First Canadian Place  
P.O. Box 130  
Toronto, ON M5X 1A4

**Beneficiary Bank Name:** Royal Bank of Canada  
20 King Street West  
Toronto, Ontario M5H 1C4  
Canada

**Bank Number:** 003  
**Transit Number:** 06012  
**Beneficiary Account No.:** 1161090  
**Swift Code:** ROYCCAT2

**Please note the following particulars:**

1. Please also indicate either the lawyer involved or the client matter number.
2. If you prefer to do a direct deposit, you must certify the cheque before it is deposited to avoid delays and provide a copy of the deposit receipt.
3. When wiring funds from the U.S., please indicate:
  - (i) Beneficiary Bank: Royal Bank of Canada
  - (ii) Beneficiary: Bennett Jones LLP in Trust
  - (iii) CAD account number 06012-1161090

**NOTE:** To comply with Law Society Rules, we do not accept cash into our Trust accounts.

Should you have any questions please contact:

[Anna Zampino](#)  
Supervisor, Accounts Payable and Trust  
Phone: 416.777.4835  
Email: [zampinoa@bennettjones.com](mailto:zampinoa@bennettjones.com)

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

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

**ASSIGNMENT AND ASSUMPTION OF PURCHASE AGREEMENT**

**THIS AGREEMENT** made as of the 7<sup>th</sup> day of October, 2024 (the "**Effective Date**").

**BETWEEN:**

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

(collectively, the "**Assignor**")

- and -

**GFD 1333W LIMITED PARTNERSHIP**

(the "**Assignee**")

- and -

**1333W LANDS LTD.**

(the "**Nominee**")

- and -

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

(the "**Vendor**")

**WHEREAS:**

- A.** Pursuant to an agreement of purchase and sale dated March 4, 2024 (as amended, restated, modified, assigned and supplemented from time to time, collectively the "**Purchase Agreement**"), the Vendor agreed to sell and the Assignor agreed to purchase, the Purchased Assets (as such term is defined in the Purchase Agreement) on the terms and subject to the conditions set out therein.
- B.** The Assignor has agreed to assign, and the Assignee has agreed to assume, all of the Assignor's right, title and interest in and to, and obligations and liabilities under, the Purchase Agreement.

- C. The Vendor has agreed to consent to the foregoing, in accordance with the Purchase Agreement, and the parties have agreed to enter into this Agreement in respect of same.

**NOW THEREFORE** in consideration of the sum of \$10.00, the mutual covenants and agreements hereinafter contained and contained in the Purchase Agreement, and other good and valuable consideration now paid by each party to the others, the receipt and sufficiency of which consideration is hereby acknowledged, the parties covenant and agree as follows:

1. **Definitions**

All capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Purchase Agreement.

2. **Assignment**

The Assignor does hereby transfer, assign and set over unto the Assignee and its successors and assigns all of the Assignor's right, title and interest in and to, and obligations and liabilities under, the Purchase Agreement (including, without limitation, the Assignor's credit for all monies paid by the Assignor under the Purchase Agreement as a deposit or otherwise), together with the full benefit of all covenants, agreements, obligations, terms, conditions, representations and warranties of any nature or kind whatsoever arising from or out of or in any way in connection with the Purchase Agreement.

3. **Assumption**

The Assignee hereby accepts the foregoing transfer and assignment by the Assignor and covenants with the Assignor to assume (and perform as applicable) all of the terms, covenants, conditions, obligations and liabilities of the Assignor under the Purchase Agreement including, without limitation, any documents to be delivered pursuant to the Purchase Agreement and any liabilities incurred in connection with the Purchase Agreement and to be bound by the Purchase Agreement.

4. **Confirmation**

The parties acknowledge and agree that the assignment contemplated by this Agreement shall not and does not, until Closing, relieve the Assignor of any of its liability or obligations pursuant to the terms of the Purchase Agreement.

5. **Consent**

The Vendor hereby consents to the foregoing assignment of the Purchase Agreement.

6. **Title Direction**

Effective as of the foregoing assignment and assumption, the Assignee hereby authorizes and directs the Vendor to, on Closing, transfer title to the Property to the Nominee, as nominee and bare trustee for the Assignee, as follows:

**1333W Lands Ltd.**

**Address for Service:**

**199 Bay Street, Suite 5300  
Toronto, ON M5L 1B9**

and the Nominee hereby acknowledges and confirms the foregoing direction.

**7. Notices**

Any notice, request, consent, acceptance, waiver or other communication required or permitted to be given under this Agreement shall be given in accordance with the notice provisions in the Purchase Agreement. The contact details and address for service of the Assignee are:

c/o GFD 1333W GP Inc.  
199 Bay Street, Suite 5300  
Toronto, ON M5L 1B9

Attn: HongYu Tina Mu, Director  
Email: tina.mu@gentaicapital.com  
Attn: Elliot Steiner, Director  
Email: esteiner@elmdevelopments.com  
Attn: Brian Dorr, Director  
Email: bdorr@dorrcapital.com

with a copy to:

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

Attn: Sean Zweig  
Email: ZweigS@bennettjones.com

**8. Further Assurances**

Each of the parties hereto shall, at the expense of the requesting party, execute and deliver such additional documents and instruments and shall perform such additional acts as may be reasonably necessary or appropriate in connection with this Agreement and all transactions contemplated by this Agreement to effectuate, carry out and perform all of the covenants, obligations, and agreements contained herein.

**9. Successors and Assigns**

The provisions of this Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective successors and permitted assigns.

#### 10. **Counterparts**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument. Counterparts may be executed either in original or electronic form and the parties to this agreement shall adopt any signatures received in electronic form as original signatures of the parties.

#### 11. **Facsimile and Electronic Signatures**

This Agreement may be executed and transmitted by facsimile or other form of electronic transmission, which facsimile or electronic transmission shall constitute an original and legally binding Agreement. This Agreement may be executed electronically and the parties hereto may rely upon such electronic signatures as though such electronic signatures were original signatures.

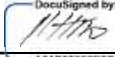
#### 12. **Governing Law**


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

***[Remainder of page intentionally left blank]***

DATED as of the date first written above.

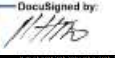
**GFD 1333W GP INC., in its capacity as general partner for and on behalf of GFD 1333W LIMITED PARTNERSHIP**

Per:   
Name: HongYu Tina Mu  
Title: A.S.O.

Per:   
Name: Elliot Steiner  
Title: A.S.O.

*I/we have authority to bind the Corporation.*


**GENESIS MORTGAGE INVESTMENT CORPORATION, IN TRUST**

Per:   
Name: HongYu Tina Mu  
Title: President

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*I/we have authority to bind the Corporation.*

**ELM ACQUISITIONS CORP., IN TRUST**

Per:   
Name: Elliot Steiner  
Title: A.S.O.

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*I/we have authority to bind the Corporation.*

- 6 -


**DORR CAPITAL CORPORATION, IN TRUST**


Per:   
Name: Brian Dorr  
Title: President and CEO

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*I/we have authority to bind the Corporation.*


**1333W LANDS LTD.**

Per:   
Name: HongYu Tina Mu  
Title: A.S.O.

Per:   
Name: Elliot Steiner  
Title: A.S.O.

*I/we have authority to bind the Corporation.*

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

Per:   
Name: Mitch Vininsky  
Title: Managing Director

Per: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

*I/we have authority to bind the Corporation.*

## Appendix “C”

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

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

THE HONOURABLE	)	TUESDAY, THE 8 <sup>th</sup>
	)	
JUSTICE KIMMEL	)	DAY OF OCTOBER, 2024

B E T W E E N :

**GENESIS MORTGAGE INVESTMENT CORPORATION**

Applicant

- and -

**1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP**

Respondents

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

**APPROVAL AND VESTING ORDER**

**THIS MOTION**, made by KSV Restructuring Inc., in its capacity as the Court-appointed receiver and manager (in such capacity, the “**Receiver**”), without security, of the real property listed on Schedule “B” of the Sale Agreement (as defined below) (the “**Real Property**”) and all the other assets, undertakings and properties of each of the Respondents (collectively, the “**Debtors**”), and all proceeds thereof (together with the Real Property, the “**Property**”), for an order, *inter alia*, (i) approving the sale transaction (the “**Transaction**”) contemplated by an agreement of purchase and sale between the Receiver, as vendor, and Genesis Mortgage

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

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

## **SERVICE**

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

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

### **APPROVAL AND VESTING**

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

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

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

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

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

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

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

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

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

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

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

#### **TERMINATION AND DISCLAIMER OF AGREEMENTS OF PURCHASE AND SALE**

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

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

#### **DEPOSIT RETURN PROTOCOL**

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

**SEALING AND GENERAL**

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

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

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

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

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**Schedule “A” – Form of Receiver’s Certificate**

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

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

B E T W E E N :

**GENESIS MORTGAGE INVESTMENT CORPORATION**

Applicant

- and -

**1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP**

Respondents

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

**RECEIVER’S CERTIFICATE**

**RECITALS**

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

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

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

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

**THE RECEIVER CERTIFIES** the following:

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

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

Per: \_\_\_\_\_  
Name:  
Title:

**Schedule “B” – Legal Description of the Property**

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

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

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

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

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

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

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

## Schedule “D” - Permitted Encumbrances

### General

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

### Specific

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

**GENESIS MORTGAGE INVESTMENT CORPORATION**  
Applicant

and

**1776411 ONTARIO LTD. et al.**  
Respondents

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

Proceeding commenced at Toronto

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**APPROVAL AND VESTING ORDER**

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

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

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

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

## Appendix “D”



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

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

THE HONOURABLE ) TUESDAY, THE 8<sup>th</sup>  
JUSTICE KIMMEL )  
DAY OF OCTOBER, 2024

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**

**DISTRIBUTION AND ANCILLARY RELIEF ORDER**

**THIS MOTION** by KSV Restructuring Inc. (the “**Receiver**”) in its capacity as receiver and manager of 1776411 Ontario Ltd. (“**177 Ontario**”) and 1333 Weber Street Kitchener LP (collectively with 177 Ontario, the “**Debtors**”) for an Order, among other things, (i) approving the activities described in the Receiver’s second report dated September 27, 2024 (the “**Second Report**”), (ii) amending the appointment order of Justice Cavanagh dated October 12, 2023 (the “**Receivership Order**”) by increasing to \$2,500,000 the amount the Receiver is authorized to

borrow, (iii) authorizing and directing the Receiver to make certain payments and distributions from the completion of the sale (the “**Transaction**”) of the real property (the “**Real Property**”) described in the agreement of purchase and sale (as amended) set out in Appendix “H” of the Second Report, (iv) declaring null and void the construction liens of Classic Tile Contractors Limited (“**Classic Tile**”) and 2866791 Ontario Corp o/a HGL Electrical (“**HGL Electrical**”), (v) authorizing and directing the Receiver to terminate and disclaim the listing agreement between Rego Realty Inc. (“**Rego Realty**”) and 177 Ontario, dated March 22, 2019 (the “**Rego Listing Agreement**”), (vi) approving the fees and disbursements of the Receiver, as set out in the affidavit of Mitch Vininsky sworn September 20, 2024, and of the Receiver’s counsel, Blaney McMurtry LLP (“**Blaneys**”), as set out in the Affidavit of Chad Kopach sworn September 18, 2024, and (vii) approving and accepting the Receiver’s Interim Statement of Receipts and Disbursements for the period from October 12, 2023, to September 12, 2024, was heard this day via Zoom videoconference.

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

## **REPORT APPROVAL**

1. **THIS COURT ORDERS** that the Second Report, and the actions of the Receiver described therein, be and are hereby approved; provided, however, that only the Receiver, in its

personal capacity and only with respect to its own personal liability, shall be entitled to rely upon or utilize in any way such approval.

### **BORROWING INCREASE**

2. **THIS COURT ORDERS** that paragraph 21 of the Appointment Order, as amended by paragraph 7 of the Order of Justice Cavanagh dated December 12, 2023, be and same is hereby further amended to increase the amount the Receiver is authorized to borrow to \$2,500,000.

### **DISTRIBUTIONS**

3. **THIS COURT ORDERS** that the Receiver shall make the following distributions from the proceeds of sale from the Transaction, in full satisfaction of the lien claimants' priority claims for holdback, including their priority claims pursuant to section 78 of the *Construction Act*, inclusive of HST (the "**Priority Lien Claims**"):

(a) \$508,913.14 to Gillam Urban Constructors Inc. ("**Gillam**"), payable as follows:

- i. \$28,417.63 to Matthews Equipment Limited o/a Herc Rentals ("**Matthews Equipment**") in respect of the construction contract between Matthews Equipment and Gillam; and,
- ii. \$480,495.51 to Gillam;

(b) \$43,231.50 to ABA Architects Inc. ("**ABA Architects**");

(c) \$245,111.48 to Aluminum Window Designs Ltd. ("**Aluminum Window**");

(d) \$60,787.01 to Conestoga Roofing & Sheet Metal Ltd. ("**Conestoga Roofing**");

(e) \$549,251.98 to Dean Lane Contractors Inc. ("**Dean Lane**");

- (f) \$165,642.13 to Gold Star Drywall Services Inc. (“**Gold Star Drywall**”);
- (g) \$48,960.02 to Greentech Sealants Inc. (“**Greentech Sealants**”);
- (h) \$34,495.53 to O’Connor Electric Ltd. (“**O’Connor Electric**”);
- (i) \$75,595.93 to Oxford Builders Supplies Inc. (“**Oxford**”);
- (j) \$103,811.87 to Pearson Metal Inc. (“**Pearson Metal**”);
- (k) \$936,001.85 to Stubbe’s Precast Inc. (“**Stubbe’s Precast**”); and,
- (l) \$63,919.39 to Troy Life & Fire Safety Ltd. (“**Troy Life**”).

4. **THIS COURT ORDERS AND DECLARES** that, following payment of the amounts set out in paragraph 3 above (the “**Lien Priority Distributions**”), the Priority Lien Claims of each of the lien claimants shall be extinguished, and the lien claim of Matthews Equipment shall be deemed to be fully satisfied.

5. **THIS COURT ORDERS** that following payment of the Lien Priority Distributions and the priority payables set out in paragraph 48 of the Second Report, including but not limited to the holdbacks as the Receiver considers appropriate to fund the receivership, including its fees and the fees of its counsel, the Receiver is hereby authorized and directed to make one or more distributions to the first mortgagees over the Real Property, Genesis Mortgage Investment Corp. (“**GMIC**”), CMLS Financial Ltd. (“**CMLS**”) and Computershare Trust Company of Canada (“**Computershare**”, and together with GMIC and CMLS, the “**First Mortgagees**”), up to the balance owing to them under their first mortgage (the “**First Mortgagee Distribution**”).

6. **THIS COURT ORDERS** that the Receiver is hereby authorized to take all reasonably necessary steps and actions to effect the Lien Priority Distributions and the First Mortgagee Distribution (collectively, the “**Distributions**”) in accordance with this Order, and shall not incur any liability as a result of making the Distributions.

7. **THIS COURT ORDERS** that notwithstanding anything else contained in this Order, each of the payments and Distributions provided for in this Order shall be made free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Order of The Honourable Justice Cavanagh made on October 12, 2023, and (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* or any other personal property registry system or real property registry system.

8. **THIS COURT ORDERS** that the Receiver or any other person facilitating payments and Distributions pursuant to this Order shall be entitled to deduct and withhold from any such payments or Distributions such amounts as may be required to be deducted or withheld under any applicable law and to remit such amounts to the appropriate governmental authority or other person entitled thereto as may be required by such law. To the extent that amounts are so withheld or deducted and remitted to the appropriate governmental authority or other person entitled thereto, such withheld or deducted amounts shall be treated for all purposes as having been paid pursuant to this Order.

## **INVALID LIENS**

9. **THIS COURT ORDERS AND DECLARES** that the lien of Classic Tile, as evidenced by the Claim for Lien in the amount of \$591,923 registered over title to the Real Property on July 21, 2023, as instrument no. WR1521825 (the “**Classic Tile Claim for Lien**”), and by the Certificate of Action registered on September 29, 2023, as instrument no. WR1536918 (the “**Classic Tile Certificate of Action**”), is null and void.

10. **THIS COURT ORDERS AND DECLARES** that the lien of HGL Electrical, as evidenced by the Claim for Lien in the amount of \$3,123,088 registered over title to the Real Property on August 9, 2023, as instrument no. WR1525921 (the “**HGL Electrical Claim for Lien**”), is null and void.

## **TERMINATION AND DISCLAIMER OF REGO LISTING AGREEMENT**

11. **THIS COURT ORDERS** that the Receiver is hereby authorized, on or prior to closing of the Transaction, to terminate and disclaim the Rego Listing Agreement, and any rights or claims thereunder or relating thereto are not continuing obligations effective against the Real Property or binding on the Purchaser.

## **APPROVAL OF PROFESSIONAL FEES AND COSTS**

12. **THIS COURT ORDERS** that the fees and disbursements of the Receiver from the commencement of the Receivership to and including August 31, 2024, as set out in the Affidavit of Mitch Vininsky sworn September 20, 2024 and attached as Appendix “P” to the Second Report, be and are hereby approved.

13. **THIS COURT ORDERS** that the fees and disbursements for Blaneys from the commencement of the Receivership to and including August 31, 2024, as set out in the Affidavit of Chad Kopach sworn September 18, 2024, and attached as Appendix “Q” to the Second Report, be and are hereby approved.

#### **STATEMENT OF RECEIPTS AND DISBURSEMENTS**

14. **THIS COURT ORDERS** that the Receiver’s Interim Statement of Receipts and Disbursements for the period from October 12, 2023, to September 12, 2024, as set out in Appendix “O” to the Second Report, be and is hereby accepted and approved.

#### **GENERAL**

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


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

any payments or Distributions made pursuant to this Order are final and irreversible and shall be binding on any trustee in bankruptcy that may be appointed in respect of any of the Respondents and shall not be void or voidable by creditors of any of the Respondents, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the *Bankruptcy and Insolvency Act* or any other applicable federal or provincial legislation, nor shall they constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

16. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

17. **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.

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

 Digitally signed  
by Jessica  
Kimmel  
Date: 2024.10.09  
15:16:31 -04'00'

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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

**DISTRIBUTION AND ANCILLARY RELIEF ORDER**

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

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

## Appendix “E”

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	THURSDAY, THE 20 <sup>TH</sup>
	)	
JUSTICE CAVANAGH	)	DAY OF FEBRUARY, 2025

**GENESIS MORTGAGE INVESTMENT CORP.**

Applicant

- and -

**1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP**

Respondents

**ORDER  
(AVO Amendment Order)**

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

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

**SERVICE**

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

**DEFINITIONS**

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

**AMENDMENT OF AVO**

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

**MISCELLANEOUS**

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

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

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

**GENESIS MORTGAGE INVESTMENT 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**  
**(AVO Amendment Order)**

**BENNETT JONES LLP**  
 One First Canadian Place, Suite 3400  
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 Toronto, ON M5X 1A4

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Lawyers for GFD 1333W Limited Partnership

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

THE HONOURABLE	)	THURSDAY, THE 26 <sup>TH</sup> DAY
	)	
JUSTICE W.D. BLACK	)	OF JUNE, 2025

**GENESIS MORTGAGE INVESTMENT CORP.**

Applicant

- and -

**1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP**

Respondents

**ORDER  
(Second AVO Amendment Order)**

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

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

**SERVICE**

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

**DEFINITIONS**

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

**AMENDMENT OF AVO**

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

**MISCELLANEOUS**

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

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



---

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

**GENESIS MORTGAGE INVESTMENT 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**  
**(Second AVO Amendment Order)**

**BENNETT JONES LLP**  
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 Toronto, ON M5X 1A4

**Sean Zweig** (LSO# 57307I)  
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Lawyers for GFD 1333W Limited Partnership

## Appendix “F”



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

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

DATE: June 17, 2025

NO. ON LIST: 3

**TITLE OF PROCEEDING:**

**Genesis Mortgage Investment Corporation  
Vs.**

**1776411 Ontario Ltd. / 1333 Weber Street Kitchener, LLP / ABA Architects Inc. / Conestoga Roofing & Sheet Metal Ltd. / Gillan Urban Constructors Inc. / Gillam Communities 1333 Weber Street Limited Partnership / Stubbe's Precast Inc. / Gold Star Drywall Services Inc. / Westmount Guarantee Services Inc. / Corfinancial Corp / CMLS Financial Ltd. / Eneicare Home and Commercial Services Limited Partnership / Troy Life & Fire Safety Ltd.**

**BEFORE: JUSTICE KIMMEL**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
Thomas Gray	GFD LP	<a href="mailto:grayt@bennettjones.com">grayt@bennettjones.com</a>
Sean Zweig		<a href="mailto:zweigs@bennettjones.com">zweigs@bennettjones.com</a>

**For Defendant, Respondent, Responding Party:**

Name of Person Appearing	Name of Party	Contact Info
Denise Bambrough	Aviva	<a href="mailto:dbambrough@blg.com">dbambrough@blg.com</a>
Chap Kopach (Receiver)	KSV	<a href="mailto:Ckopach@blaney.com">Ckopach@blaney.com</a>

**For Other, Self-Represented:**

Name of Person Appearing	Name of Party	Contact Info

Umair Khan	Tower A Unit 909 – Self Represented	umairkhan@mech@gmail.com
Michael Yeung	Csl for Gentai Capital	<a href="mailto:Michael.yeung@gentaicapital.com">Michael.yeung@gentaicapital.com</a>
Pardeep Dwivedi	Tower A Unit 1110 – Self-Represented	<a href="mailto:dwivedipardeep@gmail.com">dwivedipardeep@gmail.com</a>
Deepak Gulati	Tower A – Self-Represented	<a href="mailto:Deepakgulati.in@gmail.com">Deepakgulati.in@gmail.com</a>

---

### **ENDORSEMENT OF JUSTICE KIMMEL:**

- [1] Capitalized terms not otherwise defined in this endorsement shall have the meanings ascribed to them in the Affidavit of Michael Yeung sworn June 6, 2025 in support of this motion by GFD 1333W Limited Partnership ("GFD LP").
- [2] On October 8, 2024, the Court granted the AVO, which, among other things:
- a. approved the transaction contemplated by the Sale Agreement (the "Transaction");
  - b. upon closing of the Transaction, vested in 1333W Lands Ltd. (the "Assignee"), the nominee of GFD LP's general partner, the Respondents' right, title and interest in and to the Purchased Assets (as defined in the Sale Agreement);
  - c. authorized the Receiver to terminate and disclaim the APSs within Tower B in the Project on or following closing of the Transaction, and within Tower A in the Project following closing of the Transaction, with notice to be provided by the Assignee to the Receiver within 120 days of the closing of the Transaction as to which APSs are not being assumed by the Assignee; and
  - d. approved a deposit return protocol (the "Deposit Return Protocol") pursuant to which deposits would be returned to the purchasers of units that were disclaimed by the Receiver in accordance with the AVO.
- [3] GFD LP subsequently brought a motion for an Order, among other things, amending the AVO (the "AVO Amendment Order") to extend the period for the Assignee to provide notice to the Receiver of the APSs to be disclaimed such that notice must be provided by no later than August 31, 2025. That motion was adjourned - GFD LP ultimately returned to Court on February 20, 2025 and obtained a revised form of AVO Amendment Order, among other things, extending the deadline to provide notice to the Receiver of the APSs to be disclaimed to June 30, 2025. GFD LP advised the court at today's hearing that it

anticipates bringing a motion to further extend the disclaimer deadline beyond June 30, 2025, on a date that it is in the process of scheduling through the Commercial List Scheduling Office.

- [4] The order sought by the motion before the court today seeks certain authorizations and directions regarding the Schedule Y Directions to be provided to Aviva Insurance Company of Canada (“Aviva”) and MNP Ltd. that are expected to be appended to new agreements of purchase and sale that may be entered into by unit purchasers whose original Tower A condominium APSs are disclaimed.
- [5] After hearing the submissions of counsel for GFD LP, Aviva and the Receiver, and from Tower A unit purchasers who appeared in court and asked to speak, the court determined that this motion is premature. Since the disclaimer deadline has not passed, and may now be extended if the court grants the anticipated request for such, Tower A unit purchasers do not all yet know whether their APSs will be disclaimed or not. Other concerns were raised today as well, although those may not directly relate to this motion. That said, there is no urgency to this motion as the relief contemplated can be sought after the disclaimers have been made and the Tower A unit purchasers whose APSs are disclaimed have decided whether they want to sign new purchase agreements (which will include the Schedule Y Directions).
- [6] The stated purpose of this motion is to streamline matters and knowing precisely which unit purchasers are affected by that will serve that objective.
- [7] Accordingly, this motion is adjourned to a date to be scheduled by GFD LP through the Commercial List Office after the disclaimer deadline has passed and the contemplated report to unit purchasers regarding disclaimers has been delivered, so that the affected unit purchasers know who they are.



KIMMEL J.

## Appendix “G”



September 27, 2024

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

**Re: Update No. 2 to Condo Buyers**

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

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

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

### **Sale Process Update**

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

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

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

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

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

### **Treatment of Tower A Pre-Sale Purchase Agreements**

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

**Return of Condo Buyer Deposits**

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

\* \* \*

The Receiver will provide further updates as soon as possible.

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

Yours truly,



**KSV RESTRUCTURING INC.**

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



October 25, 2023

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

**Re: Update No. 1 to Condo Buyers**

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

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

### **Project Status**

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

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

### **Deposits**

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

\* \* \*

The Receiver will provide further updates as soon as possible.

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

Yours truly,

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

## Schedule “A”

## **SCHEDULE "B"**

### **Tower A Sales Plan**

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

## Appendix “H”



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

September 27, 2024

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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:****GENESIS MORTGAGE INVESTMENT CORPORATION****APPLICANT****- AND -****1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP****RESPONDENTS**

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

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

**SEPTEMBER 27, 2024**

## **1.0 Introduction**

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

## 1.1 Purposes of this Second Report

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

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

## 1.2 Restrictions

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

## 2.0 Background

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

## 2.1 Secured Creditors

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

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

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

## 2.2 Status of the Project

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

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

### 3.0 Sale Process

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

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

### 3.1 The Transaction

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

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

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

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<sup>1</sup> Capitalized terms not otherwise defined are defined in the Elevate APS.

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

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

### 3.2 Recommendation

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

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

### 3.3 Registrations on Title

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

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<sup>2</sup> A copy of this opinion can be provided to the Court on request.

### 3.4 Deposit Return Protocol - Condo Purchaser Deposits

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

### 3.5 Lien Analysis

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

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

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

### 3.5.1 Invalid Liens

#### ***Classic Tile Contractors Limited ("Classic Tile")***

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

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

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

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

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

### 3.5.2 Valid Liens (Including Partially Valid)

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

### 3.6 Proposed Distributions on the Project

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

### 3.7 Rego Realty

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

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

## 4.0 Sealing

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

## 5.0 Litigation and Stay Order

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

### 5.1 Dean-Lane

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

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

## 5.2 COR Claim

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

## 6.0 Borrowing Limit

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

## 7.0 Receiver's Activities

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

## 8.0 Fee Approval

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

## 9.0 Conclusion

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

\* \* \*

All of which is respectfully submitted,

*KSV Restructuring Inc.*

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

# APPENDIX “K”

***ABA Architects Inc. (“ABA Architects”)***

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

***Aluminum Window Designs Ltd. (“Aluminum Window”)***

1. Aluminum Window registered its claim for lien in the amount of \$1,662,600 on July 19, 2023, as instrument no. WR1521083 (the “Aluminium Window Claim for Lien”). The lien was perfected by registering a Certificate of Action on October 5, 2023, as instrument no. WR1537806.
2. The Partnership retained Aluminum Window pursuant to a CCDC 17 contract dated May 19, 2021 (the “Aluminum Window Contract”). The Aluminum Window Contract was to supply windows, doors and exterior glazing at Tower A. The total contract price was \$2,596,740.00 (tax included). Pursuant to a series of four change orders, the contract price was increased to \$2,640,900.40 (tax included).
3. Aluminum Window initially sent only three invoices for work done under the Aluminum Window Contract dated April 25, 2023 (\$413,354.06, inclusive of tax but not including holdback of \$40,644.45 plus tax), May 24, 2023 (\$213,484.57, inclusive of tax but not including holdback of \$20,991.60 plus tax), and June 22, 203 (\$210,216.95, inclusive of tax but not including holdback of \$20,670.30 plus tax), and three invoices for the extra work; two dated May 30, 2023 (\$17,105.94, inclusive of tax not including holdback of \$1,682.00 plus tax, and \$13,912.56, inclusive of tax but not including holdback of \$1,368.00 plus tax), and one dated June 27, 2023 (\$6,508.80, inclusive of tax but not including holdback of \$640.00, plus tax).

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

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

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

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

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

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

***Gillam Urban Constructors Inc. ("Gillam")***

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

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

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

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

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

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

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

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

***Greentech Sealants Inc. ("Greentech Sealants")***

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

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

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

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

***Oxford Builders Supplies Inc. ("Oxford")***

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

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

***Pearson Metal Inc. ("Pearson Metal")***

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

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

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

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

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

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

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

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

## Appendix “I”

Receivership of 1776411 Ontario Limited and 1333 Weber Street Kitchener LP

**Interim Statement of Receipts and Disbursements**

For the Period October 12, 2023 to May 27, 2026

(\$; unaudited)

Description	Notes	Amount
<i>Receipts</i>		
Proceeds from sale transaction	1	6,625,143
Funding under Receiver's Certificates		2,000,000
HST refunds		731,742
Interest		210,555
Refunds - miscellaneous		87,178
Transfers from the Partnership's account		154
		9,654,772
<i>Disbursements</i>		
Disitribution (excl. HST) - lien claimants		2,509,488
Repayment of borrowed funds		2,000,000
Construction costs		1,166,342
HST/PST paid on disbursements		732,350
Legal fees and disbursements		640,965
Receiver's fees and disbursements		503,800
Property tax		293,438
CBRE sale commission		250,000
Insurance		252,787
Security and miscellaneous costs		231,363
Interest paid on borrowed funds		162,046
Third party consultants		104,955
Utilities		37,408
Purchase of equipment		37,611
Other		1,790
		8,924,344
Balance in Receiver's account		<b>730,428</b>

1. Excludes distributions to CMLS on behalf of the First Mortgagees (\$43,989,625) and Genesis Mortgage Investment Corporation (\$22,835,074) directly from the sale proceeds.

## Appendix “J”



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**NOTICE OF TERMINATION AND DISCLAIMER**

March 5, 2025

TO: [REDACTED]

Reference is made to the Agreement of Purchase and Sale dated May 17, 2020, for Unit 601, Tower A, between [REDACTED] as purchaser, and 1333 Weber Street Kitchener LP, as vendor (the “Vendor”), as may be amended, supplemented, modified or restated (the “APS”).

Reference is also made to the Approval and Vesting Order granted on October 8, 2024, by the Ontario Superior Court of Justice (Commercial List) (the “Court”) in Court File No. CV-23-00706813-00CL (the “AVO”). The AVO approved an agreement of purchase and sale for the real property located at 1333 Weber Street, Kitchener (the “Property”) and certain related assets, made between the Receiver, as vendor, and Genesis Mortgage Investment Corp., Elm Acquisitions Corp. and Dorr Capital Corporation as purchasers, who assigned it to GFD 1333W Limited Partnership (the “Purchaser”).

The Purchaser advised you on February 19, 2025, that it is not assuming your APS. Therefore, in accordance with paragraph 8 of the AVO, KSV Restructuring Inc., in its capacity as Receiver (as defined in the AVO), hereby terminates and disclaims the APS effective as of the date of this notice.

You are now able to make a claim for the return of your deposit under the deposit return Protocol (“DRP”) which was Appendix A to the Supplement to the Second Report of the Receiver dated October 4, 2024, and was approved by the Court pursuant to paragraph 9 of the AVO. The DRP is intended to facilitate the return of deposits paid by purchasers of units in the Property prior to it being placed in Receivership.

The AVO and the DRP can be found at the following weblink:  
<https://www.ksvadvisory.com/experience/case/1776411ontario>

The deposit insurers’ agent, MNP Ltd., will send you an email that will include an individualized version of the Release and Termination Agreement that was attached to the Court-approved DRP together with instructions on how to submit a claim for the return of your deposit. The email will come from MNP Ltd. at [avivadepositreturn@mnp.ca](mailto:avivadepositreturn@mnp.ca). The Receiver has no further involvement in the DRP for your unit.

**KSV RESTRUCTURING INC.**, in its capacity as Receiver and not in its personal, corporate or any other capacity.

Per:

  
Name: Mitch Vininsky

Title: Managing Director

## Appendix “K”



ONTARIO SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)

**COUNSEL/ENDORSEMENT SLIP**

**COURT FILE NO.:**

**HEARING DATE: April 14, 2026**

4. CV-23-00706813-00CL

5. CV-25-00756158-0000

6. CV-23-00706796-0000

7. CV- 21-00001279-0000

8. CV-25-00000716-0000

**NO. ON LIST: 4,5,6,7,8**

**TITLE OF PROCEEDING:**

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

5. AVIVA INSURANCE COMPANY OF CANADA v. LEUSCHNER et al

6. CORFINANCIAL CORP. V. CMLS FINANCIAL LTD. ET AL

7. DEAN LANE CONTRACTORS INC V 1776411 ONT LTD

8. WERNER LEUSCHNER V CMLS FINANCIAL LTD

**BEFORE: JUSTICE KIMMEL**

**PARTICIPANT INFORMATION**

**For Plaintiff, Applicant, Moving Party:**

Name of Person Appearing	Name of Party	Contact Info
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Joseph Blinick	Counsel for Genesis Mortgage Investment Corp.	blinickj@bennettjones.com
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**For Defendant, Respondent, Responding Party:**

<b>Name of Person Appearing</b>	<b>Name of Party</b>	<b>Contact Info</b>
Trung Nguyen	Lawyer for Werner Leuschner, Kamal Patel, Jaykam Developers Limited and 1639993 Ontario Ltd	trungn@simpsonwigle.com
Matthew Greco	Counsel for Dean-Lane Contractors Inc	mgreco@pallettvalo.com
Josh Suttner	Counsel for Equitable Bank, EQB Inc. and Computershare Trust Company of Canada.	jsuttner@airdberlis.com
Sam Babe	Counsel for Aviva	sbabe@blg.com
Mitch Vininsky	Counsel for KSV, Receiver.	mvininsky@ksvadvisory.com
Eric Golden		egolden@blaney.com
Bevin Shores	Counsel for CMLS Financial Ltd.	bevin.shores@gowlingwlg.com
Gary Caplan	Counsel for Corfinancial Corp.	gcaplan@limalaw.ca
Denise Bambrough	Counsel for the Sureties, Aviva and Liberty	dbambrough@blg.com

**ENDORSEMENT OF JUSTICE KIMMEL:**

- [1] The Receiver of Genesis Mortgage Investment Corporation ("Gentai") scheduled this case conference to seek directions from the court about the prosecution and procedural management of four outstanding proceedings that relate to the Project that is under receivership. There are two such actions in Kitchener and two on the general civil list in Toronto issued by four different plaintiffs (two were issued before the Receivership Order was made, and the two others were issued in April and November of 2025).
- [2] The Project under receivership was in Kitchener. It was recently sold under a credit bid to affiliates of some of the secured lenders, in a transaction that closed after the Receiver obtained an approval and vesting order of this court ("AVI").
- [3] The parties to these four actions appeared at this case conference and filed briefs in advance. The four actions are:
- (a) Court File No. CV-23-00001279-0000 - Dean Lane Contractors Inc. v. 1776411 Ontario Ltd. et al, commenced as a lien action in Kitchener. The lien claims have been paid out and this action is now limited to claims against one of the secured lenders, CORFinancial (the "Lien Claimant's Action").
  - (b) Court File No. CV-23-00706796-0000 - CORFinancial Corp. v. CMLS Financial Ltd. et al., an action commenced on the general civil list in Toronto against Computershare, CMLS and Gentai, in respect of claims that overlap with the claims asserted in the Lien Claimant's Action against CORFinancial (the "CORFinancial Action").

- (c) Court File No. CV-25-00000716-0000 - Werner Leuschner et al v. CMLS Financial Ltd. et al, a claim commenced in Kitchener by the guarantors against the secured lenders (the “Guarantors’ Action”).
- (d) Court File No. CV 25-00756158-0000 - Aviva Insurance Company of Canada et al v. the Guarantors, in respect of their guarantees of the deposit amounts paid by the surety (Aviva) on the hundreds of residential condominium units sold by the respondents (the “Surety Action”).
- [4] The case conference covered a lot of ground over almost 90 minutes.
- [5] The Receiver asked for the court’s guidance and directions about whether: a) there should be a timetable in place for each of the four proceedings; b) all four proceedings should be transferred to, and case managed by a single judge on, the Commercial List; and c) when and whether the Receiver may apply for its discharge to extricate itself from the litigation.
- [6] The applicant (one of the secured creditors, supported by the other secured creditors) maintains that each action is, at its core, a dispute arising from the collapse of the same construction project and the same financing arrangements that gave rise to these receivership proceedings. Each of the claims directly involve the Loan, mortgage, and the related Forbearance Agreement. There is some overlap in the parties across all the Related Actions. The secured lenders are named parties in all of the actions except the Surety Action.
- [7] The secured lenders agree that moving forward in a coordinated manner rather than in isolation across different venues would serve the interests of justice and provide for an efficient use of judicial resources. Given their connection to the receivership proceedings, their complexity, the nature of the underlying transactions, and the significant amounts at issue, the secured lenders request that all four of these other actions be transferred to, and be case managed on, the Commercial List.
- [8] The Receiver supports this position, but its main objective is to have some certainty around the plan for how these proceedings will move forward once the receivership is terminated, as it intends to seek a discharge order in the foreseeable future.
- [9] The Lien Claimant takes no position on whether its action should move to the Commercial List or continue in Kitchener, it just does not want its action to be delayed or complicated by the other proceedings, since the issues have been narrowed. CORFinancial is in favour of its action being transferred to the Commercial List as long as the Lien Claimant’s Action also is transferred (one is derivative of the other).
- [10] The guarantors want to proceed with their Guarantors’ Action in Kitchener. Aviva wants to proceed with its Surety Action on the regular civil list in Toronto.
- [11] After considering the written briefs and oral submissions of counsel for the parties in these various proceedings, the court directed that three of the four other actions be transferred and be informally case managed by a judge sitting on the Commercial List in Toronto. This direction does not apply to the Surety Action, which is sufficiently distinct that it may continue on the regular civil list in Toronto. I have signed three orders today all dated April 14, 2026, transferring the Lien Claimant’s Action, the CORFinancial Action and the Guarantors’ Action to the Commercial List.
- [12] This is not a consolidation motion and no order or direction consolidating or for hearing together has been made. There is sufficient overlap between the remaining three actions, all relating to the Project that is in receivership, and the loan, guarantees, mortgage, forbearance agreement, and the events preceding the appointment of the Receiver and potentially affected by the fallout of the receivership, that it makes sense for the three other actions to be on the Commercial List, where the receivership proceeding currently is and where any future contested bankruptcy application will likely end up, so that they can be informally case managed together under the supervision, oversight and direction of an experienced Commercial List judge.

Directions can be provided regarding procedural steps and sequencing to streamline these proceedings, which will be in the interests of all parties. The parties may schedule a case conference in all of the related proceedings in due course to seek further procedural directions. It likely will make sense for this to occur after or at the same time as the Tarion Motion (discussed below).

- [13] In the course of this case conference, various questions were raised regarding the application of the existing stay of proceedings to any of these ongoing actions, and also regarding the possibility that there might be an application brought for a bankruptcy order (that would impose a stay) in conjunction with, or after, the discharge of the Receiver. The scope of the stay imposed under the order appointing the Receiver is essentially moot at this point given the Receiver's stated intention to seek a discharge order. The secured lenders agreed to confirm within 30 days whether or not they intend to bring a bankruptcy application in respect of any of the respondents or to seek a bankruptcy order in connection with the discharge of the Receiver. If there is a question about the scope of any stay that arises in connection with any future bankruptcy order, that can be addressed at a later time, if necessary.
- [14] There was also some discussion at the case conference about whether the guarantees have been released by virtue of the AVO and satisfaction of indebtedness arising from the sale proceeds (e.g., whether they have any remaining shortfalls or obligations to be satisfied that are subject to the guarantees). The secured lenders have also agreed to provide their respective positions within 30 days regarding whether they have any claims that remain subject to the guarantees. This could have implications for the continuing Guarantors' Action.
- [15] In addition to the directions sought by the Receiver in connection with the other actions (above), in this receivership proceeding, the Receiver:
- (a) Seeks to schedule a motion to have the court determine competing claims to entitlement to enrolment fees currently held by Tarion Warranty Corporation ("Tarion") pursuant to the terms of the AVO (the "Tarion Motion"). Tarion requires a court order before releasing these funds, although it is not expected to take a position on this motion.
  - (b) Seeks to schedule a motion for the Receiver's discharge and various ancillary relief (the "Discharge Motion").
- [16] The Tarion Motion has been scheduled for a half-day in-person hearing on June 2, 2026, commencing at 10:00 a.m. The parties participating in this motion (expected to be the Guarantors and the purchaser under the AVO, with the Receiver's support) shall agree upon a time table for all pre-hearing steps for this motion that will ensure that all materials (including a reply factum for the moving party if appropriate under the Commercial List Practice Direction) shall have been served, filed and uploaded into the appropriate hearing bundle in Case Center by no later than May 29, 2026 at 4:30 p.m. As noted earlier, it is not anticipated that Tarion will take a position on this motion. Its counsel was not in attendance at this case conference. They shall be advised of the motion date. If the date is problematic for Tarion and it wishes to appear, participating counsel may attend a further scheduling conference so that a new date can be booked.
- [17] The Receiver will consider whether it makes sense, and if there is sufficient time, to bring its motion for discharge on June 2, 2026 or at a later time. It shall only bring the motion on that date if it is in a position to serve it sufficiently in advance of June 2 that all stakeholders will have a chance to respond, if so advised.
- [18] This endorsement and the directions contained in it shall have the immediate effect of a court order.

A rectangular box containing a handwritten signature in cursive script that reads "Kimmel J.".

Date: Apr 15, 2026

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Jessica Kimmel

## Appendix “L”



Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

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

Plaintiffs

– and –

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

Defendants

**STATEMENT OF CLAIM**

TO THE DEFENDANTS:

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

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

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

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

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

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

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

Date: November 24, 2025

Issued by: \_\_\_\_\_  
Local Registrar

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

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

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

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

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

CLAIM

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

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

## THE PARTIES

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

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

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

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

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

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

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

## THE INDEMNITY AGREEMENT

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

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

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

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

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

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

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

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

### **THE BONDS & POLICIES**

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

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

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

### **THE PROJECT IS SOLD**

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

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

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

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

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

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

#### **CLAIMS FOR INDEMNIFICATION AND EXONERATION**

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

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

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

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

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

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

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

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

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

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

Date: November 24, 2025

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

**AVIVA INSURANCE COMPANY OF CANADA, et al.**

**WERNER LEUSCHNER, et al.**

- and -

Plaintiffs

Defendants

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

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**STATEMENT OF CLAIM**

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**BORDEN LADNER GERVAIS LLP**  
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Lawyers for the Plaintiffs,  
Aviva Insurance Company of Canada and Liberty Mutual  
Insurance Company



Court File No.: CV-25-00756158-00A1

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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

Plaintiffs

- and -

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

Defendants

- and -

**GENESIS MORTGAGE INVESTMENT CORPORATION, GENTAI CAPITAL  
CORPORATION, CMLS FINANCIAL LTD., COMPUTERSHARE TRUST COMPANY OF  
CANADA, and EQUITABLE BANK, A WHOLLY OWNED SUBSIDIARY OF EQB INC.**

Third Parties

**THIRD PARTY CLAIM**

TO THE THIRD PARTIES

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by way of a third party claim in an action in this court.

The action was commenced by the plaintiff against the defendant for the relief claimed in the statement of claim served with this third party claim. The defendant has defended the action on the grounds set out in the statement of defence served with this third party claim. The defendant's claim against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS THIRD PARTY CLAIM, you or an Ontario lawyer acting for you must prepare a third party defence in Form 29B prescribed by the Rules of Civil Procedure, serve it on the lawyers for the other parties or, where a party does not have a lawyer, serve it on the party, and file it, with proof of service, WITHIN TWENTY DAYS after this third party 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 third party 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 third party 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 third party defence.

YOU MAY ALSO DEFEND the action by the plaintiff against the defendant by serving and filing a statement of defence within the time for serving and filing your third party defence.

IF YOU FAIL TO DEFEND THIS THIRD PARTY CLAIM, 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.

*(Where the third party claim is for money only, include the following:)*

IF YOU PAY THE AMOUNT OF THE THIRD PARTY CLAIM AGAINST YOU, and \$ .. for costs, within the time for serving and filing your third party defence, you may move to have the third party claim dismissed by the court. If you believe the amount claimed for costs is excessive, you may pay the amount of the third party claim and \$400 for costs and have the costs assessed by the court.

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of court office: 330 University Avenue, 9<sup>th</sup> Floor  
Toronto ON M5G 1R7

**TO: GENESIS MORTGAGE INVESTMENT CORPORATION**  
200-3600 No. 3 Road  
Richmond, BC V6X 2C1

**AND TO: GENTAI CAPITAL CORPORATION**  
200-3600 No. 3 Road  
Richmond, BC V6X 2C1

**AND TO: CMLS FINANCIAL LTD.**  
18 York Street, Suite 1500  
Toronto, ON M5J 2T8

**AND TO: COMPUTERSHARE TRUST COMPANY OF CANADA**  
100 University Avenue, 8<sup>th</sup> Floor  
South Tower  
Toronto, ON M5J 2Y1

**AND TO: EQUITABLE BANK, A WHOLLY OWNED SUBSIDIARY OF EQB INC.**  
Equitable Bank Tower  
25 Ontario Street, Suite 1800  
Toronto, ON M5A 0Y9

### THIRD PARTY CLAIM

1. The defendants/plaintiffs by third party claim, Werner Leuschner, Kamal Patel, 1639993 Ontario Ltd. and Jaykam Developers Limited (collectively the “**Defendants**”), claim against the third party defendants, Genesis Mortgage Investment Corporation (“**GMIC**”), Gentai Capital Corporation (“**Gentai**”), CMLS Financial Ltd. (“**CMLS**”), Computershare Trust Company of Canada (“**Computershare**”), and Equitable Bank, a wholly owned subsidiary of EQB Inc. (collectively “**Equitable Bank**”) (the third party defendants are collectively referred to as the “**Lending Syndicate**”), the following:

- (a) full contribution and indemnity in respect of any amount the Defendants may be adjudged to owe the Plaintiffs in the main action bearing Court File No. CV-25-00756158-0000 (the “**Main Action**”);
- (b) an order and declaration that any release, waiver or indemnity (the “**Release**”) procured in or around the forbearance agreement dated April 27, 2023 (the “**Forbearance Agreement**”) is invalid, unenforceable, or inapplicable as against the Defendants due to unconscionability, lack of consideration flowing after the Lending Syndicate’s non performance, and/or bad faith conduct;
- (c) if applicable, pre-judgment and post-judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c C.43, as amended;
- (d) costs on a substantial-indemnity basis; and
- (e) such further and other relief as this Honourable Court may deem just.

## THE PARTIES

2. The plaintiffs, Aviva Insurance Company of Canada and Liberty Mutual Insurance Company (the “**Sureties**” or “**Plaintiffs**”), are federal corporations incorporated pursuant to the Laws of Canada which are licensed to carry on business as surety in the Province of Ontario and elsewhere.

3. The defendants/third-party plaintiffs are developers and related entities involved in a multi-phase, four-tower condominium development project known as “Elevate” (the “**Project**”) at the property municipally known as 1333 Weber Street East, Kitchener, Ontario (the “**Real Property**”):

- (a) Werner Leuschner (“**Leuschner**”) and Kamel Patel (“**Patel**”) are individuals who reside in the Province of Ontario; and
- (b) 1639993 Ontario Ltd. (“**1639993**”) and Jaykam Developers Limited, (“**Jaykam**”) are corporations incorporated pursuant to the law of the Province of Ontario.

4. The third-party defendants are members and/or agents of the Lending Syndicate that extended construction loan facilities to the Project:

- (a) CMLS, is a company incorporated pursuant to the laws of the Province of British Columbia. CMLS carries on business in the Province of Ontario as, *inter alia*, a mortgage lender, administrator, and the servicer and provider

of mortgage syndication services. Since August 17, 2021, CMLS holds an interest in the First Mortgage (as defined below) in trust for Concentra Bank, a Schedule I bank incorporated under the *Bank Act (Canada)*<sup>1</sup>.

- (b) Computershare is a trust company duly incorporated under the *Trust and Loan Companies Act (Canada)*<sup>2</sup>. Computershare carries on business as, *inter alia*, a provider of mortgage servicing and related trust services in the Province of Ontario. At all material times, Computershare was a mortgagee under the First Mortgage and held its interest for the defendant, Equitable Bank.
- (c) Equitable Bank is a Schedule I Bank incorporated under the *Bank Act (Canada)*<sup>3</sup>, and is a wholly owned subsidiary of EQB Inc.
- (d) GMIC is a corporation duly incorporated pursuant to the laws of the Province of British Columbia, carrying on business as, *inter alia*, a non-banking mortgage lender in the Province of Ontario. GMIC is managed by Gentai.

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<sup>1</sup> [Bank Act, SC 1991, c 46.](#)

<sup>2</sup> [Trust and Loan Companies Act, SC 1991, c 45.](#)

<sup>3</sup> [Bank Act, SC 1991, c 46.](#)

## OVERVIEW

5. This Third-Party Claim seeks contribution, indemnity from the Lending Syndicate for losses the Defendants may be determined to owe to the Plaintiffs in the main action. Any losses were caused by the Lending Syndicate's breaches of the parties' Forbearance Agreement (as defined below), dishonest and/or bad faith performance, fraudulent or negligent misrepresentations, and a scheme designed to manufacture a default to enable GMIC to place 177 Ontario into receivership for the specific purpose of acquiring the Project at under-value together with other related purchasers, thereby magnifying the Plaintiffs' bond losses and the Defendants' exposure in the main action.

## THE ELEVATE PROJECT

6. As noted above, this action concerns a multi-phase, four-tower condominium development project known as "Elevate" at the Real Property. The development commenced on or about July 26, 2018.

7. The Project was developed by limited partnership, 1333 Weber Street Kitchener LP (the "**Partnership**"). Legal title to the Real Property was held by the Partnership's general partner, 1776411 Ontario Ltd. ("**177 Ontario**").

## THE CREDIT FACILITIES

8. On June 28, 2021, CMLS agreed to extend certain construction loan credit facilities to 177 Ontario to develop the Project pursuant to two commitment letters, as amended (the "**Commitment Letters**");

- (a) a construction financing facility in the principal amount of \$52,800,000.00 and a letter of credit facility in the principal amount of \$2,700,000.00 (the “**Senior Commitment**”); and
- (b) a construction financing facility in the principal amount of \$13,000,000.00 (the “**Junior Commitment**”).

9. The credit facilities totalling approximately \$71.5 million were secured by, among other things, a first mortgage<sup>4</sup> (the “**First Mortgage**”), assignment of rents<sup>5</sup>, GSA<sup>6</sup>, and guarantees<sup>7</sup> by the Defendants.

10. The Commitment Letters provided for construction loan facilities up to the principal amount of \$71,500,000.00 (the “**Loans**”), to be funded by Equitable Bank, Concentra Bank and Gentai. CMLS acted as the administrator of the Loans on behalf of lenders, Equitable Bank, Concentra Bank, and Gentai.

11. Westmount Guarantee Services Inc. (“**Westmount**”) registered a second mortgage (the “**Second Mortgage**”) as Instrument No. WR1233640 in the principal

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<sup>4</sup> **First Mortgage.** 177 Ontario granted a first mortgage/charge in the amount of \$82,000,000 registered on August 17, 2021 as instrument no. WR1367209 on title to the Real Property in the Land Titles Division of Kitchener (No. 59).

<sup>5</sup> **General Assignment of Rents over the Real Property.** Registered on title on August 17, 2021 as instrument no. WR1367209 in the Land Titles Division of Kitchener (No. 59)

<sup>6</sup> **General Security Agreement** in favour of the Mortgagees granted by 177 Ontario dated August 13, 2021 (the “**GSA**”), in first ranking position over the assets and undertaking of 177 Ontario, subject only to a registration by Westmount Guarantee Service Inc. (“**Westmount**”) and any priorities agreement between and the CMLS and the other parties in the Lending Syndicate

<sup>7</sup> an unlimited guarantee in favour of the Plaintiffs dated August 13, 2021, which guaranteed the debts and liabilities of 177 Ontario

amount of \$20,000,000.00 to secure deposits paid by the purchasers of condominium units.

## **ALLEGED DEFAULTS AND FORBEARANCE AGREEMENT**

12. Starting in May 2022, issues began to surface concerning alleged defaults under the Commitment Letters. The Lending Syndicate instructed 177 Ontario to cease all construction. 177 Ontario complied.

13. On April 27, 2023, 177 Ontario, the Defendants and CMLS entered into a forbearance agreement (the "**Forbearance Agreement**") providing for workout arrangements, pursuant to which, *inter alia*:

- (a) CMLS agreed not to enforce its rights and remedies against 177 Ontario or the Defendants until the earlier of March 1, 2024 or the occurrence of default under the Loans, the Commitment Letters, or the related security;
- (b) CMLS agreed to advance an increase of no more than \$5,000,000.00 in funding towards the Loans, with principal amount of the Senior Commitment being increased by \$2,000,000.00 and the Junior Commitment being increased by \$3,000,000.00, to be allocated to various to various entities, such as trades who had placed liens on title to the Real Property, and to be provided to 177 Ontario by monthly draws requested by 177 Ontario (the "**Forbearance Payments**"); and
- (c) 177 Ontario consented to the appointment of a receiver upon default of the Forbearance agreement.

**BREACH OF THE FORBEARANCE AGREEMENT**

14. On or about May 5, 2023, after the terms of the Forbearance Agreement were settled and signed but before CMLS advanced the first draw under the Forbearance Agreement, CMLS advised the Defendants that:

- (a) the Lending Syndicate had made a calculation error when calculating the amount of the Forbearance Payment. The effect of this error was that the amount to be advanced under the Forbearance Payment was \$714,979.27 less than previously agreed to (the “**Shortfall**”); and
- (b) the Lending Syndicate was running out of funds and would not be able to make the advances it had promised to make under the terms of the Forbearance Agreement.

15. Notwithstanding that the Shortfall was caused by the Lending Syndicate’s own error, CMLS refused to advance the Forbearance Payment until the “mistake” was corrected and CMLS obtained additional funds from the other parties of the Lending Syndicate, excluding Equitable Bank, to cover the Shortfall.

16. To avoid further delays in paying certain lien claimants, the Defendants proposed, and CMLS agreed, on behalf of the Lending Syndicate, to a separate side agreement with CORFinancial Corp. (“**CORFinancial**”) to remedy the Shortfall (the “**Shortfall Agreement**”) whereby:

- (a) CorFinancial would obtain an agreement from one of the lien claimants, Dean-Lane Contracting Inc. (hereinafter “**Dean-Lane**”), pursuant to which Dean-Lane would agree to receiving a deferred payment of \$1,000,000.00 (the “**Deferred Amount**”) of the \$2,173,426.30 it was owed;
- (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;

17. In consideration of Dean-Lane agreeing to the Deferred Amount from CMLS, CORFinancial 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.

18. On or about May 5, 2023, Dean-Lane agreed to the terms proposed by CORFinancial and CORFinancial delivered a written undertaking to Dean-Lane on the terms set out above.

19. 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.

20. However, despite the Defendants repeated demands, CMLS failed or otherwise refused to pay the Shortfall or Deferred Amount to Dean-Lane.

21. It was an express or implied term of the Forbearance Agreement that the Plaintiffs would provide the draws agreed to finance construction of the Project.

22. By failing to pay the Shortfall, the Deferred Amounts to Dean-Lane, and the March draw as required under the terms of the Forbearance Agreement, the Lending Syndicate breached the terms of the Forbearance Agreement and the Shortfall Agreement, acted in bad faith and dishonestly.

23. The Lending Syndicate intentionally refused to advance payment of the Shortfall, the Deferred Amounts to Dean-Lane and the March Draw, knowing that it would directly result in the default of the Forbearance Agreement, and provide the grounds for the appointment of a receiver over the Real Property of 177 Ontario, as more particularly described below.

## CLAIMS FOR INDEMNITY BY LENDING SYNDICATE

24. The Lending Syndicate - specifically through Andrea Cali (for CMLS) and James Kim (for GMIC and Gentai), represented to the Defendants that it would advance the full amounts stipulated in the Forbearance Agreement and fund all required draws.

25. The Lending Syndicate knew, or ought to have known, that these representations were false and that the Defendants would rely upon them to their significant detriment. The Defendants did in fact rely upon these representations.

26. The Lending Syndicate conspired and agreed among themselves to withhold the March and April 2023 draws under the manufactured pretext of being unable to "reconcile" cost overruns. The predominant purpose of this conspiracy was to engineer a default under the Forbearance Agreement.

27. The manufactured default provided the grounds for GMIC to appoint a receiver and implement a sales process designed to allow GMIC and its partners, Elm Acquisitions Corp. ("**Elm Acquisitions**") and Dorr Capital Corporation ("**Dorr**") (collectively the "**Purchasers**") to purchase the Project and Real Property, notwithstanding the Defendants' proposal to inject a further \$27,000,000.00 in DIP financing to complete Tower A.

28. The Lending Syndicate failed to mitigate its losses and unnecessarily increased the Surety's liability by imposing a unilateral 24% price increase on purchasers who had already entered into binding agreements of purchase and sale for units in Tower A. The unreasonable and unwarranted increase led to mass terminations of 26 agreements of

purchase and sale and deposit claims of condo units that had already been sold in Tower A.

29. If the Plaintiffs incurred any losses, which is not admitted but expressly denied, by its acts and omissions as described above, the Lending Syndicate is solely or contributorily responsible for the Plaintiffs' losses and are liable to indemnify the Defendants in full for any amounts this Honourable Court finds the Defendants liable to the Plaintiffs.

30. The Defendants request that this Third-Party Claim be tried together with or immediately after the main action in the City of Toronto.

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Barristers & Solicitors  
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**Trung Nguyen**  
**LSO No. 49386C**

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Lawyers for the Defendants/  
Plaintiffs by Third Party Claim

AVIVA INSURANCE COMPANY OF  
CANADA, et al.  
Plaintiffs

-and-  
WERNER LEUSCHNER, et al.  
Defendants  
(Plaintiffs by Third Party Claim)

- and -  
GENESIS MORTGAGE  
INVESTMENT CORPORATION, et al.  
Third Parties

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding Commenced at Toronto

**THIRD PARTY CLAIM**

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Barristers & Solicitors  
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Burlington ON L7P 0V1

**Trung Nguyen**  
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Lawyers for the Defendants/  
Plaintiffs by Third Party Claim

## Appendix “M”



Court File No.:

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

**BETWEEN:**

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

**Plaintiffs**

**- and -**

**CMLS FINANCIAL LTD., COMPUTERSHARE TRUST COMPANY OF  
CANADA, EQUITABLE BANK, EQB INC., GENESIS MORTGAGE  
INVESTMENT CORP. and GENTAI CAPITAL CORPORATION**

**Defendants**

**NOTICE OF ACTION**

**TO THE DEFENDANTS**

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the Plaintiff. The claim made against you is set out in the statement of claim served with this notice of action.

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 notice of action 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.

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 85 Frederick Street  
court office: Kitchener, ON N2H 0A7

<b>TO:</b>	<b>CMLS FINANCIAL LTD.</b> 18 York Street, Suite 1500 Toronto, ON M5J 2T8
<b>AND TO:</b>	<b>COMPUTERSHARE TRUST COMPANY OF CANADA</b> 100 University Avenue, 11th Floor Toronto, Ontario M5J 2Y1
<b>AND TO:</b>	<b>EQUITABLE BANK</b> Equitable Bank Tower 30 St. Clair Avenue West, Suite 700 Toronto, Ontario M4V 3A1
<b>AND TO:</b>	<b>EQB INC.</b> Equitable Bank Tower 30 St. Clair Avenue West, Suite 700 Toronto, Ontario M4V 3A1
<b>AND TO:</b>	<b>GENESIS MORTGAGE INVESTMENT CORP.</b> 200-3600 No. 3 Road Richmond, BC V6X 2C1
<b>AND TO:</b>	<b>GENTAI CAPITAL CORPORATION</b> 200-3600 No. 3 Road Richmond, BC V6X 2C1

## CLAIM

- I. The Plaintiffs' claim is for:
  - (a) damages in the amount of \$110,000,000.00 for breach of contract, inducing breach of contract, breach of duty of good faith, breach of duty of honest performance, honest or negligent misrepresentation, conversion, unjust enrichment, *quantum meruit*, intentional interference with economic relations and conspiracy;
  - (b) damages in the amount of \$110,000,000.00 for fraud, deceit and fraudulent misrepresentation;
  - (c) further, or in the alternative, a declaration and order that the forbearance agreement dated April 27, 2023 (the "**Forbearance Agreement**") and Full and Final Release, Waiver and Indemnity (the "**Release**"), as more particularly described below are (i) unconscionable and that they be set aside or (ii) are invalid and unenforceable;
  - (d) punitive, aggravated, exemplary and/or special damages in the amount of \$500,000.00;
  - (e) pre- and post-judgment interest pursuant to the *Courts of Justice Act*, RSO 1990, c C.43, as amended;
  - (f) costs on a substantial-indemnity basis; and
  - (g) such further and other relief as this Honourable Court may deem just.

## The Parties

2. The Plaintiffs are guarantors of certain loan obligations as more particularly described below.
3. The defendant, CMLS Financial Ltd. (“CMLS”), is a corporation incorporated pursuant to the laws of the province of British Columbia. CMLS carries on business in the province of Ontario as, *inter alia*, a mortgage lender, administrator, servicer and provider of mortgage syndication services. Since August 17, 2021, CMLS held an interest in the First Mortgage, as more particularly described below, in trust for Concentra Bank, a Schedule I bank incorporated under the *Bank Act* (Canada).
4. The defendant, Computershare Trust Company (“Computershare”), is a trust company duly incorporated under the *Trust and Loan Companies Act* (Canada). Computershare carries on business as, *inter alia*, a provider of mortgage servicing and related trust services in the province of Ontario. At all material times, Computershare was a mortgagee under the First Mortgage, more particularly described below, and held its interest in trust for the defendant, Equitable Bank, a Schedule I bank incorporated under the *Bank Act* (Canada), a wholly owned subsidiary of EQB Inc. (Equitable Bank and EQB Inc. are collectively referred to hereinafter as “**Equitable Bank**”; Computershare and Equitable Bank are collectively referred to as the “**Computershare Defendants**”).

5. The defendant, Genesis Mortgage Investment Corp. (“**GMIC**”) is a corporation duly incorporated pursuant to the laws of the province of British Columbia, carrying on business as, *inter alia*, a non-banking mortgage lender in the province of Ontario. GMIC is managed by the defendant, Gentai Capital Corporation (“**Gentai**”) (GMIC and Gentai are collectively the “**Gentai Defendants**”)

#### Overview

6. This action arises out of the parties’ involvement in the development of a four-tower condominium project (the “**Project**”) at the real property municipally known as 1333 Weber Street East, Kitchener (the “**Real Property**”).
7. Title to the Real Property is held by 1776411 Ontario Limited (“**177 Ont Ltd**”) (1333 Weber Street Kitchener LP and 177 Ont Ltd are collectively referred to as the “**Partnership**”).
8. The defendants, CMLS, Computershare (on behalf of the Equitable Bank Defendants) and GMIC (on behalf of Gentai) (collectively the “**Lending Syndicate**”) provided certain construction loan credit facilities<sup>1</sup> to the Partnership (collectively the “**Loan Agreements**”), secured by a first mortgage registered on title to the Real Property on August 16, 2021 as Instrument No. WR1367209 (the “**First Mortgage**”).

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<sup>1</sup> Pursuant to a mortgage loan commitment dated June 28, 2021, as amended on July 21, 2021, and bearing loan number 50715, CMLS made available a construction financing facility in the principal amount of \$52,800,000.00 and a letter of credit facility in the principal amount of \$2,700,000.00. Pursuant to a second mortgage loan commitment dated June 28, 2021, bearing loan number 50716, as amended on July 21, 2021, and on May 3, 2022, CMLS made available to the Plaintiffs a construction loan financing facility in the principal amount of \$16,000,000.00.

9. CMLS and Computershare are senior secured lenders and Gentai is the junior secured lender under the terms of the First Mortgage.
10. The Plaintiffs guaranteed the Partnership's obligations under the Loan Agreements to the Lending Syndicate.
11. In this action, the Plaintiffs allege, *inter alia*, that the Defendants:
  - (a) Breached the terms of the Forbearance Agreement by failing, refusing or neglecting to advance draws for March and April 2023, as the defendants were contractually obligated to do under the terms of the Forbearance Agreement;
  - (b) Induced the plaintiffs to breach the Forbearance Agreement for the purpose of enforcing on the First Mortgage and security granted thereunder, including the appointment of a receiver;
  - (c) Failed, refused and/or neglected to disclose until the eve of the closing date to sign the Forbearance Agreement that CMLS had made a "computational error" which would result in a shortfall of \$714,979.27 in the amounts to be advanced under the Forbearance Agreement;
  - (d) Induced the plaintiffs into executing the Forbearance Agreement and Releases under the false pretence that the Lending Syndicate would advance construction draws for March and April 2023 as a term of the Forbearance Agreement;
  - (e) Acted dishonestly and in bad faith in the performance of their obligations under the Forbearance Agreement;

(f) Made honest, negligent and/or fraudulent representations to the plaintiffs, including *inter alia*, that:

- (i) representations by Andrea Cali on behalf of CMLS, the mortgage administrator, manager and syndicator, from about March to August 2022, that the Lending Syndicate would fund construction financing for Towers 2 and 3 of the Project;
- (ii) Representations by Andrea Cali from November 2022 to December 2022 that the Lending Syndicate would advance the total amount agreed upon in the Forbearance Agreement, including the Shortfall;
- (iii) representations by Andrea Cali from December 2022 to January 2023 that the Lending Syndicate would advance March and April 2023 draws in accordance with the terms of the Forbearance Agreement; and
- (iv) Such further and other representations as shall be particularized in the Statement of Claim.

(collectively the “**Representations**”), which Representations were false; the defendants knew or ought to have known were false; were intended to be relied upon by the plaintiffs; the plaintiffs did in fact rely upon the Representations to their detriment and which caused the plaintiffs losses.

(g) Conspired to deprive the plaintiffs of the Real Property and Project. The elements of the conspiracy include but are not limited to the following:

- (i) the defendants agreed as between each other that they would not advance the March and April 2023 draws due under the Forbearance Agreement under the false pretence that they could not “reconcile” the cost overruns on the project;
  - (ii) the defendants knew that withholding the draws would cause the Partnership to default on the terms of the Forbearance Agreement, pursuant to which the Partnership and plaintiffs had consented to the appointment of a receiver upon an event of default under the Forbearance Agreement;
  - (iii) the defendants acts were calculated in furtherance of their agreement to injure the plaintiffs;
  - (iv) the plaintiffs suffered damages as a result of the defendants’ conduct.
- (h) Were unjustly enriched, the plaintiffs suffered a corresponding deprivation, for which no juristic reason exists; and
- (i) Converted the Real Property and personal property of the Partnership and plaintiffs for their own use.
12. Further particulars of the material facts underlying the claims and causes of action pled in this Notice of Action shall be provided in the Statement of Claim.

13. The Plaintiffs propose that the trial of this action be heard in Kitchener, Ontario.

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Lawyers for the Plaintiffs

**WERNER LEUSCHNER et al.**  
Plaintiffs

- and -

**Court File No./N° du dossier du greffe : CV-25-00000716-0000**

COURT FILE NO.

**CMLS FINANCIAL LTD. et al.**  
Defendants

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**PROCEEDING COMMENCED AT**  
**KITCHENER**

**NOTICE OF ACTION**

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Lawyers for the Plaintiffs

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**

**B E T W E E N:**

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

Plaintiffs

- and -

CMLS FINANCIAL LTD., COMPUTERSHARE TRUST COMPANY OF CANADA,  
EQUITABLE BANK, EQB INC., GENESIS MORTGAGE INVESTMENT CORP. and  
GENTAI CAPITAL CORPORATION

Defendants

**STATEMENT OF CLAIM**

Notice of Action issued on April 28, 2025

1. The plaintiffs, Werner Leuschner ("**Leuschner**"), Kamal Patel ("**Patel**"), Jaykam Developers Limited ("**Jaykam**") and 1639993 Ontario Ltd. ("**163 Ontario**") claim against the defendants, CMLS Financial Ltd. ("**CMLS**"), Computershare Trust Company of Canada ("**Computershare**"), Equitable Bank and EQB Inc. (collectively "**Equitable Bank**"), Genesis Mortgage Investment Corp. ("**GMIC**"), and Gentai Capital Corporation ("**Gentai**"):
  - (a) damages in the amount of \$110,000,000.00 for fraud, deceit, fraudulent misrepresentation, negligent misrepresentation, unjust enrichment, intentional interference with economic relations, conspiracy and inducing breach of contract;

- (b) aggravated, punitive, exemplary and/or special damages in the amount of \$500,000.00
- (c) further, or in the alternative, a Declaration that the forbearance agreement dated April 27, 2023 (the “**Forbearance Agreement**”) and Full and Final Release, Waiver and Indemnity (the “**Release**”), as more particularly described below is unconscionable, invalid, unenforceable and/or that they be set aside;
- (d) prejudgment interest in accordance with section 128 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (e) post-judgment interest in accordance with section 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;
- (f) the costs of this proceeding on a substantial-indemnity scale, plus HST; and
- (g) such further and other relief as to this Honourable Court may seem just.

### **The Parties**

2. The plaintiff, Leuschner, is an individual who resides in Kitchener, Ontario and was at all material times a director and officer of 163 Ontario and the guarantor of certain loan obligations more particularly described below.

3. The plaintiff, 163 Ontario, is a corporation incorporated pursuant to the laws of the Province of Ontario with its registered address located at 258 Edgewater Crescent, Unit 8, Kitchener, Ontario, N2A 4M2. At all material times, 163 Ontario was a borrower and the guarantor of certain loan obligations, described in greater detail below.
4. The plaintiff, Jaykam, is a corporation incorporated pursuant to the laws of Ontario, with its registered head office located at 29 Idle Ridge Court in Kitchener, Ontario. Patel is the sole officer and director of Jaykam.
5. The plaintiff, Patel, is an individual who resides in Kitchener, Ontario and was, at all material times, the sole director and officer of Jaykam and the guarantor of certain loan obligations described below.
6. The defendant CMLS is a company incorporated pursuant to the laws of the Province of British Columbia. CMLS carries on business in the Province of Ontario as, *inter alia*, a mortgage lender, administrator, and the servicer and provider of mortgage syndication services. Since August 17, 2021, CMLS holds an interest in the First Mortgage (as defined below) in trust for Concentra Bank, a Schedule I bank incorporated under the *Bank Act (Canada)*.
7. The defendant Computershare is a trust company duly incorporated under the Trust and Loan Companies Act (Canada). Computershare carries on business as, *inter alia*, a provider of mortgage servicing and related trust services in the Province of Ontario. At all material times, Computershare was a mortgagee under the First Mortgage and held its interest for the defendant, Equitable Bank.

8. The defendant, Equitable Bank is a Schedule I Bank incorporated under the *Bank Act* (Canada), a wholly owned subsidiary of EQB Inc.
9. The defendant GMIC is a corporation duly incorporated pursuant to the laws of the Province of British Columbia, carrying on business as, *inter alia*, a non-banking mortgage lender in the Province of Ontario. GMIC is managed by the defendant, Gentai.

### **The Elevate Project**

10. On or about July 26, 2018, the Plaintiffs began the development of a four-tower condominium project named 'Elevate' (the "**Project**") at the address municipally known as 1333 Weber Street East, Kitchener, Ontario (the "**Real Property**").
11. The Real Property was previously owned Pamata Hospitality Inc. ("**Pamata**"), of which Patel was a 51% shareholder and 49% was owned by Ashvin Patel. Prior to the Project, Pamata operated a Howard Johnson hotel at the Real Property.
12. The project was developed by 1333 Weber Street Kitchener LP ("**1333 Weber LP**" or the "**Partnership**"), a limited partnership established under the Ontario *Limited Partnerships Act*. The Partnership's registered principal place of business is 258 Edgewater Crescent, Unit 8, in Kitchener, Ontario.
13. The general partner of the Partnership was 1776411 Ontario Ltd. ("**177 Ontario**"), incorporated pursuant to the laws of Ontario, with its registered head office located 258 Edgewater Crescent, Unit 8, in Kitchener, Ontario. Leuschner is the sole officer and director of 177 Ontario. 177 Ontario is the General Partner on behalf of 1333 Weber Street Kitchener LP.

14. There are four limited partners in the Partnership:
  - a) 177 Ontario and 163 Ontario, separately, are unit-holders (both are 100 per cent controlled and owned by Leuschner);
  - b) Jaykam is the third unit-holder; and
  - c) Pamata.
15. Legal title to the Real Property was held by 177 Ontario.
16. The Project was 177 Ontario's sole asset.

#### **The Loan Facilities and Security**

17. CMLS, Computershare (on behalf of Equitable Bank), and GMIC (on behalf of Gentai) (collectively, the "**Lending Syndicate**") provided certain construction loan credit facilities to the Partnership (the "**Loan Agreements**") which were to be secured on title to the Real Property, to be described in greater detail below.
18. On June 28, 2021, CMLS agreed to finance the Project pursuant to two commitment letters, as amended (the "**Commitment Letters**"):
  - a) a construction financing facility in the principal amount of \$52,800,000.00 and a letter of credit facility in the principal amount of \$2,700,000.00 (the "**Senior Commitment**"); and
  - b) a construction financing facility in the principal amount of \$13,000,000.00 (the "**Junior Commitment**").

19. The Commitment Letters provided for construction loan facilities in the maximum principal amount of \$71,500,000.00 (the “**Loans**”). Equitable Bank, Concentra Bank, and Gentai provided funding for the Loans. CMLS is the administrator of the Loans on behalf of Equitable Bank, Concentra Bank, and Gentai.
20. To secure 177 Ontario’s obligations under the Commitment Letters, 177 Ontario granted the following security:
  - a) On or about August 17, 2021, 177 Ontario granted a mortgage/charge in the amount of \$82,000,000 registered the mortgage/charge as instrument no. WR1367209 on title to the Real Property in the Land Titles Division of Kitchener (No. 59) (the “**Construction Mortgage**”);
  - b) a General Assignment of Rents over the Real Property, registered on title on August 17, 2021 as instrument no. WR1367209 in the Land Titles Division of Kitchener (No. 59) (the “**GAR**”);
  - c) a General Security Agreement in favour of the Mortgagees granted by 177 Ontario dated August 13, 2021 (the “**GSA**”), in first ranking position over the assets and undertaking of 177 Ontario, subject only to a registration by Westmount Guarantee Service Inc. (“**Westmount**”) and any priorities agreement between and the CMLS and the other parties in the Lending Syndicate; and
  - d) an unlimited guarantee in favour of the Defendants dated August 13, 2021, which guaranteed the debts and liabilities of 177 Ontario.

### **The Defaults and Forbearance Agreement**

21. Starting in May 2022, the Plaintiffs began encountering issues which resulted in defaults under the terms of the Commitment Letters (the “**Defaults**”).
22. As a result of the Defaults, CMLS made demand for repayment of the Loans.
23. On April 27, 2023, 177 Ontario, the Plaintiffs, and the CMLS entered into a forbearance agreement (the “**Forbearance Agreement**”), pursuant to which:
  - a) CMLS agreed not to enforce its rights and remedies against 177 Ontario and the Plaintiffs until the earlier of March 1, 2024 or the occurrence of default under the Loans, the Commitment Letters, or the related security;
  - b) CMLS agreed to advance an increase of no more than \$5,000,000.00 in funding towards the Loans, with principal amount of the Senior Commitment being increased by \$2,000,000.00 and the Junior Commitment being increased by \$3,000,000.00, to be allocated to various to various entities, such as trades who had placed liens on title to the Real Property, and to be provided to 177 Ontario by monthly draws requested by 177 Ontario (the “**Forbearance Payment**”); and
  - c) 177 Ontario consented to the appointment of a receiver upon default of the Forbearance agreement.

### **Breach of the Forbearance Agreement**

24. On or about May 5, 2023, after the terms of the Forbearance Agreement were settled and signed but before CMLS advanced the first draw under the Forbearance Agreement, CMLS advised the Plaintiffs that:
- a) the Lending Syndicate had made a calculation error when calculating the amount of the Forbearance Payment. The effect of this error was that the amount to be advanced under the Forbearance Payment was \$714,979.27 less than previously agreed to (the “**Shortfall**”); and
  - b) the Lending Syndicate was running out of funds and would not be able to make the advances it had promised to make under the terms of the Forbearance Agreement.
25. Notwithstanding that the Shortfall was caused by the Lending Syndicate’s own error, CMLS advised the Plaintiffs that the Forbearance Payment would not be advanced until the mistake was corrected and CMLS obtained additional funds from the other parties of the Lending Syndicate, excluding Equitable Bank, to cover the Shortfall.
26. To avoid further delays in paying the trades (the “**Trades**”) who were constructing the Project, the Plaintiffs proposed, and CMLS agreed, on behalf of the Lending Syndicate, to a separate side agreement with CorFinancial Corp. (“**CorFinancial**”) to remedy the Shortfall (the “**Shortfall Agreement**”) whereby:

- a) CorFinancial would obtain an agreement from one of the Trades, Dean-Lane Contracting Inc. (hereinafter "**Dean-Lane**"), pursuant to which 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;
  - 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, CORFinancial 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.
27. On or about May 5, 2023, Dean-Lane agreed to the terms proposed by CorFinancial and CorFinancial delivered a written undertaking to Dean-Lane on the terms set out above.
28. 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.

29. However, despite the Plaintiffs repeated demands, CMLS failed or otherwise refused to pay the Shortfall or Deferred Amount to Dean-Lane.
30. It was an express or implied term of the Forbearance Agreement that the Defendants would provide the draws to further the Plaintiff's construction of the Project.
31. By failing to pay the Shortfall, the Deferred Amounts to Dean-Lane, and the March draw pursuant to the terms of the Forbearance Agreement, the Lending Syndicate breached the terms of the Forbearance Agreement and the Shortfall Agreement, acted in bad faith and dishonestly.
32. The Defendants intentionally refused to advance payment of the Shortfall, the Deferred Amounts to Dean-Lane and the March Draw, knowing that it would directly result in the default of the Forbearance Agreement, and provide the grounds for the appointment of a receiver over the Real Property of 177 Ontario.

### **Fraudulent Misrepresentations**

33. The Defendants made the following representations to the Plaintiffs:
  - a) representations by Andrea Cali on behalf of CMLS, the mortgage administrator, manager and syndicator, from about March to August 2022, that the Lending Syndicate would fund construction financing for Towers 2 and 3 of the Project;

- b) Representations by Andrea Cali from November 2022 to December 2022 that the Lending Syndicate would advance the total amount agreed upon in the Forbearance Agreement, including the Shortfall;
- c) representations by Andrea Cali from December 2022 to January 2023 that the Lending Syndicate would advance March and April 2023 draws in accordance with the terms of the Forbearance Agreement;
- d) representations by James Kim on behalf of GMIC and Gentai that Gentai would fund the advances required under the terms of the Forbearance Agreement; and
- e) such further representations the particulars of which shall be furnished prior to trial.

(collectively the “**Misrepresentations**”).

- 34. The Defendants knew or ought to have known that the Misrepresentations were false and that the Plaintiffs would rely upon the Misrepresentations.
- 35. The Plaintiffs did in fact rely upon the Misrepresentations to their detriment, which has caused the Plaintiffs’ losses and damages as described herein.
- 36. The Defendants are liable to the Plaintiffs on the basis of fraudulent, negligent or honest misrepresentation.

## Conspiracy

37. As detailed above, beginning at a time known to the Plaintiffs, the Defendants conspired to deprive the Plaintiffs of the March and April 2023 construction draws. The elements of the conspiracy include but are not limited to the following:

- a) the Defendants agreed as between each other that they would not advance the March and April 2023 draws due under the Forbearance Agreement under the false pretence that they could not “reconcile” the cost overruns on the project; and
- b) the Defendants intentionally withheld the March and April 2023 draws to cause the Partnership to default on the terms of the Forbearance Agreement, pursuant to which the Partnership and Plaintiffs had consented to the appointment of a receiver upon an event of default under the Forbearance Agreement.

38. The Defendants’ acts were calculated to trigger the appointment of the receiver, were made in bad faith, and dishonestly. The object of the conspiracy was to force the Defendants to default on the terms of the Forbearance Agreement, thereby providing grounds for the Defendants to appoint a receiver, engage in a sales process, which ultimately pave the pathy for the Receiver’s sale of the Project to the defendant, GMIC, along with Elm Acquisitions Corp. and Dorr Capital Corporation (collectively the “**Proposed Purchasers**”).

**Conversion**

39. The Defendants wrongfully converted the Plaintiffs' Real Property and personal property through unlawful, fraudulent means, which has caused the Plaintiffs' damages. The Defendants acted with the intention of denying the Plaintiffs' right to their property and in such a manner that is inconsistent with the Plaintiffs' right of possession.
40. The Defendants' attempted to conceal the fraud, including by providing the Plaintiffs with false confirmations regarding the costs of the Project.

**Unjust Enrichment**

41. As a result of the fraud described herein, the Defendants have been unjustly enriched by at least \$110,000,000.00, which amount the Plaintiffs have been deprived of. There is no juristic reason for the Defendants' enrichment.
42. The Defendants have retained and benefited from these losses suffered by the Plaintiffs by fraudulently misrepresenting to the Plaintiffs that they would receive the construction draws in accordance of the Forbearance Agreement and then depriving the Plaintiffs of the draws, thereby causing an "Event of Default" under the terms of the Forbearance Agreement.

**Damages**

43. To date, the Plaintiffs are aware that the Defendants have misappropriated \$110,000,000.00 worth of real and personal property.

44. The Plaintiffs continue to investigate their accounts, transactions, and other related financial matters and will amend the Statement of Claim if and when further fraudulent conduct is discovered.

45. The Plaintiffs have made efforts to mitigate their damages by attempting to resolve the matter directly with the Defendants.

46. The Defendants are jointly and severally liable for the Plaintiffs' damages.

**Aggravated, Punitive and/or Exemplary Damages**

47. An award of the aggravated and punitive damage is justified in this case having regard to the Defendants' high-handed, egregious, and reprehensible conduct. Their actions demonstrate a wanton, wilful, and reckless disregard for the Plaintiffs' legal rights. The Defendant's conduct is independently actionable and worthy of denunciation. An award of aggravated and punitive damages to deter others from similar conduct.

48. The Plaintiffs rely on the following statutes and regulations:

- *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194; and
- *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended.

49. The Plaintiffs request that this action be tried in Kitchener, Ontario.

DATE: May 28, 2025

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Lawyers for the Plaintiff

-and-

Court File No. CV-25-00000716-0000

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

**STATEMENT OF CLAIM**

**SPETTER ZEITZ KLAIMAN PC**  
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Lawyers for the Plaintiff

## Appendix “N”

**IN THE MATTER OF THE RECEIVERSHIP OF  
1776411 ONTARIO LTD. & 1333 WEBER STREET KITCHENER LP**  
(Preliminary list of creditors as at October 12, 2023)  
\$C; unaudited

Creditors	Address	Amount Owed*
<b><u>Secured</u></b>		
CMLS FINANCIAL LTD. & COMPUTERSHARE TRUST COMPANY OF CANADA		44,753,553
GENESIS MORTGAGE INVESTMENT CORP.		19,598,405
WESTMOUNT GUARANTEE		1
CORFINANCIAL CORP		1
Total secured		64,351,960
<b><u>Unsecured</u></b>		
ABA ARCHITECTS INC.		144,411
ALLDOOR SUPPLY		17,462
ALTUS GROUP LIMITED		28,059
ALUMINUM WINDOW DESIGNS LTD.		1,667,898
ARROW FIRE PROTECTION CONSULTANTS INC.		13,837
ATCO STRUCTURES & LOGISTICS		2,966
BROKERLINK INC.		463,546
CHARMINE PALMER'S CONSTRUCTION INC.		52,444
CHUNG & VANDER DOELEN		1
CITY OF KITCHENER-TAXES		22,076
CLASSIC TILE CONTRACTORS LIMITED		555,007
CONESTOGA ROOFING & SHEET METAL LTD.		304,570
DEAN LANE CONTRACTORS INC.		2,176,227
DEAL PORTAL INC.		1,469
DELTA ELEVATOR COMPANY LIMITED		16,150
DEVLAND CONSULTING INC.		5,650
ELLIS DON FORMING LTD.		459,363
ENOVA POWER CORP.		503,980
GEORGE AND ASMUSSEN LIMITED		40,430
GHD LIMITED		1,289
GILLAM COMMUNITIES 1333 WEBER		2,361,578
GILLAM URBAN CONSTRUCTORS INC.		1,077,322
GOLD STAR DRYWALL SERVICES INC		765,599
GREEN TECH SEALANTS INC.		263,518
GSP GROUP		15,876
HC MATCON INC.		191,719
HGL ELECTRICAL 2866791 ONTARIO CORP.		9,063
KIESWETTER EXCAVATING INC.		96,139
KINGSGUARD SECURITY INC.		46,840
KITCHENER HYDRO AC 7919700000		2,311

KITCHENER UTILITIES 110191194	1
KITCHENER UTILITIES #110227799	1,330
LMI CANADA INSURANCE	473,745
LOOPSTRA NIXON LLP	1
MCCARTER GRESpan BEYNON WEIR	7,298
MTE CONSULTANTS INC.	7,817
O'CONNOR ELECTRIC	473,302
OXFORD BUILDERS SUPPLIES INC.	202,513
PEARSON METAL INC.	252,704
QUALTEK NDT INC.	8,475
REALTY EXECUTIVES COMPLETE	280,000
REGO REALTY INC., BROKERAGE	2,289,434
RWH ENGINEERING INC.	712
STRONGFOAM INSULATION	2,774
STUBBE'S PRECAST INC.	1,490,144
THALER METAL INDUSTRIES LTD.	61,720
TROY LIFE & FIRE SAFETY LTD.	177,466
UCIT ONLINE SECURITY INC.	1,695
UNITED ALUMINUM SYSTEMS LTD.	131,375
WILKINSON CHUTES CANADA	18,766
Total unsecured	<hr/> 17,188,072
<b>Total</b>	<hr/> <b>81,540,032</b> <hr/>

\*An amount of \$1 represents an unknown amount.

## Appendix “O”

**From:** Shores, Bevin <[Bevin.Shores@gowlingwlg.com](mailto:Bevin.Shores@gowlingwlg.com)>  
**Sent:** May 14, 2026 3:03 PM  
**To:** Josh Suttner <[jsuttner@airdberlis.com](mailto:jsuttner@airdberlis.com)>; Joseph Blinick <[BlinickJ@bennettjones.com](mailto:BlinickJ@bennettjones.com)>; Trung Nguyen <[TrungN@simpsonwigg.com](mailto:TrungN@simpsonwigg.com)>  
**Cc:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>; Thomas Gray <[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>; Gertner, Thomas <[thomas.gertner@gowlingwlg.com](mailto:thomas.gertner@gowlingwlg.com)>; Calvin Horsten <[chorsten@airdberlis.com](mailto:chorsten@airdberlis.com)>; Eric Golden <[egolden@blaney.com](mailto:egolden@blaney.com)>  
**Subject:** RE: Elevate | Secured Lender Position on Guarantee

Good afternoon, all:

I can also confirm that CMLS Financial Ltd. ("CMLS") concurs with and adopts Genesis' position below with respect to the Guarantee, including the reservation of all rights and remedies on behalf of CMLS.

Further, in accordance with paragraph 13 of Justice Kimmel's April 15, 2026 endorsement, Genesis Mortgage Investment Corp., Gentai Capital Corporation, Equitable Bank, EQB Inc., Computershare Trust Company of Canada, and CMLS Financial Ltd. advise that they will not be bringing a bankruptcy application themselves; however they understand that the Receiver, KSV Restructuring Inc., will be bringing applications to assign 1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP into bankruptcy.

Regards,

Bevin Shores (she/her)  
*Partner*  
 T +1 905 540 2468  
[bevin.shores@gowlingwlg.com](mailto:bevin.shores@gowlingwlg.com)

My Assistant: Lise Kipfer  
 T +1 905 540 3267  
[lise.kipfer@gowlingwlg.com](mailto:lise.kipfer@gowlingwlg.com)



**From:** Josh Suttner <[jsuttner@airdberlis.com](mailto:jsuttner@airdberlis.com)>  
**Sent:** May 14, 2026 3:00 PM  
**To:** Joseph Blinick <[BlinickJ@bennettjones.com](mailto:BlinickJ@bennettjones.com)>; Trung Nguyen <[trungn@simpsonwigg.com](mailto:trungn@simpsonwigg.com)>  
**Cc:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>; Thomas Gray <[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>; Shores, Bevin <[Bevin.Shores@ca.gowlingwlg.com](mailto:Bevin.Shores@ca.gowlingwlg.com)>; Gertner, Thomas <[thomas.gertner@gowlingwlg.com](mailto:thomas.gertner@gowlingwlg.com)>; Calvin Horsten <[chorsten@airdberlis.com](mailto:chorsten@airdberlis.com)>; Eric Golden <[egolden@blaney.com](mailto:egolden@blaney.com)>  
**Subject:** RE: Elevate | Secured Lender Position on Guarantee

**This message originated from outside of Gowling WLG. | Ce message provient de l'extérieur de Gowling WLG.**

Thanks Joseph.

The below reflects EQB and Computershare's position as well.

**Josh Suttner**

Partner | Lawyer

T 647.426.2820  
E [jsuttner@airdberlis.com](mailto:jsuttner@airdberlis.com)

## Aird & Berlis LLP

Toronto | Vancouver

Aird & Berlis LLP operates as a multi-disciplinary practice.

This email is intended only for the individual or entity named in the message. Please let us know if you have received this email in error. If you did receive this email in error, the information in this email may be confidential and must not be disclosed to anyone.

**From:** Joseph Blinick <[BlinickJ@bennettjones.com](mailto:BlinickJ@bennettjones.com)>

**Sent:** May 14, 2026 2:56 PM

**To:** Trung Nguyen <[trungn@simpsonwiggles.com](mailto:trungn@simpsonwiggles.com)>

**Cc:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>; Thomas Gray <[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>; Shores, Bevin <[bevin.shores@gowlingwlg.com](mailto:bevin.shores@gowlingwlg.com)>; Gertner, Thomas <[thomas.gertner@gowlingwlg.com](mailto:thomas.gertner@gowlingwlg.com)>; Calvin Horsten <[chorsten@airdberlis.com](mailto:chorsten@airdberlis.com)>; Josh Suttner <[jsuttner@airdberlis.com](mailto:jsuttner@airdberlis.com)>; Eric Golden <[egolden@blaney.com](mailto:egolden@blaney.com)>

**Subject:** Elevate | Secured Lender Position on Guarantee

Trung,

This statement is delivered on behalf of Genesis Mortgage Investment Corp. ("Genesis") pursuant to the direction of the Honourable Justice Kimmel, as set out in her endorsement of April 15, 2026. In accordance with Her Honour's direction, below we set out the current position of Genesis, as one of the secured lenders under the Guarantee and Postponement of Claims dated as of August 2021 (the "Guarantee") given by 1639993 Ontario Ltd., Jaykam Developers Limited, Werner Leuschner and Kamal Patel (collectively, the "Guarantors") in respect of the obligations of 1776411 Ontario Ltd., as general partner on behalf of 1333 Weber Street Kitchener LP (the "Borrower"), under the charge/mortgage dated August 17, 2021 over the lands municipally known as 1333 Weber Street East, Kitchener, Ontario (the "Mortgage"), and the related loan and security documents.

The "Obligations" guaranteed under the Guarantee track everything the Borrower owes or must perform under the Mortgage, and the Mortgage secures not only principal and interest but also the "Indebtedness" more broadly, including "all Costs" of and incidental to enforcement, receivership and other realization proceedings, including "all legal costs incurred by the Chargee on a substantial indemnity basis". Although Genesis credit bid its debt, it takes the position that the Guarantors may remain liable on a joint and several, absolute and unconditional basis (including under the independent indemnity in Section 1.2 and the primary obligor covenant in Section 1.3 of the Guarantee) for certain claims, including for, among other things, legal costs and other enforcement-related costs incurred by Genesis in connection with the receivership of the Borrower and the defence of claims made against Genesis arising out of same and the lending relationship more generally.

While no claims have been made by Genesis against the Guarantors under or pursuant to the Guarantees, Genesis reserves all of its rights and remedies. Nothing in this statement,

and no act or omission of Genesis (including any credit bid, realization on security, forbearance or other step taken in connection with the receivership or the defence of any such claims), constitutes a release, waiver, discharge, election of remedies or estoppel of any of Genesis's rights or remedies as against the Guarantors, the Borrower or any other person under the Guarantee, the Mortgage, the other loan and security documents, at law or in equity, all of which rights and remedies (including the right to pursue the Guarantors under the Guarantee) are expressly reserved and preserved.

Yours truly,

**Joseph Blinick**

*Partner*, Bennett Jones LLP

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

T. [416 777 4828](tel:4167774828) | F. [416 863 1716](tel:4168631716)

[BennettJones.com](https://www.BennettJones.com)



## Appendix “P”

**From:** Eric Golden

**Sent:** May 26, 2026 3:17 PM

**To:** 'Trung Nguyen' <TrungN@simpsonwagle.com>

**Cc:** Sean Zweig <ZweigS@bennettjones.com>; Thomas Gray <GrayT@bennettjones.com>; Gertner, Thomas <thomas.gertner@gowlingwlg.com>; Calvin Horsten <chorsten@airdberlis.com>; Josh Suttner <jsuttner@airdberlis.com>; Joseph Blinick <BlinickJ@bennettjones.com>; Vy Rodulfo <VyR@simpsonwagle.com>; Chad Kopach <ckopach@blaney.com>; Stephen Gaudreau <SGaudreau@blaney.com>; Steven Kelly <SKelly@blaney.com>; Mitch Vininsky <mvininsky@ksvadvisory.com>; 'Ben Luder' <bluder@ksvadvisory.com>; Shores, Bevin <Bevin.Shores@gowlingwlg.com>; 'dbambrough@blg.com' <dbambrough@blg.com>

**Subject:** RE: Elevate | Secured Lender Position on Guarantee/Bankruptcy Applications./Surety Claim and Third Party Claim

Trung,

1. My recollection is very different from yours regarding Justice Kimmel's questioning on the Case Conference on April 14, 2026, as Her Honour asked point blank if there was any reason the sureties' Statement of Claim could not stand alone independently of the other three claims in a different court (your firm had issued on behalf of your guarantor clients one of these three claims against the first secured lenders, and the third party claim your firm delivered in the Surety action following the case conference mirrors that guarantors' claim). However, that is an issue for counsel for the sureties and counsel for the first secured lenders to deal with on June 2 if they wish to do so. The Receiver brought the outstanding litigation proceedings before the Court for the reasons previously set out at the case conference, and is now proceeding with its discharge and the bankruptcy applications.
2. The receivership respondents, the limited partnership ("LP") and the LP's general partner ("GP") owe the sureties about \$12M and still owe the lien claimants another \$14M. That's \$26M excluding the remaining unsecured creditors. The Receiver assumes there is no prospect of the two entities ever resuming operations.
3. I note that that the guarantors of the receivership respondents' debt to the first secured lenders are opposing the Purchaser's motion for payment of the Tarion Enrollment Fees to be heard on June 2. The guarantors have no standing to do so, and such opposition is improper. If the Tarion Enrollment Fees had been not included as a purchased asset in the APA with the Purchaser, they would be an estate asset, and the proceeds therefrom would be for the general benefit of estate creditors.
4. Are there other GP or LP estate assets that your clients are aware of and have not previously disclosed to the Receiver?
5. Similarly, as per above the guarantors have initiated litigation against the first secured lenders. However, the guarantors are asserting a cause of action that belongs to the receivership respondents. The guarantors have no standing to do so. If the guarantors wish to purchase it, they can attempt do so either from the Receiver or in a bankruptcy (by way of s. 38 of the BIA, or fund the trustee to pursue it).

6. A bankruptcy of the receivership respondents will allow the trustee to maximize recovery for the creditors of the GP and the LP, to the extent any assets remain, and provide for an orderly wind up of the borrowers.
7. Finally, in the Endorsement of Justice Kimmel made April 14, 2026, following the Case Conference, Her Honour imposed the following deadlines for the first secured lenders to advise of their positions on bankruptcy of the GP and LP, and the guarantees of the indebtedness of the GP and LP to the first secured lenders:
  - a. The secured lenders agreed to confirm within 30 days whether or not they intend to bring a bankruptcy application in respect of any of the respondents or to seek a bankruptcy order in connection with the discharge of the Receiver.
  - b. The secured lenders have also agreed to provide their respective positions within 30 days regarding whether they have any claims that remain subject to the guarantees.

These deadlines were complied with as per the attached email chain. The first secured lenders support a motion by the Receiver for authorization to assign the GP and the LP into bankruptcy. The material will be served prior to the June 2 hearing so that the bankruptcy motions and the discharge hearing can be timetabled on June 2.

Eric Golden  
 Partner - Chair, Business Reorganization & Insolvency Group  
[egolden@blaney.com](mailto:egolden@blaney.com)  
 ☎ 416-593-3927 | ☎ 416-596-2049

**From:** Trung Nguyen <[TrungN@simpsonwiggles.com](mailto:TrungN@simpsonwiggles.com)>  
**Sent:** May 20, 2026 11:03 AM  
**To:** Eric Golden <[egolden@blaney.com](mailto:egolden@blaney.com)>  
**Cc:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>; Thomas Gray <[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>; Gertner, Thomas <[thomas.gertner@gowlingwlg.com](mailto:thomas.gertner@gowlingwlg.com)>; Calvin Horsten <[chorsten@airdberlis.com](mailto:chorsten@airdberlis.com)>; Josh Suttner <[jsuttner@airdberlis.com](mailto:jsuttner@airdberlis.com)>; Joseph Blinick <[BlinickJ@bennettjones.com](mailto:BlinickJ@bennettjones.com)>; Vy Rodulfo <[VyR@simpsonwiggles.com](mailto:VyR@simpsonwiggles.com)>; Chad Kopach <[ckopach@blaney.com](mailto:ckopach@blaney.com)>; Stephen Gaudreau <[SGaudreau@blaney.com](mailto:SGaudreau@blaney.com)>; Steven Kelly <[SKelly@blaney.com](mailto:SKelly@blaney.com)>; Mitch Vininsky <[mvininsky@ksvadvisory.com](mailto:mvininsky@ksvadvisory.com)>; 'Ben Luder' <[bluder@ksvadvisory.com](mailto:bluder@ksvadvisory.com)>; Shores, Bevin <[Bevin.Shores@gowlingwlg.com](mailto:Bevin.Shores@gowlingwlg.com)>; 'dbambrough@blg.com' <[dbambrough@blg.com](mailto:dbambrough@blg.com)>  
**Subject:** RE: Elevate | Secured Lender Position on Guarantee/Bankruptcy Applications./Surety Claim and Third Party Claim

Hi Eric,

In response to your email below:

1. I will reserve comment until I receive the Receiver's updated Statement of Creditors.

- I do not recall Justice Kimmel asking counsel the questions you've referenced. Justice Kimmel asked if anyone was requesting that the Surety Action be transferred to the Commercial List. The Guarantors did not take a position on the Surety Action being transferred to the CL because its position at all times has been that both the Guarantors' Action and the Surety Action were commenced in the proper Court. Frankly, at the Case Conference, the Third-Party Claim for indemnity in the Surety Action had not been contemplated yet. I had not discussed it with my clients or received instructions, which is why it was not raised.

I note at the Case Conference, you advised Justice Kimmel that the secured creditors were considering bringing an application to assign the companies that are currently in receivership into bankruptcy (para 14 of endorsement of April 14, 2026). You did not advise Her Honour of the Receivers' intention to bring bankruptcy applications. Instead, you advised that the Receiver intended to schedule its discharge motion [para 15(b)]. At all times prior to the Case Conference, the Receiver's advice was that it intended to seek discharge imminently. We did not learn of the Receiver's intention to bring the bankruptcy applications until Ms. Shore's (CMLS's lawyer) email of May 14, 2026 below.

Can you please advise why the Receiver did not raise its intention to bring the bankruptcy applications at the Case Conference?

Thank you,

Trung Nguyen

P: 905.639.1052 x 235  
E: [trung@simpsonwagle.com](mailto:trung@simpsonwagle.com)



**From:** Eric Golden <[egolden@blaney.com](mailto:egolden@blaney.com)>

**Sent:** May 15, 2026 11:27 AM

**To:** Trung Nguyen <[TrungN@simpsonwagle.com](mailto:TrungN@simpsonwagle.com)>

**Cc:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>; Thomas Gray <[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>; Gertner, Thomas <[thomas.gertner@gowlingwlg.com](mailto:thomas.gertner@gowlingwlg.com)>; Calvin Horsten <[chorsten@airdberlis.com](mailto:chorsten@airdberlis.com)>; Josh Suttner <[jsuttner@airdberlis.com](mailto:jsuttner@airdberlis.com)>; Joseph Blinick <[BlinickJ@bennettjones.com](mailto:BlinickJ@bennettjones.com)>; Vy Rodulfo <[VyR@simpsonwagle.com](mailto:VyR@simpsonwagle.com)>; Chad Kopach <[ckopach@blaney.com](mailto:ckopach@blaney.com)>; Stephen Gaudreau <[SGaudreau@blaney.com](mailto:SGaudreau@blaney.com)>; Steven Kelly <[SKelly@blaney.com](mailto:SKelly@blaney.com)>; Mitch Vininsky <[mvininsky@ksvadvisory.com](mailto:mvininsky@ksvadvisory.com)>; 'Ben Luder' <[bluder@ksvadvisory.com](mailto:bluder@ksvadvisory.com)>; Shores, Bevin <[Bevin.Shores@gowlingwlg.com](mailto:Bevin.Shores@gowlingwlg.com)>; 'dbambrough@blg.com' <[dbambrough@blg.com](mailto:dbambrough@blg.com)>

**Subject:** RE: Elevate | Secured Lender Position on Guarantee/Bankruptcy Applications./Surety Claim and Third Party Claim

Hi Trung,

- In response to your question, that will be set out in the motion material the Receiver will serve prior to the next hearing date on June 2, 2026. However, FYI I in case you do not have it, I've attached the Receiver's Statement of Creditors as of Oct. 2023, that we are in the process of

updating to take account of the EQB payout, the purchaser group cash-credit bid (which resulted in the EQB payout and Gentai bidding its outstanding credit *at the time*), the indebtedness to the surety and the construction lien holdback distributions.

2. On what basis did you stay silent on the last case conference on April 14, 2026, when Justice Kimmel asked counsel attending if there was any reason the attached Surety statement of claim could not stand alone, and without any connection to the remaining proceedings that were then ordered transferred to the CL? I've been provided with your clients' attached third party claim issued May 8, 2026. The intention to issue that third party claim, or even the fact that it was a possibility being contemplated, should have been disclosed by you and your clients to Her Honour at the last case conference (and should also have been referenced in your Aide Memoire).
3. I have added Denise Bambrough at BLG back to this email distribution list, since she is counsel to the Surety and she obviously had no knowledge at all of your clients' third-party claim at the relevant times, let alone one repeating the allegations in the Guarantors' claim against the lenders (which action was transferred to the CL).

Eric Golden  
 Partner - Chair, Business Reorganization & Insolvency Group  
[egolden@blaney.com](mailto:egolden@blaney.com)  
 ☎ 416-593-3927 | ☎ 416-596-2049

**From:** Trung Nguyen <[TrungN@simpsonwigg.com](mailto:TrungN@simpsonwigg.com)>  
**Sent:** May 14, 2026 4:58 PM  
**To:** Eric Golden <[egolden@blaney.com](mailto:egolden@blaney.com)>; Shores, Bevin <[Bevin.Shores@gowlingwlg.com](mailto:Bevin.Shores@gowlingwlg.com)>  
**Cc:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>; Thomas Gray <[GrayT@bennettjones.com](mailto:GrayT@bennettjones.com)>; Gertner, Thomas <[thomas.gertner@gowlingwlg.com](mailto:thomas.gertner@gowlingwlg.com)>; Calvin Horsten <[chorsten@airdberlis.com](mailto:chorsten@airdberlis.com)>; Josh Suttner <[jsuttner@airdberlis.com](mailto:jsuttner@airdberlis.com)>; Joseph Blinick <[BlinickJ@bennettjones.com](mailto:BlinickJ@bennettjones.com)>; Vy Rodulfo <[VyR@simpsonwigg.com](mailto:VyR@simpsonwigg.com)>  
**Subject:** RE: Elevate | Secured Lender Position on Guarantee

Thank you, Bevin.

Eric, on what basis is the receiver petitioning the companies into bankruptcy?

Trung Nguyen

P: 905.639.1052 x 235  
 E: [trung@simpsonwigg.com](mailto:trung@simpsonwigg.com)



## Appendix “Q”

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

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(IN BANKRUPTCY AND INSOLVENCY)  
COMMERCIAL LIST**

**IN THE MATTER OF THE RECEIVERSHIP OF 1776411 ONTARIO LTD. AND 1333 WEBER  
STREET KITCHENER LP**

B E T W E E N :

**GENESIS MORTGAGE INVESTMENT CORP.**

Applicant

- and -

**1776411 ONTARIO LTD. AND 1333 WEBER STREET KITCHENER LP**

Respondent

**AFFIDAVIT OF MITCH VININSKY  
(sworn May 28, 2026)**

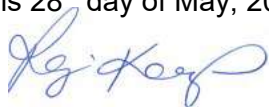
I, **MITCH VININSKY**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

1. I am a Managing Director of KSV Restructuring Inc. (“KSV”).
2. Pursuant to an order (the “**Receivership Order**”) of the Ontario Superior Court of Justice (Commercial List) made on October 12, 2023, KSV was appointed as the receiver and manager (in such capacities, the “**Receiver**”), without security, of (i) the real property located at 1333 Weber Street East, Kitchener (the “**Real Property**”), (ii) all of the right, title and interest of 1776411 Ontario Ltd. (“**177**”) and 1333 Weber Street Kitchener LP (the “**Partnership**”, and collectively with 177, the “**Debtor**”) in the personal property arising from, pertaining to, located on, or used in the operation or maintenance of the Real Property, and all proceeds therefrom, and (iii) all of the Debtor’s rights and interests in, to, under, and in respect of all material agreements, leases, documents, permits,

approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder.

- 3. I have managed this mandate since the date of the Receivership Order. As such, I have knowledge of the matters to which I hereinafter depose.
- 4. The Receiver prepared invoices detailing its services rendered and disbursements incurred (the “**Invoices**”) from September 1, 2024 to April 30, 2026 in the aggregate amount of \$203,417.25. Attached hereto and marked as **Exhibit “A”** to this Affidavit are copies of the Invoices.
- 5. Additionally, attached hereto as **Exhibit “B”** is a summary of the roles, hours and rates charged by members of the Receiver who have worked on this matter, and I hereby confirm that the list represents an accurate account of such information. The average hourly rate of the Receiver is \$609.12.
- 6. I consider the accounts to be fair and reasonable considering the circumstances connected with this matter.
- 7. This Affidavit is made in support of a motion to, *inter alia*, approve the attached accounts of the Receiver and the fees and disbursements detailed therein, and for no improper purpose whatsoever.

**SWORN** before me at the City of Toronto, in the Province of Ontario, this 28<sup>th</sup> day of May, 2026



Rajinder Kashyap, a Commissioner, etc.,  
Province of Ontario, for KSV Restructuring Inc.  
Expires February 23, 2027



\_\_\_\_\_  
**MITCH VININSKY**

This is Exhibit "A" referred to in the  
Affidavit of Mitch Vininsky sworn before  
me, this 28<sup>th</sup> day of May, 2026



---

Rajinder Kashyap, a Commissioner, etc.,  
Province of Ontario, for KSV Restructuring Inc.  
Expires February 23, 2027



**Mitch Vininsky 301**

**ksv advisory inc.**

220 Bay Street, Suite 1300

Toronto, Ontario, M5J 2W4

T +1 416 932 6013

F +1 416 932 6266

mvininsky@ksvadvisory.com

ksvadvisory.com

## INVOICE

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto ON M5J 2W4

October 10, 2024

Invoice No: 3963

HST #: 818808768RT0001

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

For professional services rendered for the period ending September 30, 2024 by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the “Receiver”), including:

### General Matters

- Corresponding extensively with Blaney McMurtry LLP (“Blaney”), the Receiver’s counsel, regarding all aspects of this mandate, as outlined in detail below;
- Corresponding with Equitable Bank (“EQ”) and Gentai Capital Corporation (“Gentai”), the Partnership’s senior secured creditors, regarding, among other things, construction activities at the Partnership’s condominium development project located at 1333 Weber Street, Kitchener (the “Project”) and the sale process for the Partnership’s property;
- Corresponding with Aird & Berlis LLP (“A&B”) and Bennett Jones LLP (“Bennett Jones”), counsel representing EQ and Gentai, respectively, regarding the receivership proceeding;
- Corresponding with Elm Developments Corp. (“Elm”), the general contractor engaged by the Receiver, to discuss the ongoing construction activities for the Project;
- Corresponding with RWH Engineering Inc. (“RWH”), the firm retained for shoring monitoring and inspection services for the Project;
- Reviewing the shoring monitoring report and site visit reports provided by RWH dated September 3 and 20, 2024;

- Preparing and maintaining an ongoing cost tracker related to the Project;
- Corresponding regularly with Brokerlink Inc., the Partnership's insurance broker, to extend the insurance policies for the Project;
- Corresponding with Blaney regarding its review of the liens registered on title to the Project;
- Corresponding with Blaney regarding certain power supply units installed at the Project and a settlement with the vendor of those units;
- Reviewing correspondence between Blaney and counsel to Dean-Lane Contractors Inc. and CORFinancial Corp. regarding their claims against the Partnership;

### **Court Matters**

- Reviewing and commenting on multiple versions of the following materials filed in connection with a motion to, among other things, approve a transaction for the Project with Dorr Capital Corporation, Gentai, and Elm (collectively, the "Purchaser Group") (the "Transaction"), approve certain distributions and increase the Receiver's borrowing limit, including:
  - the Motion Record of the Receiver dated September 27, 2024;
  - the Aide Memoire dated September 24, 2024; and
  - the draft Orders;
- Preparing the Receiver's Second Report to Court dated September 27, 2024 ("Second Report");
- Corresponding with Blaney regarding the Second Report;
- Attending in Court, virtually, on September 25, 2024 to schedule to hearing;
- Reviewing the Court's endorsement issued on September 25, 2024;

### **Unit Holder Matters**

- Corresponding with condominium unit purchasers (the "Condo Buyers") regarding the receivership proceedings, the deposit insurance available through Tarion Warranty Corporation ("Tarion") and Westmount Guarantee Services Inc. ("Westmount") and the status of their purchase agreements;
- Attending calls and corresponding by email with numerous unit holders of the Project;
- Preparing a Notice to Unit Purchasers for each of the Condo Buyers in Tower A, B and C dated September 27, 2024 and corresponding with Blaney regarding same;

### **Sale Process**

- Corresponding with CBRE Limited ("CBRE"), the listing brokerage for the Project, regarding the conditional sale of the Project;
- Corresponding with EQ regarding the Sale Process, including calls on September 9, 11, 12, 18 and 19, 2024;

- Corresponding with Consortia Equity Capital Limited regarding its interest in submitting an offer for the Project, including a call on September 13, 2024;
- Corresponding with Bennett Jones regarding several extension requests related to the asset purchase agreement dated March 4, 2024 (the “APA”) with the Purchaser Group;
- Corresponding with the Purchaser Group regarding the conditions and closing of the APA and the treatment of the condominium unit purchaser sale agreements, including calls on September 6, 9, 10, 13, 16, 19, 21 and 22, 2024;
- Preparing several versions of a schedule of estimated closing costs and providing it to the Purchaser Group;
- Reviewing and commenting on several amendments to the APA;
- Reviewing and commenting on the waiver of conditions to the APA and executing the same on September 24, 2024;
- Corresponding with Borden Ladner Gervais LLP, counsel to Westmount, and Torys LLP, counsel to Tarion, regarding a deposit return protocol (the “DRP”) for Condo Buyers whose agreements are to be terminated as a result of the Transaction, including attending a call on September 20, 2024;
- Reviewing and commenting on the DRP;

#### Other

- Responding to numerous inquiries from creditors and interested parties regarding the Partnership;
- Preparing a statement of receipts and disbursements;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements	\$ 72,448.55
HST	9,418.31
Total due	<u>\$ 81,866.86</u>

KSV Restructuring Inc.  
 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP

**Time Summary**

For the period ended September 30, 2024

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Mitch Vininsky	750	73.90	55,425.00
Ben Luder	450	35.25	15,862.50
Other Staff and administration		5.25	1,151.25
Total fees		114.40	72,438.75
Out-of-pocket disbursements (postage)			9.80
Total fees and disbursements			72,448.55



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## INVOICE

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

November 7, 2024

Invoice No: 4014  
HST #: 818808768RT0001

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

For professional services rendered for the period ending October 31, 2024 by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the “Receiver”), including:

### General Matters

- Corresponding extensively with Blaney McMurtry LLP (“Blaney”), the Receiver’s counsel, regarding all aspects of this mandate, as outlined in detail below;
- Corresponding with Equitable Bank (“EQ”) and Gentai Capital Corporation (“Gentai”), the Partnership’s senior secured creditors, regarding, among other things, construction activities at the Partnership’s condominium development project located at 1333 Weber Street, Kitchener (the “Project”) and the pending transaction for the Partnership’s property;
- Corresponding with Aird & Berlis LLP (“A&B”) and Bennett Jones LLP (“Bennett Jones”), counsel representing EQ and Gentai, respectively, regarding the receivership proceeding;
- Corresponding with Elm Developments Corp. (“Elm”), the general contractor engaged by the Receiver, to discuss the ongoing construction activities for the Project;
- Corresponding with RWH Engineering Inc. (“RWH”), the firm retained for shoring monitoring and inspection services for the Project;
- Reviewing the shoring monitoring report and site visit reports provided by RWH dated October 4 and 16, 2024;

- Corresponding with Brokerlink Inc., the Partnership's insurance broker, regarding extensions for the insurance policies related to the Project;
- Corresponding with EQ and the City of Kitchener regarding a letter of credit from Concentra Bank related to the Project;

### **Court Matters**

- Reviewing and commenting on multiple versions of the following materials filed in connection with the Receiver's motion to, among other things, approve a transaction for the Project with Dorr Capital Corporation, Gentai, and Elm (collectively, the "Purchaser Group") (the "Transaction"), approve certain distributions and increase the Receiver's borrowing limit, including:
  - the Factum of the Receiver dated October 3, 2024;
  - the Supplementary Motion Record of the Receiver dated October 4, 2024; and
  - the draft Orders;
- Preparing the Receiver's Supplement to the Second Report to Court dated October 4, 2024 (the "Supplement");
- Corresponding with Blaney regarding the Supplement;
- Attending in Court, virtually, on October 8, 2024;
- Reviewing the Court Orders and Justice Kimmel's endorsement issued on October 8, 2024;

### **Unit Holder Matters**

- Corresponding with condominium unit purchasers (the "Condo Buyers") regarding the receivership proceedings, the deposit insurance available through Tarion Warranty Corporation ("Tarion") and Westmount Guarantee Services Inc. ("Westmount") and the status of their purchase agreements;
- Attending calls and corresponding by email with numerous unit holders of the Project;
- Corresponding with Blaney regarding email updates sent to the Condo Buyers regarding the closing of the Transaction;

### **Sale Process**

- Corresponding with CBRE Limited ("CBRE"), the listing brokerage for the Project, regarding the conditional sale of the Project;
- Corresponding with EQ regarding the Sale Process, including calls on October 9 and 28, 2024;
- Corresponding with Borden Ladner Gervais LLP, counsel to Westmount, and Torys LLP, counsel to Tarion, regarding a deposit return protocol (the "DRP") for Condo Buyers whose agreements are to be terminated as a result of the Transaction;
- Reviewing and commenting on the DRP;

- Corresponding with Bennett Jones regarding several extension requests related to the asset purchase agreement dated March 4, 2024 (the "APA") with the Purchaser Group, including a call on October 7, 2024;
- Reviewing and commenting on various amendments to the APA;
- Attending a call with a lender of the Purchaser Group on October 8, 2024;
- Reviewing several versions of payout statements for EQ and Gentai;
- Preparing several versions of a schedule of estimated closing costs and providing it to the Purchaser Group and its counsel;
- Corresponding extensively with the Purchaser Group, Bennett Jones and Blaney regarding all matters relating to the closing of the Transaction;
- Reviewing and commenting on the statement of funds and statement of adjustments;
- Reviewing and commenting on a direction to Gentai Financial Services Corporation regarding its payment to Blaney;
- Coordinating and processing distributions from the proceeds of the Transaction to EQ and various lien claimants;

#### Other

- Responding to numerous inquiries from creditors and interested parties regarding the Partnership;
- Preparing a statement of receipts and disbursements;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements	\$ 57,383.42
HST	<u>7,459.84</u>
Total due	<u><u>\$ 64,843.26</u></u>

KSV Restructuring Inc.  
1776411 Ontario Ltd and 1333 Weber Street Kitchener LP

**Time Summary**

For the period ended October 31, 2024

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Mitch Vininsky	750	57.10	42,825.00
Ben Luder	450	28.75	12,937.50
Other Staff and administration		8.00	1,617.00
Total fees		93.85	57,379.50
Out-of-pocket disbursements			3.92
Total fees and disbursements			57,383.42



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## INVOICE

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

December 10, 2024

Invoice No: 4102

HST #: 818808768RT0001

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

For professional services rendered for the period ending November 30, 2024 by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the “Receiver”), including:

### General Matters

- Corresponding with Blaney McMurtry LLP (“Blaney”), the Receiver’s counsel, regarding all aspects of this mandate, as outlined in detail below;
- Corresponding with Equitable Bank (“EQ”) and Gentai Capital Corporation (“Gentai”), the Partnership’s senior secured creditors, regarding, among other things, the Partnership’s condominium development project located at 1333 Weber Street, Kitchener (the “Project”) and the closing of the transaction for the Partnership’s property (the “Transaction”);
- Reviewing the shoring monitoring report and site visit report provided by RWH Engineering Inc. dated November 1, 2024;
- Corresponding with Brokerlink Inc., the Partnership’s insurance broker, regarding the cancellation of the insurance policies related to the Project;
- Drafting a letter of authorization to the Project’s utility providers notifying of the closing of the Transaction;
- Preparing an Interim Report of the Receiver pursuant to Subsection 246(2) of the *Bankruptcy and Insolvency Act*;

- Calculating and filing the October HST refund with Canada Revenue Agency;
- Corresponding with Blaney regarding correspondence from Spetter Zeitz Klaiman PC, legal counsel to the Partnership's principals;

**Unit Holder Matters**

- Corresponding with condominium unit purchasers regarding the receivership proceedings, the deposit insurance available through Tarion Warranty Corporation and Westmount Guarantee Services Inc. and the status of their purchase agreements;
- Attending calls and corresponding by email with numerous unit holders of the Project;

**Other**

- Responding to numerous inquiries from creditors and interested parties regarding the Partnership;
- Preparing a statement of receipts and disbursements;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements	\$ 16,294.40
HST	<u>2,118.27</u>
Total due	<u>\$ 18,412.67</u>

KSV Restructuring Inc.  
1776411 Ontario Ltd and 1333 Weber Street Kitchener LP

**Time Summary**

For the period ended November 30, 2024

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Mitch Vininsky	750	15.30	11,475.00
Ben Luder	450	9.30	4,185.00
Other Staff and administration		2.75	567.75
Total fees		27.35	16,227.75
Out-of-pocket disbursements			66.65
Total fees and disbursements			16,294.40



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## INVOICE

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

January 10, 2025

Invoice No: 4135  
HST #: 818808768RT0001

**Re: 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP (together, the  
"Partnership")**

For professional services rendered for the period ending December 31, 2024 by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the "Receiver"), including:

### General Matters

- Preparing and filing the November HST refund with Canada Revenue Agency;
- Coordinating various payments from the proceeds of the sale of the Partnership's property (the "Transaction");
- Corresponding with Bennett Jones LLP, counsel to Gentai Capital Corporation, to discuss an extension for the purchasing group to disclaim certain pre-construction agreements of purchase and sale;

### Unit Holder Matters

- Corresponding with condominium unit purchasers regarding the closing of the Transaction;
- Attending calls and corresponding by email with condominium unit purchasers regarding disclaimers and other issues involving the Transaction;

Other

- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements	\$	2,293.50
HST		<u>298.16</u>
Total due	\$	<u>2,591.66</u>

KSV Restructuring Inc.  
1776411 Ontario Ltd and 1333 Weber Street Kitchener LP

**Time Summary**

For the period ended December 31, 2024

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Mitch Vininsky	750	1.40	1,050.00
Ben Luder	450	2.00	900.00
Other Staff and administration		1.70	343.50
Total fees		5.10	2,293.50



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## INVOICE

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

March 10, 2025

Invoice No: 4263

HST #: 818808768RT0001

**Re: 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP (together, the  
"Partnership")**

For professional services rendered for the two month period ending February 28, 2025 by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the "Receiver"), including:

### General Matters

- Corresponding with the City of Kitchener regarding a letter of credit that had been funded by the Partnership;
- Corresponding with Blaney McMurtry LLP ("Blaney"), the Receiver's counsel, regarding payment of property taxes to the City of Kitchener from the proceeds of the sale of the Partnership's property (the "Transaction");

### Court Matters

- Reviewing the following materials filed by Genesis Mortgage Investment Corp. ("Gentai") in connection with a motion heard on January 23, 2025 to, among other things, approve a 6-month extension of the deadline for the purchasing group to disclaim certain pre-construction agreements of purchase and sale (the "January 23<sup>rd</sup> Motion"), including:
  - the Notice of Motion dated January 16, 2025; and
  - the Affidavit of Michael Yeung sworn January 16, 2025;
- Reviewing a Responding Motion Record dated January 22, 2025 filed by Aviva Insurance Company of Canada in respect of the January 23<sup>rd</sup> Motion;

- Corresponding with Bennett Jones LLP (“Bennett Jones”), counsel to Gentai, and Blaney to discuss the January 23<sup>rd</sup> Motion materials, including attending a call on January 15, 2025;
- Attending the January 23<sup>rd</sup> Motion in Court, virtually;
- Reviewing Justice Dietrich’s endorsement issued on January 23, 2025;
- Reviewing the following materials filed by Gentai in connection with a motion heard on February 20, 2025 to, among other things, approve a 4-month extension of the deadline for the purchasing group to disclaim certain pre-construction agreements of purchase and sale (the “February 20<sup>th</sup> Motion”), including:
  - the Notice of Motion dated February 11, 2025; and
  - the Affidavit of Michael Yeung sworn February 11, 2025;
- Reviewing the Court Order and Justice Cavanagh’s endorsement issued on February 20, 2025;

**Unit Holder Matters**

- Corresponding with condominium unit purchasers (the “Purchasers”) regarding the Transaction;
- Attending calls and corresponding by email with condominium unit purchasers regarding disclaimers and other issues involving the Transaction;
- Prepare a draft notice of termination and disclaimer for Tower A Purchasers and corresponding with Blaney regarding same;

**Other**

- Preparing a statement of receipts and disbursements;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements	\$	10,744.23
HST		1,396.75
Total due	\$	<u>12,140.98</u>

KSV Restructuring Inc.  
 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP

**Time Summary**

For the period ended February 28, 2025

<b>Personnel</b>	<b>Rate (\$)*</b>	<b>Hours</b>	<b>Amount (\$)</b>
Mitch Vininsky	850	8.40	7,140.00
Ben Luder	475	7.15	3,396.25
Other Staff and administration		0.95	207.00
Total fees		16.50	10,743.25
Add: Out-of-pocket disbursements			0.98
Total fees and disbursements			10,744.23

\* Includes rate increases of \$100/hour for Mr. Vininsky and \$25/hour and for Mr. Luder effective January 1, 2025.



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## INVOICE

1776411 Ontario Ltd. and 1333 Weber Street Kitchener LP  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

June 9, 2025

Invoice No: 4470  
HST #: 818808768RT0001

**Re: 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP  
(together, the "Partnership")**

For professional services rendered from March 1 to May 31, 2025 by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the "Receiver"), including:

### General Matters

- Preparing a draft notice of termination and disclaimer for Tower A Purchasers and corresponding with Blaney McMurtry LLP ("Blaney"), the Receiver's counsel, regarding same;

### Court Matters

- Reviewing the following draft materials prepared by Genesis Mortgage Investment Corp. ("Gentai") in connection with a motion to be heard on June 17, 2025 to, among other things, direct Aviva Insurance Company of Canada and MNP Ltd. to abide by and act on a Direction provided by GFD LP in respect of disclaiming certain agreements of purchase and sale in Tower A of the Project (the "June 17<sup>th</sup> Motion"), including:
  - the draft Affidavit of Michael Yeung; and
  - the draft Order;
- Corresponding with Bennett Jones LLP ("Bennett Jones"), counsel to Gentai, and Blaney to discuss the June 17<sup>th</sup> Motion draft materials;

**Other**

- Preparing an Interim Report of the Receiver pursuant to Subsection 246(2) of the *Bankruptcy and Insolvency Act*;
- Preparing a statement of receipts and disbursements;
- Filing monthly HST returns with Canada Revenue Agency;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees	\$ 8,757.50
HST	1,138.48
Total due	\$ <u>9,895.98</u>

KSV Restructuring Inc.  
1776411 Ontario Ltd and 1333 Weber Street Kitchener LP

**Time Summary**

For the period ended May 31, 2025

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Mitch Vininsky	850	5.60	4,760.00
Ben Luder	475	7.20	3,420.00
Other Staff and administration		2.60	577.50
Total fees		15.40	8,757.50



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## INVOICE

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

October 9, 2025

Invoice No: 4715

HST #: 818808768RT0001

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

For professional services rendered from June 1 to September 30, 2025 by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the “**Receiver**”), including:

### Court Matters

- Reviewing the following draft materials prepared by GFD 1333W Limited Partnership (“**GFD**”) in connection with a motion heard on June 17, 2025 (the “**June 17<sup>th</sup> Motion**”) and again on June 26, 2025 (the “**June 26<sup>th</sup> Motion**”) to, among other things, direct Aviva Insurance Company of Canada and MNP LLP (“**MNP**”) to abide by and act on a Direction provided by GFD LP in respect of disclaiming certain agreements of purchase and sale in Tower A of the project located at 1333 Weber Street, Kitchener, including:
  - the Notice of Motion dated June 6, 2025;
  - the Affidavit of Michael Yeung, sworn June 6, 2025;
  - the Notice of Motion dated June 17, 2025;
  - the Affidavit of Michael Yeung, sworn June 17, 2025; and
  - the draft Order;
- Corresponding with Bennett Jones LLP (“**Bennett Jones**”), counsel to GFD, and Blaney McMurtry LLP (“**Blaney**”), the Receiver’s counsel, to discuss the June 17<sup>th</sup> Motion and June 26<sup>th</sup> Motion draft materials;
- Attending in Court, virtually, on June 26, 2025;

**General Matters**

- Preparing and sending a notice of termination and disclaimer for certain Tower A Purchasers (the “**Disclaimer Notices**”) and corresponding with Blaney and Bennett Jones regarding same;
- Corresponding with MNP regarding the Disclaimer Notices, including attending calls on August 19 and September 10, 2025;
- Reviewing and responding to numerous emails and phone calls from residential condominium purchasers regarding the status of their sale agreements and the deposit return protocol;

**Other**

- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees as per attached time summary	\$ 11,760.25
HST	1,528.83
Total due	\$ <u>13,289.08</u>

KSV Restructuring Inc.  
1776411 Ontario Ltd and 1333 Weber Street Kitchener LP

**Time Summary**

For the period ended September 30, 2025

<b>Personnel</b>	<b>Rate (\$)*</b>	<b>Hours</b>	<b>Amount (\$)</b>
Mitch Vininsky	850	5.20	4,420.00
Ben Luder	450 - 500	11.75	5,806.25
Other Staff and administration		6.75	1,534.00
Total fees		23.70	11,760.25

\*Please note that effective July 1, 2025, the hourly rate for Mr. Luder has increased from \$475 to \$500.



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## INVOICE

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

November 10, 2025

Invoice No: 4799  
HST #: 818808768RT0001

**Re: 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP (together, the  
"Partnership")**

For professional services rendered in October 2025 by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the "**Receiver**"), including:

### Court Matters

- Drafting the Receiver's Third Report to Court to recommend the Court approve, among other things, the Receiver's discharge;

### General Matters

- Corresponding with MNP Ltd regarding the Court-approved deposit return protocol (the "**Deposit Return Protocol**") and executing Release and Termination Agreements as required;
- Reviewing and responding to numerous emails and phone calls from residential condominium purchasers regarding the status of their sale agreements and the Deposit Return Protocol;

### Other

- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees as per the attached time summary	\$	5,176.50
HST		672.95
Total due	\$	<u>5,849.45</u>

KSV Restructuring Inc.  
1776411 Ontario Ltd and 1333 Weber Street Kitchener LP

**Time Summary**

For the period ended October 31, 2025

<b>Personnel</b>	<b>Rate (\$)</b>	<b>Hours</b>	<b>Amount (\$)</b>
Mitch Vininsky	850	0.50	425.00
Ben Luder	500	9.00	4,500.00
Other Staff and administration		1.15	251.50
Total fees		10.65	5,176.50



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## INVOICE

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP  
c/o KSV Restructuring Inc.  
220 Bay Street, Suite 1300  
Toronto, ON M5J 2W4

May 7, 2026

Invoice No: 5354  
HST #: 818808768RT0001

**Re: 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP (together, the  
"Partnership")**

For professional services rendered from November 1, 2025 to April 30, 2026 by KSV Restructuring Inc. in its capacity as receiver and manager of the Partnership appointed pursuant to an Order of the Ontario Superior Court of Justice dated October 12, 2023 (the "**Receiver**"), including:

### Court Matters

- Drafting the Receiver's Third Report to Court to recommend the Court approve, among other things, the Receiver's discharge;
- Reviewing the following briefs (the "**Briefs**") in connection with a case conference heard on April 14, 2026 (the "**Case Conference**") to, among other things, address certain litigation matters related to these receivership proceedings, including:
  - the Case Conference Brief of Dean-Lane Contractors Inc. dated April 10, 2026;
  - the Case Conference Brief of Aviva Insurance Company of Canada and Liberty Mutual Insurance Company dated April 10, 2026;
  - the Case Conference Brief of Werner Leuschner, Kamal Patel, Jaykam Developers Limited and 163993 Ontario Ltd dated April 13, 2026; and
  - the Case Conference Brief of CorFinancial Corp. dated April 13, 2026;
- Corresponding with Blaney McMurtry LLP ("**Blaney**") regarding the Briefs;
- Reviewing and commenting on a brief prepared by Blaney in respect of the Case Conference;
- Attending, virtually, at the Case Conference;

**General Matters**

- Corresponding with MNP Ltd regarding the Court-approved deposit return protocol (the “**Deposit Return Protocol**”) and executing Release and Termination Agreements as required;
- Reviewing and responding to numerous emails and phone calls from residential condominium purchasers regarding the status of their sale agreements and the Deposit Return Protocol;

**Other**

- Preparing an Interim Report of the Receiver pursuant to Subsection 246(2) of the *Bankruptcy and Insolvency Act*;
- Convening internal meetings; and
- Dealing with all other matters not otherwise referred to herein.

Total fees and disbursements	\$	19,640.25
HST		2,553.23
Total due	\$	<u>22,193.48</u>

KSV Restructuring Inc.  
 1776411 Ontario Ltd and 1333 Weber Street Kitchener LP

**Time Summary**

For the period of November 1, 2025 to April 30, 2026

<b>Personnel</b>	<b>Rate (\$)*</b>	<b>Hours</b>	<b>Amount (\$)</b>
Mitch Vininsky	850 - 950	14.70	13,505.00
Ben Luder	500 - 600	7.55	4,050.00
Other staff and administration		4.75	1,085.25
Total fees		27.00	18,640.25
Add: Out-of-pocket disbursements			1,000.00
Total fees and disbursements			19,640.25

\* Includes rate increases of \$100/hour for Mr. Vininsky and Mr. Luder effective January 1, 2026.

This is Exhibit "B" referred to in the  
Affidavit of Mitch Vininsky sworn before  
me, this 28<sup>th</sup> day of May, 2026



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Rajinder Kashyap, a Commissioner, etc.,  
Province of Ontario, for KSV Restructuring Inc.  
Expires February 23, 2027

1776411 Ontario Ltd and 1333 Weber Street Kitchener LP  
 Schedule of Professionals' Time and Rates  
 For the Period from September 1, 2024 to April 30, 2026

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Personnel	Title	Duties	Hours	Billing Rate (\$ per hour)	Amount (\$)
Mitch Vininsky	Managing Director	Overall responsibility	182.10	750 - 950	141,025.00
Ben Luder	Manager	All aspects of mandate	117.95	450 - 600	55,057.50
Other staff and administrative			33.90	195 - 265	7,334.75
Total fees			<u>333.95</u>		<u>203,417.25</u>
Total hours					333.95
Average hourly rate					\$ 609.12

## Appendix “R”

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

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

BETWEEN:

**GENESIS MORTGAGE INVESTMENT CORPORATION**

Applicant

-and-

**1776411 ONTARIO LTD. and 1333 WEBER STREET KITCHENER LP**

Respondents

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

**I, CHAD KOPACH**, of the City of Toronto, in the Province of Ontario, **MAKE OATH  
AND SAY AS FOLLOWS:**

1. I am a partner with the law firm of Blaney McMurtry LLP (“**Blaneys**”), independent counsel for the Receiver KSV Restructuring Inc. (“**KSV**”, or the “**Receiver**”). As such, I have knowledge of the matters hereinafter deposed to except where stated to be on information and belief, and where so stated I verily believe it to be true.

2. Pursuant to an Order of Justice Cavanagh of the Ontario Superior Court of Justice (the “**Court**”) dated October 12, 2023 (the “**Appointment Order**”), KSV was appointed, pursuant to section 243(1) of the *Bankruptcy and Insolvency Act* (the “**BIA**”) and section 101 of the *Courts of Justice Act*, as receiver and manager of the undertakings, assets and properties of the Respondents,

approvals, licenses and instruments in respect of the Real Property and all monies or proceeds payable thereunder.

- 3. I have managed this mandate since the date of the Receivership Order. As such, I have knowledge of the matters to which I hereinafter depose.
- 4. The Receiver prepared invoices detailing its services rendered (the "Invoices") from September 1, 2024 to April 30, 2026 in the aggregate amount of \$203,417.25. Attached hereto and marked as **Exhibit "A"** to this Affidavit are copies of the Invoices.
- 5. Additionally, attached hereto as **Exhibit "B"** is a summary of the roles, hours and rates charged by members of the Receiver who have worked on this matter, and I hereby confirm that the list represents an accurate account of such information. The average hourly rate of the Receiver is \$609.12.
- 6. I consider the accounts to be fair and reasonable considering the circumstances connected with this matter.
- 7. This Affidavit is made in support of a motion to, *inter alia*, approve the attached accounts of the Receiver and the fees and disbursements detailed therein, and for no improper purpose whatsoever.

SWORN before me at the City of )  
 Toronto, in the Province of Ontario, )  
 this 28<sup>th</sup> day of May, 2026 )  
 )  
 )  
 )  
 )

\_\_\_\_\_  
 Rajinder Kashyap, a Commissioner, etc.,  
 Province of Ontario, for KSV Restructuring Inc.  
 Expires February 23, 2027

\_\_\_\_\_

**MITCH VININSKY**



This is Exhibit "A" referred to in the Affidavit of Chad Kopach sworn May 21, 2026.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive style with a large, looped initial "K".

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*Commissioner for Taking Affidavits (or as may be)*

**KELLY VICKERS (P13560)**

## LEGAL COSTS SUMMARY

<b>LAWYER</b>	<b>YEAR OF CALL</b>	<b>HOURLY RATE</b>
Steven Jeffrey	1984	\$850
Eric Golden	1996	\$850 as of February 1, 2024 \$900 as of February 1, 2025 \$950 as of February 1, 2026
Shawn Wolfson	2002	\$800
Chad Kopach	2003	\$650 as of February 1, 2024 \$750 as of February 1, 2025
Kym Stasiuk	2008	\$575 as of February 1, 2024
Rob Hawkins	2021	\$375 as of February 1, 2024 \$400 as of February 1, 2025
Shaun Odes	2022	\$350
Steven Kelly	2023	\$350 as of February 1, 2024 \$400 as of February 1, 2025
Gurwinder S. Bansal	2024	\$350

## SUMMARY OF ACCOUNTS

No.	Date of Account	Fees	Disbursements	H.S.T.	Total
1.	October 21, 2024	\$150,492.50	\$436.35	\$19,589.93	\$170,518.78
2.	November 25, 2024	\$97,120.50	\$276.65	\$12,659.55	\$110,056.70
3.	November 30, 2024	\$12,830.00	\$ -	\$1,667.90	\$14,497.90
4.	January 31, 2025	\$12,162.50	\$ -	\$1,581.13	\$13,743.63
5.	May 31, 2025	\$14,370.00	\$124.46	\$1,883.24	\$16,377.70
6.	October 14, 2025	\$7,110.00	\$ -	\$924.30	\$8,034.30
7.	November 30, 2025	\$15,195.00	\$78.75	\$1,982.47	\$17,256.22
8.	December 31, 2025	\$2,325.00	\$ -	\$302.25	\$2,627.25
9.	January 31, 2026	\$11,905.00	\$48.65	\$1,551.89	\$13,505.54
10.	March 31, 2026	\$12,380.00	\$ -	\$1,609.40	\$13,989.40
TOTAL		\$335,890.50	\$964.86	\$43,752.06	\$380,607.42
Average Hourly Rate - (before H.S.T.)		Total fees (before H.S.T.): \$ 335,890.50 ÷ Total hours: 500.9 = \$670.57			

This is Exhibit "B" referred to in the Affidavit of Chad Kopach sworn May 21, 2026.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive style with a large, looped "V".

---

*Commissioner for Taking Affidavits (or as may be)*

**KELLY VICKERS (P13560)**



Blaney McMurtry LLP | Lawyers  416-593-1221  
 2 Queen Street East | Suite 1500  
 Toronto, Ontario M5C 3G5  Blaney.com

KSV Advisory  
 220 Bay Street, 13th Floor  
 P.O. Box 20  
 Toronto ON M5J 2W4

Invoice Date: October 21, 2024  
 Invoice Number: 806652  
 Matter Number: 205172-0001  
 HST Number: R1194444149

Attention: Elevate Condominiums

## INVOICE

Matter: Elevate Condominiums

*To our professional services up to and including September 30, 2024.*

	Tax Rate	Amount (CAD)
Professional Fees	13.00%	150,492.50
<b>Costs (Taxable)</b>		
Cyberbahn Agent Service Fee	13.00%	120.05
Search - Corporate	13.00%	14.00
Computer Searches - R.E. (Teraview)	13.00%	65.25
<b>Costs (Non-Taxable)</b>		
Search - Corporate* - Non-Taxable		64.70
Computer Searches - R.E. (Teraview) * - No-Tax		31.35
Filing Fees* - Non-Taxable		56.00
Municipal Inquiries* - Non-Taxable		85.00
	Subtotal	150,928.85
	Tax @ 13.00%	19,589.93
	<b>Amount payable</b>	<b>\$170,518.78</b>

### BLANEY McMURTRY LLP

Eric Golden  
 E. & O.E

### Invoice due on receipt

**Terms:** Payment upon receipt. Interest as allowed in the Solicitors Act at a rate of 0.8% per annum, calculated monthly will be added to all amounts overdue 30 days or more.

Matter Number: 205172-0001

Invoice Date:

October 21, 2024

Matter: Elevate Condominiums

Invoice Number:

806652

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2024-09-03	EG	emails re borrowing group re call; communications with Kopach re Dean Lane claim; emails b/w Dorr and KSV re details required for AVO motion;	0.30
2024-09-05	CK	Review exchange of correspondence with borrowers' counsel regarding next steps given pending waiver of conditions; prepare analysis of Gillam lien claim for Receiver;	1.80
2024-09-05	EG	emails with lenders' counsel and KSV re agenda for tomorrow's call and adding a second call on Monday;	0.10
2024-09-06	CK	Prepare for and attend on call with counsel for borrowers regarding remaining issues to be dealt with prior to waiver, and timing for report and motion record given pending return date (September 25, 2024);	1.90
2024-09-06	EG	review Dean Lane lien analysis form Chad to determine what portions relate to lien and what portions relate to COR; prepare for and attend call with lenders, and with then KSV and Chad; call from EQ re same;	1.50
2024-09-09	CK	Receipt and review of purported commitment letter from Consortia; draft analysis of Gillam lien claim, including maximum holdback claim, and correspondence to Receiver regarding analysis;	1.30
2024-09-09	EG	call with fist mortgagee counsel and KSV re ; emails from Consortia re potential offer involving Gillam; communications with KSV re same; email from KSV with latest SRD; communications with Chad re NOM and lien portion for KSV report; review Gillam lien analysis from Chad; emails from BJ re extension to APA;;	1.50
2024-09-09	SOdes	Email from purchaser's counsel confirming extension;	0.10
2024-09-09	SOdes	Email to M. Vininsky re advising of purchaser's counsel's request to extend due diligence period and requesting confirmation whether to proceed with extension;	0.10
2024-09-09	SOdes	Email to purchaser's counsel re one day extension to the due diligence period;	0.10
2024-09-09	SOdes	Email from purchaser's counsel re request to extend due diligence period;	0.10
2024-09-10	EG	email from KSV re status of litigation reserve issue; email from BJ re same and APA extension; communications with clerk re re-ordering of COR/Inspektor file from court; payout statement from Gentai; call from EQ re status;	0.80
2024-09-10	SOdes	Email to purchaser's counsel re extension of due diligence date;	0.10
2024-09-10	SOdes	Email from M. Vininsky advising to proceed with	0.10

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date:

October 21, 2024

Matter: Elevate Condominiums

Invoice Number:

806652

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		extension of the due diligence date;	
2024-09-10	SOdes	Email from purchaser's counsel re confirming extension of due diligence date;	0.10
2024-09-10	SOdes	Email from purchaser's counsel requesting further extension to the due diligence date;	0.10
2024-09-11	EG	communications with Mitch re APA waiver and related issues; review and revise updated security opinion; email to Bennett Jones re missing documents for same; communication with Kym Stasiuk re updated searches for opinion;	1.00
2024-09-12	GB	Research caselaw on lien discharge;	0.50
2024-09-12	CK	Correspondence exchanged with counsel for O'Connor regarding upcoming AVO motion; continued revisions to draft report, including revisions to lien analysis; correspondence regarding holdback/litigation reserve regarding COR and Dean Lane claims; compile lien documents for resubmittal to lenders and to purchaser group;	6.90
2024-09-12	SOdes	Correspondence re construction lien claimants and additional extension to the due diligence date;	0.10
2024-09-12	KS	email correspondence with E. Golden regarding revisions to security opinion and updating searches; instructing R. Hawkins and S. Li regarding same;	0.50
2024-09-12	JK	Verified corporate names and conducted PPSA searches against 1776411 Ontario Ltd. and on 1333 Weber Street Kitchener LP;	0.20
2024-09-12	RHawk	Reviewed and revised security opinion; correspondence with K. Stasiuk and corporate clerk re same;	1.30
2024-09-12	SLi	Conducting title searches; emailing K. Stasiuk re the same; updating search summary; ordering PPSA updates; updating title summary;	0.90
2024-09-12	EG	emails with Bennet Jones and Kym Stasiuk re security opinion additional documents and revisions; communications throughout day with and between KSV, Kopach, Steve Jeffery, EQ, Dorr, Elm and BJ re mortgage payout statement statement, KSV reserves and priority payments, lien priority and latest extension request;	2.90
2024-09-13	EG	communications re Kym and Steve Jeffery security opinion questions and issues; multiple calls from EQ re APA issues; communications with with Elm re same; communication throughout the day with Chad, Steve Jeffery, Bennett Jones and KSV re same; conference call with Dorr and KSV re same; instructions to Chad re lien summary for purchaser group; emails with KSV re further Consortia inquiries;	4.10

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date:

October 21, 2024

Matter: Elevate Condominiums

Invoice Number:

806652

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		emails with Elm re lien arrangements; emails from and to Sanj re status;	
2024-09-13	KS	reviewing opinion and search summary results; email correspondence with R. Hawkins and S. Li regarding search results; email correspondence with S. Jeffery regarding same;	1.50
2024-09-13	RHawk	Correspondence with K. Stasiuk re security opinion; review of additional searches;	0.30
2024-09-13	SLi	Ordering and reviewing corporate searches; updating schedule B;	0.50
2024-09-13	JK	Conducted Corporate/LP, Bankruptcy, Bank Act and Execution searches against 1776411 Ontario Ltd. and on 1333 Weber Street Kitchener LP;	0.60
2024-09-13	JK	Verified corporate name and conducted PPSA search on 1776411 Ontario Ltd.;	0.20
2024-09-13	SJ	Review revised security opinion and instructions to K. Stasiuk;	0.30
2024-09-13	AS	Obtaining updated parcel register;	0.10
2024-09-13	CK	Revise and finalize lien analysis and remainder of second report; attend on calls regarding report items and status of construction; review correspondence among purchaser group regarding dealing with liens; prepare for and attend on call with purchaser group regarding liens, and correspondence with summary of holdback analysis results; confirmation from Elm regarding intention to re-engage with architect and flooring supplier;	5.00
2024-09-14	EG	communications with A&B, KSV and Chad re status and next steps re APA; arrange for updated muni tax search; detailed email to purchaser group re to-do list;	2.80
2024-09-15	KS	reviewing various email correspondence regarding closing costs; drafting statement of adjustments and statement of funds; email correspondence with S. Jeffery regarding same; email correspondence with E. Golden regarding same;	1.50
2024-09-15	CK	Commence draft of Notice of Motion, including specific relief as against lien claimants regarding payout of holdback upon closing; review revisions to draft report and further revisions to draft;	8.20
2024-09-15	EG	revise report second; multiple emails and calls with KSV and Chad re same; emails with BJ, A&B, Stikes, Gowlings, KSV, Blaneys and purchaser group re next steps and issues for APA waiver including payouts, liens, adjustments, disclaimers/condo purchasers; email to KSV with updated second report;	11.40
2024-09-16	EG	communications with KSV re CBRE APA fee;	7.60

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Matter Number: 205172-0001

Invoice Date:

October 21, 2024

Matter: Elevate Condominiums

Invoice Number:

806652

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		communications with Chad and KSV re Condo owner email distribution list; communications with clerk re muni tax results; communications from EQ re Concentra LC; review email from same with related LC documents; emails with Kopach and Jeffery re same; further call with EQ re same; communications throughout day with with A&B, Gowling. BJ, KSV, Blaneys and purchaser group re APA issues (eg. LC, adjustments on closing, lien priority, payouts, notice to Condo Purchasers, APA extension); communications with Kym and Chad re security opinion; review revised KSV report; call with KSV and Chad re report revisions; conference call with KSV, BJ and Chad re status and next steps re APA; revise Notice of Motion for AVO; review and revise letter to Condo Purchasers re Tower B and email to S. Wolfson re same re Tarion and Westmount issues for letter;	
2024-09-16	SOdes	Review of email correspondence re draft statement of adjustments, draft statement of funds, waiver and amendment; Review of waiver and amendment;	0.60
2024-09-16	DK	Request realty tax certificate from City of Kitchener; receipt and review of certificate, confirming total arrears payable to date;	0.50
2024-09-16	CK	Continue draft of report and NoM; instructions to clerk regarding fee affidavit; prepare for and attend on call with stakeholders' counsel regarding pending AVO motion, and issues to be determined and incorporated into amendment; instructions to clerk regarding unit purchasers' contact information from APS; review emails from unit holders, their counsel and real estate agents regarding receivership; review terms of AVO included in sale agreement;	9.30
2024-09-16	AS	Pulling Charge Amending Agreement Instrument;	0.10
2024-09-16	SKelly	Review of draft fee affidavit; review of invoices to be produced for privilege; communication with C. Kopach re same;	1.20
2024-09-16	SJ	Telephone call from E. Golden RE APA issues;	0.70
2024-09-16	PLeitgeb	Reviewed agreements of purchase and sale and added purchaser e-mail addresses to spreadsheet, re: Towers A and B; meetings with C. Kopach; e-mails from/to C. Kopach, re: spreadsheet;	10.00
2024-09-16	PLeitgeb	Meeting with C. Kopach and receipt of instructions, re: spreadsheet;	0.20
2024-09-16	RHawk	Revised security opinion; revised schedules; meeting with S. Odes re review of APS and list of documents;	0.90
2024-09-16	KS	discussion with S. Odes regarding agreement of purchase and sale and closing; instructing R. Hawkins regarding same; reviewing email correspondence	3.10

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date:

October 21, 2024

Matter: Elevate Condominiums

Invoice Number:

806652

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		regarding outstanding realty taxes; reviewing and revising security opinion; email correspondence with E. Golden regarding same; reviewing payout statements; revising statement of adjustments and statement of funds; various email correspondence with S. Jeffery and E. Golden regarding same;	
2024-09-17	SOdes	Review of draft waiver and eighth amendment to the agreement of purchase and sale; Prepared comments on the draft waiver and eighth amendment; Correspondence re Blaney comments on draft waiver and eight amendment, ITCs, further one day extension by email correspondence, and security opinion;	1.20
2024-09-17	CK	Further revisions to notice of motion and to report; finalize fee affidavit; receipt and review of status update from clerk regarding contact details from APS;	3.50
2024-09-17	PLeitgeb	Reviewed agreements of purchase and sale and added purchaser e-mail addresses to spreadsheet, re: Tower C;	3.50
2024-09-17	EG	email from Wolfson re revisions and additions to Tower B draft letter to unit purchasers; revise second report; communications with KSV, Elm, Bennet Jones and A&B re draft report; emails from and to BJ, KSV and S. Jeffery re statements of adjustment and funds re APA, proposed 8th amendment to APA and various APA issues therein; ;further revisions to draft report;	5.20
2024-09-17	PLeitgeb	Re-named file folders containing e-mails;	0.20
2024-09-17	PLeitgeb	Continued review of agreements of purchase and sale and addition of purchaser e-mail addresses to spreadsheet, re: Tower C;	0.50
2024-09-17	PLeitgeb	Reviewed e-mails and added purchaser and/or counsel e-mail addresses to spreadsheet; e-mail to C. Kopach, re: revised/updated spreadsheet;	2.30
2024-09-17	PLeitgeb	Meeting with C. Kopach and receipt of instructions, re: Tower C;	0.10
2024-09-17	PLeitgeb	E-Mails from/to C. Kopach;	0.10
2024-09-17	SJ	Emails from J. van Gent regarding waiver and amending agreement; instructions to S. Odes; review and emails to M. Vininsky; telephone calls with and emails from and to E. Golden; email to J. van Gent regarding further extension and comments on waiver agreement;	0.70
2024-09-17	KS	reviewing various email correspondence regarding statement of adjustments, waiver and agreement of purchase and sale amendment; discussion with R. Hawkins regarding closing documents;	0.30
2024-09-17	SW	Emails with E. Golden regarding proposed letter to unit purchasers regarding termination of Agreements	0.50

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date:

October 21, 2024

Matter: Elevate Condominiums

Invoice Number:

806652

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		of Purchase and Sale and claims for purchaser deposits; revising letter;	
2024-09-17	RHawk	Meeting with S. Odes re review of APS; phone call with K. Stasiuk;	0.30
2024-09-18	PLeitgeb	Meeting with C. Kopach, re: spreadsheet containing purchaser e-mail addresses;	0.10
2024-09-18	PLeitgeb	Reviewed new/further documents received from client; revised/updated draft spreadsheet with further purchaser e-mail addresses, e-mail to C. Kopach;	1.40
2024-09-18	KS	reviewing various email correspondence regarding agreement of purchase and sale amendment and extension of due diligence period; email correspondence with C. Kopach regarding draft approval and vesting order;	0.50
2024-09-18	CK	Further review and finalization of report following comments from BJ; receipt and review correspondence regarding further revision to APS on issue of Tower A APSs; correspondence exchanged with Receiver (BL) regarding production of missing APSs from Towers A, B and C; status update from clerk regarding compilation of contact information for all purchasers; commence revision to AVO; instructions regarding Schedules C and D to AVO;	2.50
2024-09-18	SOdes	Review of correspondence re waiver and amendment;	0.30
2024-09-18	SJ	Review revised waiver and amending agreement and emails from and to M. Vininsky and E. Golden; emails from and to C. Ferencz; emails from and to C. Ferencz and M. Vininsky regarding further extension of due diligence date;	0.30
2024-09-18	PLeitgeb	Continued reviewing agreements of purchase and sale and adding purchaser e-mail addresses to spreadsheet, re: Tower C;	2.50
2024-09-18	PLeitgeb	E-Mail from C. Kopach; receipt and review of agreement of purchase and sale for Tower C, Unit 201; revised/updated draft spreadsheet containing purchaser e-mail addresses; e-mail to C. Kopach;	0.20
2024-09-18	EG	detailed proof to finalize draft second report and communications with Chad re same; email to KSV re same and communications with same; revise Tower B disclaimer letter; review and finalize NOM; emails with KSV re same; emails with BJ, KSV and Blaneys re 8th amendment and potential substantive amendments to APA; emails with EQ re loan increase re LC; emails with BLG re Westmount contact; reviewing and revising latest draft of security opinion;	4.80
2024-09-19	KS	Review relevant law regarding PPSA security opinion; email correspondence with S. Jeffery and E. Golden	2.80

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date:

October 21, 2024

Matter: Elevate Condominiums

Invoice Number:

806652

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		regarding security opinion; various email correspondence with C. Kopach regarding approval and vesting order; instructing S. Li regarding same; revising approval and vesting order; email correspondence with C. Kopach regarding same; reviewing email correspondence from E. Golden regarding security opinion; revising same; email correspondence with S. Jeffery regarding same;	
2024-09-19	RHawk	Correspondence with E. Golden re PPSA opinion;	0.20
2024-09-19	PLeitgeb	Telephone discussion with C. Kopach and receipt of instructions, re: purchaser e-mail addresses;	0.10
2024-09-19	CK	Review schedule of compiled email addresses; continue draft of AVO; instructions to KS regarding schedule to AVO; correspondence regarding status of APS waiver and amendment to deal with disclaimers; draft ancillary order regarding distributions and approvals; instructions to SK regarding factum; review correspondence regarding finalization of security opinion;	5.40
2024-09-19	PLeitgeb	E-Mail to C. Kopach, re: revised/updated list of purchaser e-mail addresses;	0.10
2024-09-19	EG	communications with SJ and KSV re security opinion and revisions to same re expansion of APA assest covered; review and revise updated AVO and communications with Kopach re same; communications with S. Jeffery and b/w BJ, Blaneys and KSV re eighth amendment re purchaser plan wording and other substantive amendments to APA ; communications with Dorr, KSV, Chad and S. Jeffery re CMLS and Gentai payouts, statement of funds and statement of adjustments;	3.00
2024-09-19	PLeitgeb	Revised and formatted draft list of purchaser e-mail addresses for Towers A, B and C;	1.30
2024-09-19	SJ	Instructions to K. Stasiuk regarding security opinion; telephone call with E. Golden; emails from and to C. Ferencz regarding waiver agreement and further extension; revise waiver and amending agreement;	0.70
2024-09-19	SOdes	Review of email correspondence re security opinion, revised draft waiver and eight amendment, payout statement, further email extension;	0.40
2024-09-20	RHawk	Correspondence with E. Golden re security opinion;	0.10
2024-09-20	SKelly	Drafting of factum in support of motion for approval and vesting order re Elevate APS;	3.00
2024-09-20	EG	emails and calls with EQ, Elm, Bennett Jones. Chad and KSV re latest APA issues (disclaimer/assumption plan, LC, Westmount subordination); communications with Kym and Steve re opinion and Westmount	4.30

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date:

October 21, 2024

Matter: Elevate Condominiums

Invoice Number:

806652

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		subordination issue; review and revise opinion re same; emails with Westmount re payout, purchaser letter and DRP details; conference call with Westmount and KSV; emails b/w KSV and Gentai re disclaimer/assumption plan; payout statements from CLMS and emails b/w Dorr and Gentai re same; communications with BJ, KSV and S. Jeffery re proposed eighth amendment;	
2024-09-20	SJ	Review Westmount priority agreement and emails from and to K. Stasiuk and E. Golden; telephone calls with E. Golden; email from C. Ferencz - review revised waiver and amending agreement;	0.60
2024-09-20	KS	various email and telephone correspondence with E. Golden and S. Jeffery regarding security opinion; revising same; email correspondence regarding same;	1.00
2024-09-21	EG	emails with KSV, Bennett Jones and CMLS re potential Westmount priority issue; email with Elm, KSV and BJ re Elevate APA disclaimer/assumption plan;	2.00
2024-09-22	SKelly	Continued drafting of factum re law section on disclaimer of agreements of purchase and sale;	1.40
2024-09-22	EG	emails with A&B re status; emails with KSV and Bennett Jones re Rego disclaimer, Elevate APA purchaser disclaimer/assumption plan and letters to those Unit purchasers; status update to Osborne J; call with KSV re status and next steps;	3.80
2024-09-23	SOdes	Correspondence re draft Waiver and Eighth Amendment;	0.40
2024-09-23	SW	Telephone call with E. Golden regarding purchaser deposits and ECDI policy;	0.10
2024-09-23	EG	communications with Chad re Rego service; various communications throughout day with EQ re status and next steps; communications throughout day with Bennett Jones, Brian Dorr, CMLS, Chad and KSV re Westmount priority issue; communications with Kym and S. Jeffery re opinion and Westmount priority issue and opinion revisions; email from and to Court re motion material; email from and to Ketalars re AVO motion status; review 8th amendment to APA and provide comments on disclaimer/assumption plan; emails with Bennett Jones and KSV re same; email to BJ re draft AVO; review and revise draft KSV condo purchaser letter re Tower B; emails with Bennett Jones re letter wording; emails with BLG re same and DPR; call with KSV and EQ re status and next steps; emails with EQ, Gentai, BJ and KSV re waiver of conditions;	7.70
2024-09-23	KS	various email correspondence with E. Golden and S. Jeffery regarding security opinion; reviewing and	2.00

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Matter Number: 205172-0001

Invoice Date:

October 21, 2024

Matter: Elevate Condominiums

Invoice Number:

806652

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		revising same;	
2024-09-23	SJ	Emails from and to and telephone call with E. Golden regarding priority agreement between Gentai and Westmount; instructions to K. Stasiuk; review revised waiver and amending agreement; emails from and to C. Ferencz and M. Vininsky; conference telephone call with M. Vininsky, E. Golden and J. Chau;	1.20
2024-09-24	CK	Receipt of confirmation of execution of waiver execution; receipt of revised NOM; continue draft of NOM; review correspondence regarding Aviva/Westmount deposit return protocol; review purchaser plan regarding Towers A B and C unit purchasers; review draft security opinion; review Gentai GSA and registered security; correspondence regarding Westmount \$750k owing; receipt of comments on draft NOM and further revisions to same; draft, revise and finalize Aide Memoire; attend to service of AM on SL with NOM; provide copies of documents to judge for use on upcoming scheduling motion;	6.70
2024-09-24	SJ	Emails from and to M. Vininsky, C. Ferencz and E. Golden; telephone calls from E. Golden; instructions to S. Odes; review Gentai and Westmount commitments regarding \$750K cash collateral;	0.80
2024-09-24	EG	analyze Rego realty issue and disclaimer; communications with Chad re Rego disclaimer; revise Notice of Motion; communications with KSV, AB and BJ re same; draft Aide Memoire for hearing tomorrow; communications with KSV and Chad re same; emails with Denise re DRP and letters; emails with KSV re same and priority payments schedule for APA; detailed email to Osborne J. re update for tomorrow; finalize NOM and Aide Memoire; revise email to SL re service; email to Rego re same; communications with Kym and Steve re security opinion issues: review and revise same; communications with BJ, Blaneys and KSV re finalizing 8th and final APA amendment; review additional document from BJ re same; emails and calls with KSV, Blaneys and BJ re potential Westmount priority issue; emails with BLG re same;	8.80
2024-09-24	KS	revising security opinion; email correspondence with E. Golden and S. Jeffery regarding same; various email correspondence with E. Golden and S. Jeffery regarding Westmount security documents;	0.70
2024-09-24	SOdes	Correspondence re final draft of waiver and eighth amendment, waiver time and amendment time, closing documents; Compiled waiver and eighth amendment;	0.30
2024-09-25	KS	email correspondence with E. Golden regarding PPSA	1.00

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<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		registrations; email correspondence with E. Golden and S. Jeffery regarding opinion; revising same; email correspondence with R. Hawkins and S. Odes regarding closing; discussion with S. Odes regarding same;	
2024-09-25	SOdes	Review of agreement of purchase and sale; Prepared list of documents for closing; Correspondence re list of documents and closing;	1.40
2024-09-25	EG	prepare for hearing; communications with Chad re service and Service List additions; emails from Rego re its initial position on disclaimer motion; emails from and to COR and Dean Lane re AVO and holdback; communications mortgagees' counsel re same; emails with debtor counsel re hearing; communications with KSV re issues and hearing; attend hearing; communications with KSV post hearing; email to BLG re DRP and Westmount priority issue; email from Torys with revised DRP; communications with Kym/Steve re opinion; communications with EQ re status; review Endorsement of Osborne J; emails to and from Osborne J to fix typos in Endorsement;	6.20
2024-09-25	RHawk	Correspondence with K. Stasiuk and S. Odes re review of APS and list of documents; review of APS; reviewed and revised list of documents;	0.80
2024-09-26	SOdes	Correspondence with purchaser's counsel re closing agenda; Updated closing agenda;	0.40
2024-09-26	SJ	instructions to K. Stasiuk regarding agenda; emails from M. Vininsky and E. Golden;	0.10
2024-09-26	KS	reviewing list of closing documents; email correspondence with S. Jeffery regarding same; revising closing agenda; email correspondence with S. Odes regarding same; email correspondence with E. Golden regarding security opinion; revising same; email correspondence with E. Golden regarding same;	1.00
2024-09-26	EG	communications with Chad KSV re DRP and Condo Purchaser letters; emails from and to BLG and Torys re same and potential Westmount priority over Gentai; review and revise updated second report from KSV; communications with BJ re factum for AVO ; communications with Kym/Steve re opinion; emails with EQ and KSV re LC;	4.20
2024-09-27	EG	review final security opinion post Westmount; communications with Kym and KSV re same; revisions to and finalizing second report, NOM, condo purchaser letters; communications with and b/w KSV and Kopach re same; commuications with Torys, BLG and KSV re DRP and amend motion docs accordingly; instructions to Kopach re emails to unit purchasers	7.80

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<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2024-09-27	CK	and SL re motion record and related letters; Correspondence regarding draft deposit return protocol; revise and finalize notice of motion; revise and finalize Tower A, B and C letters to purchasers; draft correspondence to service list, to Tower A purchasers, Tower B purchasers and Tower C purchasers regarding upcoming motion, and purchasers' plan for pre-construction APSs; attend on call with counsel for O'Connor regarding position on upcoming motion;	6.50
2024-09-27	SOdes	Attendance to drafting closing documents;	2.80
2024-09-27	KS	email correspondence with E. Golden regarding security opinion; revising same; instructing S. Li to finalize same; email correspondence with E. Golden regarding same;	0.50
2024-09-28	EG	analysis of COR holdback claim; revise factum for same;	1.80
2024-09-30	EG	communications with BLG and KSV re status of DRP; emails from COR and Dean lane re their positions on AVO: update to Bennett Jones re status of same and COR/Dean Lane; revise factum;	2.20
2024-09-30	CK	Review and commence revisions to draft factum; review AVO regarding Rego disclaimer; correspondence to Rego regarding addition to SL; further factum revisions regarding Dean Lane and COR claims; correspondence from lawyer for Dean Lane regarding non-opposition to pending AVO;	3.00
<b>Total</b>			<b>224.60</b>

**Timekeeper Summary**

<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Golden, Eric	Partner	95.80	850.00	81,430.00
Jeffery, Steven	Partner	5.40	850.00	4,590.00
Kopach, Chad	Partner	62.00	650.00	40,300.00
Stasiuk, Kym	Partner	16.40	575.00	9,430.00
Wolfson, Shawn	Partner	0.60	800.00	480.00
Bansal, Gurwinder	Associate	0.50	350.00	175.00
Hawkins, Rob	Associate	3.90	375.00	1,462.50
Kelly, Steven	Associate	5.60	350.00	1,960.00
Odes, Shaun	Associate	8.70	350.00	3,045.00
Kearns, Dawn	Clerk	0.50	350.00	175.00
Kroupis, John	Clerk	1.00	290.00	290.00

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<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Leitgeb, Pauline	Law Clerk	22.60	300.00	6,780.00
Li, Sherry	Law Clerk	1.40	225.00	315.00
Santos, Ana	Clerk	0.20	300.00	60.00
<b>Total</b>		<b>224.60</b>		<b>\$150,492.50</b>

**Disbursement Summary**

<u>Description</u>	<u>Amount</u>
Computer Searches - R.E. (Teraview)	65.25
Computer Searches - R.E. (Teraview) * - No-Tax	31.35
Cyberbahn Agent Service Fee	120.05
Filing Fees* - Non-Taxable	56.00
Municipal Inquiries* - Non-Taxable	85.00
Search - Corporate	14.00
Search - Corporate* - Non-Taxable	64.70
<b>Total</b>	<b>\$436.35</b>

\*HST is not charged



Blaney McMurtry LLP | Lawyers  416-593-1221  
 2 Queen Street East | Suite 1500  
 Toronto, Ontario M5C 3G5  Blaney.com

KSV Advisory  
 220 Bay Street, 13th Floor  
 P.O. Box 20  
 Toronto ON M5J 2W4

Invoice Date: October 21, 2024  
 Invoice Number: 806652  
 Matter Number: 205172-0001  
 HST Number: R1194444149

Attention: Elevate Condominiums

### REMITTANCE COPY

#### Elevate Condominiums

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Balance Due</u>
<u>Current Invoice</u>		
2024-10-21	806652	\$170,518.78
<b>Balance Due</b>		<b>\$170,518.78</b>

**Please Remit to:** **To pay by Visa, Mastercard or Amex**  
 please [Click here to pay](#)

To ensure that your payment is applied correctly, please send us an email, including the invoice number(s) being paid and the file number, to: [clientservices@blaney.com](mailto:clientservices@blaney.com)

**To pay by Wire (CAD):**  
 TD Canada Trust, Bank No. 004, Transit No. 10252,  
 General Account No. 0680-5215022  
 Swift Code: TDOMCATTOR

**For USD Payments:**  
 Bank No: 004; Transit No: 10252  
 Beneficiary Acct Name: Blaney McMurtry LLP  
 2 Queen Street East Suite 1500 Toronto ON Canada  
 USD General Acct: 0680-7309161  
 Swift Code: BDF AUS3NXXX  
 ABA Routing No: 026009593  
 US Intermediary Bank: Bank of America New York, NY

**(Please Reference Invoice Number)**

This is Exhibit "C" referred to in the Affidavit of Chad Kopach sworn May 21, 2026.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive style with a large, looped "V" at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**KELLY VICKERS (P13560)**

KSV Advisory  
220 Bay Street, 13th Floor  
P.O. Box 20  
Toronto ON M5J 2W4

Invoice Date: November 25, 2024  
Invoice Number: 809706  
Matter Number: 205172-0001  
Client Number: 205172  
HST Number: R1194444149

Attention: Elevate Condominiums

## INVOICE

Matter: Elevate Condominiums

*To our professional services up to and including November 25, 2024.*

	Tax Rate	Amount (CAD)
Professional Fees	13.00%	97,120.50
<b>Costs (Taxable)</b>		
Courier	13.00%	231.85
Cyberbahn Agent Service Fee	13.00%	28.80
<b>Costs (Non-Taxable)</b>		
Filing Fees* - Non-Taxable		16.00
	Subtotal	97,397.15
	Tax @ 13.00%	12,659.55
	<b>Amount payable</b>	<b>\$110,056.70</b>

**BLANEY McMURTRY LLP**

Eric Golden  
E. & O.E

### Invoice due on receipt

**Terms:** Terms: Payment upon receipt. Interest as allowed in the Solicitors Act at a rate of 12.0% per annum, calculated monthly will be added to all amounts overdue 30 days or more.

Matter Number: 205172-0001

Invoice Date: November 25, 2024

Matter: Elevate Condominiums

Invoice Number: 809706

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2024-10-01	EG	review and revise factum; communications with Kopach re same; communications with KSV, BJ and A&B re same; further revisions to factum; communications with BJ and Chad re AVO and ancillary Order; email to BLG re status and revised and updated DRP from BLG; communications with SJ and BJ re deposits; review and revise ancillary order;	5.20
2024-10-01	SKelly	Review of agreements of purchase and sale of unit holders re subordination clause and no registration on title in furtherance of drafting of factum; Confirmation of applicable caselaw re right of receiver to disclaim non-APS contracts in receivership proceedings;	1.90
2024-10-01	RHawk	Review of draft closing documents; revised same; correspondence with S. Odes re same;	0.70
2024-10-01	SJ	Telephone call from J. van Gent regarding Westmount and deposits; emails to and from M. Vininsky; email to E. Golden;	0.20
2024-10-01	KS	reviewing security documents contained in court record; email correspondence with C. Kopach regarding same; reviewing unit purchase agreements and factum language; email correspondence with C. Kopach regarding same;	1.00
2024-10-01	CK	Further revisions to draft factum regarding disclaimer of Unit APSs and Rego Listing Agreement and law on lien discharge; revisions to draft AVO and draft ancillary order; correspondence to SZ and SM regarding factum; comments from Receiver regarding factum and draft orders; attend on call with lien claimant counsel regarding next steps following issuance of AVO;	8.80
2024-10-01	SOdes	Continued attendance to DRA; Review of purchaser's closing documents; Updated receiver's closing documents; Updated closing agenda;	1.30
2024-10-02	KS	reviewing draft closing documents; email correspondence with S. Jeffery regarding same; email correspondence with S. Odes regarding same;	0.40
2024-10-02	EG	emails with BJ and KSV re updated AVO, ancillary order and factum; communications with Kopach re same;	0.30
2024-10-02	SKelly	Finalization of factum re approval and vesting order, distribution, and denial of liens;	0.70
2024-10-02	SOdes	Correspondence re closing documents; Updated closing documents to reflect incorporation of purchaser;	0.60
2024-10-02	SJ	Review letters regarding Westmount deposits; emails to and from J. van Gent; email to M. Vininsky; instructions to K. Stasiuk regarding closing	0.70

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<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		documents;	
2024-10-02	RHawk	Phone call with S. Odes re draft closing documents; review of closing documents;	0.40
2024-10-02	JK	Conducted Corporate searches on 1584821 Ontario Inc. and on 2045052 Ontario Corporation;	0.20
2024-10-02	CK	Further draft of factum regarding upcoming motion date; receipt of comments from counsel to lenders; review comments on draft orders and revisions to same; correspondence exchanged with receiver regarding comments on final draft of factum and orders; instructions to SK regarding citations and backpage;	2.80
2024-10-03	SOdes	Email to M. Vininsky re draft closing documents;	0.10
2024-10-03	CK	Correspondence with unit purchasers regarding alternative addresses for service; coordinate with KV regarding same; further revisions to and finalize factum; revise and finalize draft AVO and draft distribution and ancillary order; attend on call with lawyer for O'Connor; confirm settlement for temporary power claim; attend on multiple telephone conversations with unit purchasers in Towers A, B and C regarding sales plan, termination/disclaimer and deposit return protocol; review and revise DRP and correspondence to counsel for insurers; correspondence to Rego regarding intention to disclaim listing agreement; receipt and review draft supplement to second report;	8.70
2024-10-03	SOdes	Email to purchaser's counsel confirming no comments on assignment and assumption of agreement of purchase and sale;	0.10
2024-10-03	RHawk	Correspondence with client and S. Odes re closing documents;	0.20
2024-10-03	SJ	Emails from and to E. Golden regarding Westmount; instructions to K. Stasiuk; email to J. van Gent regarding deposits;	0.20
2024-10-03	KS	email correspondence with S. Odes regarding draft closing documents; email correspondence with S. Jeffery regarding closing cost schedule; revising statements of adjustments and funds; email correspondence with S. Jeffery regarding same; email correspondence with E. Golden regarding same;	1.10
2024-10-03	SOdes	Email to M. Vininsky re confirming no comments on purchaser's draft assignment and assumption of agreement of purchase and sale;	0.10
2024-10-03	EG	revise factum and AVO/Ancillary Order; communications with KSV, Bennett Jones and Chad re same; emails to from BLG/Torys re DRP; emails	3.80

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<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		with Steve Jeffery and KSV re same re DRP; communications with Chad re same and proposed revisions to latest draft of DRP; briefly review draft closing docs and emails with Steve Jeffery, Shaun and KSV re same and deposits/Westmount; review and revise supp second report; communications with Chad re same; communications with Kym and Steve J. re updated SOA and SOF; communications with Kopach re email to Rego and service of factum today;	
2024-10-04	KS	reviewing proposed changes to closing documents; email correspondence with S. Odes regarding same;	0.90
2024-10-04	SOdes	Email from purchaser's counsel re closing documents;	0.10
2024-10-04	EG	email with BLG/Torys re finalization of DRP; communications with KSV re same; further revisions to draft AVO and ancillary order; revise and finalize factum accordingly; communications with Kym and Steve J. re updated SOA and SOF;	3.20
2024-10-04	CK	Review, revise and finalize supplementary report; review and redact APS; finalize factum for service; draft service emails to unit purchaser groups; attend on multiple calls with unit purchasers regarding status of agreements following closing and claims under anticipated DRP; attend on call with lawyer for Classic Tile regarding status of agreement with Elm post-closing; correspondence exchanged with lawyer for Gillam regarding purported holdback claim for pre-FA services, and regarding Herc settlement; attend on call with lawyer for Gillam regarding contents of Gillam accounting, and need for documentation to prove Herc settlement and waiver or assignment of lien rights; correspondence to lawyers for lenders regarding final versions of AVO and Distribution/Ancillary Order;	6.70
2024-10-04	SOdes	Reviewed revised closing documents and prepared comments;	0.60
2024-10-06	CK	Prepare comparison versions of AVO (to APS version, and to model order); correspondence to service list with AVO and ancillary order; receipt of correspondence and voicemail messages from unit purchasers; commence preparation for upcoming hearing regarding disallowance of lien claims;	3.50
2024-10-07	SJ	Emails and telephone call from E. Golden; telephone call and emails from and to J. Helmstadter and emails to and from E. Golden and from M. Vininsky;	0.80
2024-10-07	CK	Revisions to version of factum for upload onto Case Center; attend on calls with prospective Tower B and C purchasers; correspondence exchanged with Tower A purchaser; attend on call with lawyer for Classic Tile lawyer; correspondence to Kimmel J. regarding motion	4.90

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<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		proceeding unopposed; draft correspondence to insurers regarding questions from Tower A and B purchasers;	
2024-10-07	RHawk	Review of DRA; review of closing documents; meeting with S. Odes re same;	0.60
2024-10-07	EG	emails with KSV with updated costs tracker; communications with Blaneys lawyers re same and updated SOA/SOF; communications with KSV and BJ re same; review purchaser proposed revisions to AVO and communications with Kopach and Jeffery re same; communications with SJ re APA and excluded contracts; communications with Kopach re Herc settlement issue; prepare for motion tomorrow;	4.50
2024-10-07	KS	email correspondence with E. Golden regarding statement of adjustments and statement of funds; reviewing various email correspondence regarding same; email correspondence with E. Golden regarding closing; email correspondence with S. Odes regarding changes to closing documents;	1.20
2024-10-07	SOdes	Correspondence re signed assignment and assumption agreement re APS, revised assignment and assumption agreement re contracts, etc., closing date, statement of adjustments, closing documents, revised DRA; Review of revised DRA and prepared comments; Revised assignment and assumption agreement re contracts, etc., Revised DRA;	2.90
2024-10-08	EG	prepare for and attend motion; finalize order; communications with KSV, Dorr and EQ post hearing and next steps; review finalized order post hearing; instructions to Chad re email to Kimmel J; review updated CMLS payout; communications with KSV re updated costs tracker; communications with KSV re closing;	5.20
2024-10-08	CK	Attend on calls with unit purchasers regarding questions on next steps following AVO; attend on calls with Herc and with counsel to Gillam regarding form of distribution order; revisions to draft AVO given position of purchaser's lender; prepare for and attend on motion; revisions to draft order, and correspondence to Kimmel J. with revised draft orders;	3.80
2024-10-08	SKelly	Review of relevant caselaw and appointment order re power of court to determine priority of lien claimants;	0.50
2024-10-08	KS	email correspondence with E. Golden and C. Kopach regarding proposed changes to approval and vesting order; telephone correspondence with S. Jeffery regarding same; telephone correspondence with C. Kopach regarding same; reviewing email correspondence regarding updated payout statement;	1.10

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		revising statement of adjustments and statement of funds;	
2024-10-08	SOdes	Emails to and from purchaser's counsel re closing and revised DRA;	0.20
2024-10-09	EG	review Endorsement of Kimmel J; instructions to Kopach re notice to SL and Unit purchasers; emails with KSV re costs tracker, closing and notice to unit purchasers; emails between KSV, BJ and S. Jeffery re closing date; emails with BJ re registration of order on title;	1.50
2024-10-09	SOdes	Correspondence re settled DRA, statement of adjustments, statement of funds, closing date;	0.40
2024-10-09	CK	Attend on calls with unit purchasers; instructions to clerk regarding compilation of contact details for DRP; correspondence to lawyer for Aviva regarding final version of DRP; correspondence from lawyer for purchaser group regarding scheduling closing for October 21; correspondence to Kimmel J. regarding rescheduled closing; receipt and review of endorsement and signed orders; correspondence to service list and to unit purchasers regarding endorsement and approval of sale; correspondence with unit purchasers regarding scheduling phone calls to discuss approval;	3.90
2024-10-09	KS	reviewing various email correspondence regarding extension of closing date; revising statement of adjustments and statement of funds;	0.50
2024-10-09	SJ	Emails from E. Golden and M. Vininsky regarding closing date; emails from and to J. van Gent and M. Vininsky; instructions to S. Odes; emails from J. van Gent and J. Kim regarding updated payouts;	0.30
2024-10-10	CK	Attend on multiple calls with unit purchasers regarding rescheduled closing and next steps on DRP claim process; receipt and review of updated cost build up from Receiver;	3.60
2024-10-10	EG	email form KSV with updated costs tracker;	0.10
2024-10-11	CK	Attend on calls with Tower B purchasers regarding DRP timing;	1.10
2024-10-15	SOdes	Updated closing agenda; Prepared punch list of outstanding items; Finalized DRA; Correspondence re executed DRA and punch list of outstanding items;	0.80
2024-10-15	KS	reviewing updated cost tracker provided by client; revising statement of adjustments and statement of funds; email correspondence with E. Golden regarding same; email correspondence with S. Jeffery and S. Odes regarding punch list; revising same; instructing S. Odes regarding same; instructing S. Odes	2.00

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Invoice Number: 809706

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		regarding document registration agreement;	
2024-10-15	RHawk	Review of closing documents;	0.20
2024-10-15	SJ	Emails from and to M. Vininsky; instructions to K. Stasiuk;	0.10
2024-10-15	EG	emails from, to and b/w BJ, KSV and Blaneys re updated SOA and SOF, and Elm anticipated costs;	0.50
2024-10-16	EG	email from S. Odes re updated SOA and SOF; emails with same KSV re same and closing payout amount;	0.30
2024-10-16	SOdes	Correspondence Acknowledgment and Direction, draft application to register vesting order, statement of adjustments and interest accrued on deposit, statement of funds, receiver's certificate, verbal updates re tax/water; Updated punch list and agenda; Prepared receiver's certificate; Reviewed APS re interest on deposits;	1.40
2024-10-16	RHawk	Review of outstanding items; correspondence with S. Odes re same;	0.30
2024-10-16	KS	email correspondence with E. Golden regarding statement of adjustments and statement of funds; email correspondence with client regarding same; revising same; instructing S. Odes regarding same; email correspondence with S. Odes and R. Hawkins regarding outstanding items for closing; instructing S. Li to prepare draft ereg documents;	1.00
2024-10-17	KS	email correspondence with S. Li regarding draft ereg documents; instructing S. Li to revise same; various email correspondence with S. Odes regarding closing documents and execution of same; email correspondence with S. Odes regarding outstanding items;	0.80
2024-10-17	SOdes	Review application of vesting order and acknowledgement and direction; Revised acknowledgement and direction; Correspondence re acknowledgement and direction, application of vesting order, receiver's certificate, signed documents, statement of adjustments, wire details, flow of funds, hold back; Prepared signature package; Reviewed statement of adjustments;	2.40
2024-10-17	EG	emails b/w Blaneys and KSV re closing issues and adjustments; communications with Shawn re same;	0.40
2024-10-17	RHawk	Review of closing documents; review of A&D and EReg documents; meeting with S. Odes re the foregoing;	0.80
2024-10-17	SJ	Email from M. Vininsky regarding adjustments and instructions to S. Odes;	0.10
2024-10-17	SLi	Preparing draft AVO; email correspondences re the	0.60

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<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		same;	
2024-10-18	EG	emails with and between BJ, KSV and Blaneys re closing extension, and SOA/SOF;	0.30
2024-10-18	KS	reviewing various email correspondence from client and counsel regarding closing and outstanding items; various email and discussions with S. Odes regarding same; instructing S. Odes regarding email amendment to agreement of purchase and sale; email correspondence with purchaser counsel regarding extension of closing date; instructing S. Odes regarding changes to statement of adjustments and statement of funds;	2.30
2024-10-18	RHawk	Correspondence with all parties re closing date and documents;	0.30
2024-10-18	SOdes	Correspondence re updated statement of adjustments, updated statement of funds, KSV to pay disbursements, amending 6 month readjustment period and proposed email amending APS, punch list, revised Gentai payout statement, updated tax amount, closing date extension; Attendance to preparing email amending APS re readjustment period;	1.90
2024-10-19	SOdes	Correspondence re readjustment period;	0.20
2024-10-19	EG	emails with KSV re lien claimant payments;	0.10
2024-10-21	CK	Attend on calls with multiple unit purchasers regarding extension of time for closing; prepare for and attend on call with DB (counsel to deposit insurer) regarding form and contents of spreadsheet with depositor information; instructions to clerk regarding compilation of Tower B contact information and copies of APSs;	3.00
2024-10-21	KS	various email correspondence with S. Jeffery regarding email amendment to agreement of purchase and sale; email correspondence with S. Odes regarding same; revising statement of adjustments and statement of funds; email correspondence with S. Odes regarding same;	2.00
2024-10-21	SJ	Instructions to K. Stasiuk; email from M. Vininsky regarding adjustments;	0.30
2024-10-21	SOdes	Attendance to review of statement of funds and statement of adjustment; Correspondence re amendment to agreement of purchase and sale, statement of funds and statement of adjustment;	1.10
2024-10-21	EG	communications with Kopach re extension to closing and notice to SL;	0.10
2024-10-22	EG	emails with KSV and Blaneys re closing; review latest SOA and SOF;	0.20
2024-10-22	CK	Correspondence and telephone calls with multiple	2.80

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date: November 25, 2024

Matter: Elevate Condominiums

Invoice Number: 809706

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		Tower A, B and C purchasers; continue to compile updated contact information per communications, and instructions to clerk regarding same; correspondence regarding statement of adjustments revisions; correspondence exchanged with lien claimants regarding wire details; correspondence to deposit insurer with Tower B emails and APSs;	
2024-10-22	SOdes	Attendance to revising email amendment to agreement of purchase and sale; Attendance to updating statement of funds; Review statement of adjustments; Correspondence re email amendment to agreement of purchase and sale and updated statement of funds and statement of adjustments;	1.40
2024-10-22	KS	discussion with S. Odes regarding email amendment to agreement of purchase and sale; email correspondence with S. Odes regarding statement of funds; revising statement of adjustments; email correspondence with S. Odes regarding same;	0.50
2024-10-23	SOdes	Telephone and email correspondence re wire instructions, punch list of outstanding items, confirmation that amendment to APS has been approved by purchaser;	0.70
2024-10-23	EG	email with KSV re latest Tarion inquiry; emails b/w Blaneys and BJ re APA amendment;	0.20
2024-10-23	KS	telephone correspondence with S. Odes regarding matter status; reviewing email correspondence from purchaser counsel regarding email amendment to agreement of purchase and sale;	0.20
2024-10-23	CK	Finalize Tower A updated email list; correspondence to Deposit Insurer counsel with updated list and Tower A APSs;	0.60
2024-10-24	SOdes	Revised undertakings to readjust to reflect the new readjustment period; Correspondence re revised undertakings;	0.30
2024-10-24	KS	reviewing revised undertakings; email correspondence with S. Odes regarding same;	0.30
2024-10-25	SOdes	Correspondence re payout statements, updated punch list, receiver's certificate, signed Receiver's documents, direction re funds, statement of funds and statement of adjustment, updated e-Reg. Application for Vesting Order; Attendance to direction re funds, revising statement of adjustment and statement of funds; Updated closing agenda and punch list;	2.20
2024-10-25	KS	reviewing revised statement of adjustments and statement of funds; email correspondence with S. Odes regarding same; email correspondence with S. Odes regarding closing and punch list; email correspondence with E. Golden regarding closing and	1.60

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date: November 25, 2024

Matter: Elevate Condominiums

Invoice Number: 809706

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		outstanding items; email correspondence with S. Jeffery regarding undertaking and agreement of purchase and sale; email correspondence with client regarding same; email correspondence with purchaser counsel regarding same;	
2024-10-25	SJ	Instructions to K. Stasiuk re closing issues;	0.10
2024-10-25	RHawk	Review of matter correspondence; review of punch list;	0.20
2024-10-25	EG	emails b/w Blaneys, KSV and BJ re APA amendments and closing issues; communications with Kym re same; review updated costs tracker;	0.30
2024-10-28	SJ	Instructions to K. Stasiuk re closing issues;	0.30
2024-10-28	CK	Correspondence exchanged with purchasers counsel regarding closing; attend on call regarding documents and information required for closing; draft of correspondence to unit purchasers to be sent following closing; finalize draft and forward to purchaser counsel for review;	1.70
2024-10-28	EG	communications with Chad re update email to all Tower purchasers; instructions to CK re same; revise emails all Tower condo purchasers; emails b/w BJ, Blaneys and KSV re closing; call with KSV re same;	1.20
2024-10-28	KS	reviewing email correspondence from purchaser counsel regarding proposed changes to statement of adjustments and statement of funds; email correspondence with S. Odes regarding revised versions of same; reviewing draft direction from receiver regarding loan advance; email correspondence with S. Odes and S. Jeffery regarding same; email correspondence with client regarding same; email correspondence with S. Odes regarding closing and outstanding items; instructing assistant to prepare closing documents;	2.00
2024-10-28	SOdes	Updated statement of funds and statement of adjustments; Reviewed direction from KSV to Gentai and prepared comments; Updated direction re funds from KSV to Purchaser; Review of Purchaser's signed closing documents; Telephone and email correspondence re revised statement of funds and statement of adjustments, dispensing with KSV's undertaking to readjust, direction from KSV to Gentai, direction re funds, receiver's certificate, updated Application to Register Vesting Order, closing documents, outstanding closing matters;	3.00
2024-10-28	SLi	Updating draft AVO;	0.10
2024-10-28	RHawk	Attendance to various closing matters;	0.20
2024-10-29	SJ	Instructions to K. Stasiuk; review emails regarding	0.10

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date: November 25, 2024

Matter: Elevate Condominiums

Invoice Number: 809706

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		closing today;	
2024-10-29	CK	Correspondence exchanged with purchaser counsel regarding documentation and information required for closing; correspondence from purchaser group regarding revisions to draft unit APS purchasers; finalize correspondence in draft for review by Deposit Insurers; correspondence to DB (Deposit Insurer counsel) regarding draft correspondence, and receipt of comments on same; receipt of documentation regarding registration of AVO and instructions to file certificate; review correspondence regarding wire transfer details; correspondence to receiver regarding updated wire and other payment details for lien claimants;	5.20
2024-10-29	EG	communications with Kopach re emails re Towers a b an c; revise same; emails throughout day re closing and communications with Blaneys, BJ and KSV re same; emails and call with Blaneys and KSV re payout amounts;	2.70
2024-10-29	SOdes	Telephone and email correspondence re closing documents and closing matters; Attendance to closing documents and closing matters;	5.30
2024-10-29	KS	attending to various closing matters; various email and telephone correspondence with S. Odes regarding same; various email correspondence with purchaser counsel and client regarding same; attending to matters regarding funds disbursement and email correspondence regarding same;	3.00
2024-10-29	SLi	Reviewing wire forms; email correspondences re wires;	0.50
2024-10-30	CK	Finalize correspondence to Unit APS holders; attend on multiple calls with Unit APS holders regarding next steps, timing of next steps, and anticipated timing for payment of deposit claims;	3.20
2024-10-30	SOdes	Post-closing matters, including report book;	2.00
2024-10-30	EG	emails with and b/w Chad, Blaneys, KSV, BJ, CMLS, EQB and BLG re closing issues;	0.80
2024-10-30	KS	attending to various matters regarding transfer of closing proceeds; attending to post-closing matters; instructing S. Odes to prepare report index;	1.00
2024-10-30	SLi	Updating wire forms; email correspondences re wires;	0.50
<b>Total</b>			<b>159.30</b>

**Timekeeper Summary**

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date: November 25, 2024

Matter: Elevate Condominiums

Invoice Number: 809706

<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Golden, Eric	Partner	30.90	850.00	26,265.00
Jeffery, Steven	Partner	3.20	850.00	2,720.00
Kopach, Chad	Partner	64.30	650.00	41,795.00
Stasiuk, Kym	Partner	22.90	575.00	13,167.50
Hawkins, Rob	Associate	3.90	375.00	1,462.50
Kelly, Steven	Associate	3.10	350.00	1,085.00
Odes, Shaun	Associate	29.10	350.00	10,185.00
Kroupis, John	Clerk	0.20	290.00	58.00
Li, Sherry	Law Clerk	1.70	225.00	382.50
<b>Total</b>		<b>159.30</b>		<b>\$97,120.50</b>

**Disbursement Summary**

<u>Description</u>	<u>Amount</u>
Courier	231.85
Cyberbahn Agent Service Fee	28.80
Filing Fees* - Non-Taxable	16.00
<b>Total</b>	<b>\$276.65</b>

\*HST is not charged

KSV Advisory  
 220 Bay Street, 13th Floor  
 P.O. Box 20  
 Toronto ON M5J 2W4

Invoice Date: November 25, 2024  
 Invoice Number: 809706  
 Matter Number: 205172-0001  
 Client Number: 205172  
 HST Number: R1194444149

Attention: Elevate Condominiums

### REMITTANCE COPY

#### Elevate Condominiums

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Balance Due</u>
<u>Current Invoice</u>		
2024-11-25	809706	\$110,056.70
<b>Balance Due</b>		<b>\$110,056.70</b>

**Please Remit to:** **To pay by Visa, Mastercard or Amex**  
 please [Click here to pay](#)

To ensure that your payment is applied correctly, please send us an email, including the invoice number(s) being paid and the file number, to: [clientservices@blaney.com](mailto:clientservices@blaney.com)

**To pay by Wire (CAD):**

TD Canada Trust, Bank No. 004, Transit No. 10252,  
 General Account No. 0680-5215022  
 Swift Code: TDOMCATTOR

**For USD Payments:**

Bank No: 004; Transit No: 10252  
 Beneficiary Acct Name: Blaney McMurtry LLP  
 2 Queen Street East Suite 1500 Toronto ON Canada  
 USD General Acct: 0680-7309161  
 Swift Code: BDF AUS3NXXX  
 ABA Routing No: 026009593  
 US Intermediary Bank: Bank of America New York, NY

**(Please Reference Invoice Number)**

This is Exhibit "D" referred to in the Affidavit of Chad Kopach sworn May 21, 2026.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive style with a large, stylized "V".

---

*Commissioner for Taking Affidavits (or as may be)*

**KELLY VICKERS (P13560)**

KSV Advisory  
220 Bay Street, 13th Floor  
P.O. Box 20  
Toronto ON M5J 2W4

Invoice Date: November 30, 2024  
Invoice Number: 811888  
Matter Number: 205172-0001  
Client Number: 205172  
HST Number: R1194444149

Attention: Elevate Condominiums

## INVOICE

Matter: Elevate Condominiums

*To our professional services up to and including November 30, 2024.*

	Tax Rate	Amount (CAD)
Professional Fees	13.00%	12,830.00
	Subtotal	12,830.00
	Tax @ 13.00%	1,667.90
	<b>Amount payable</b>	<b>\$14,497.90</b>

**BLANEY McMURTRY LLP**

Eric Golden  
E. & O.E

### Invoice due on receipt

**Terms:** Terms: Payment upon receipt. Interest as allowed in the Solicitors Act at a rate of 12.0% per annum, calculated monthly will be added to all amounts overdue 30 days or more.

Matter Number: 205172-0001

Invoice Date: November 30, 2024

Matter: Elevate Condominiums

Invoice Number: 811888

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2024-11-01	CK	Receipt of correspondence from deposit insurer counsel regarding purported issues with Tower B purchaser list; instructions to clerk regarding review of contact information for Tower B purchasers; review APSs to confirm contact information; correspondence to lawyer for deposit insurer with responses to purported discrepancies; receipt of confirmation of transfer of funds to lien claimants; correspondence from counsel to purchaser group requesting comment on assignment agreement; draft response and confirm with Receiver; correspondence to lawyer for purchaser group regarding request for contact details for Tower A sales team;	2.80
2024-11-01	EG	emails with Chad re Aviva response to Unit purchasers;	0.30
2024-11-04	PLeitgeb	Reviewed notes, re: agreements of purchase and sale and discrepancies as set out in e-mail from D. Bambrough (BLG);	1.70
2024-11-04	CK	Communications from Tower A and B purchasers (x9) regarding next steps and timing; correspondence from Elm and from Gentai regarding timing for establishing contact number and email for sales team;	1.90
2024-11-05	CK	Communications with purchasers from Tower A and B regarding status of Tower A sales plan and status of deposit return protocol (and timing for initial correspondence from insurer); communications with Tower C purchasers;	1.10
2024-11-06	CK	Correspondence from Tower B purchasers regarding timing of response from insurer on claim documents submitted pursuant to deposit return protocol; compile correspondence from Tower B and C purchasers interested in purchase of Tower A units, if available; receipt of correspondence from Tower B purchasers to MNP/Aviva with documents in support of DRP claims;	2.50
2024-11-08	KS	attending to post-closing matters; email correspondence with E. Golden regarding same;	0.10
2024-11-08	PLeitgeb	Telephone conference with C. Kopach and K. Vickers;	0.30
2024-11-08	CK	Instructions to clerk regarding purported discrepancies in Tower B unit purchaser identities [REDACTED]; review APS documents for purported discrepancies in Towers A and B;	1.00
2024-11-08	EG	email from new Werner lawyer re allocation of sale funds; communications wit Kopach and KSV re same; instructions to clerk re SL amendment; review final SOA and SOF and email to new Werner lawyer re same;	0.50
2024-11-12	KS	reviewing draft report book index; emailing S. Odes with comments regarding same;	0.50

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date: November 30, 2024

Matter: Elevate Condominiums

Invoice Number: 811888

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2024-11-13	EG	communications with Chad re deposit info;	0.50
2024-11-13	PLeitgeb	Completed review of file/agreements of purchase and sale, re: discrepancies;	3.50
2024-11-13	PLeitgeb	Continued review of file/agreements of purchase and sale;	2.00
2024-11-13	CK	Correspondence between Tower A and B purchasers, and MNP/Aviva, regarding DRP claim status;	0.40
2024-11-14	PLeitgeb	E-Mail to C. Kopach and K. Vickers reporting on results of review of file/agreement of purchase and sale documents, re: Tower A discrepancies;	2.50
2024-11-15	EG	email from and to counsel for debtors re KSV release of the guarantees;	0.20
2024-11-15	CK	Correspondence exchanged with Tower A purchaser regarding status of sales team contact, and timing of contact;	0.10
2024-11-20	CK	Draft correspondence to lawyer for purchaser group regarding cost and timing for McCarter Grespan to obtain documentation and information required for Tower A sales process; review correspondence from J.Weir regarding McCarter Grespan anticipated timing and costs;	1.10
2024-11-21	CK	Correspondence with multiple Tower A and B purchasers regarding status of sales plan and DRP claims process; correspondence exchanged with Elm (E. Lebovic) with copies of correspondence sent to purchasers of Towers A, B and C;	0.60
2024-11-27	CK	Attend on calls (x3) with Tower A and C purchasers; correspondence to Tower A purchaser regarding contact details for Tower A sales team; voicemail from former counsel to debtors regarding new owner requests for documents;	1.00
2024-11-29	EG	email from and to KSV re muni tax arrears; email from Shaun re same;	0.10
<b>Total</b>			<b>24.70</b>

**Timekeeper Summary**

<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Golden, Eric	Partner	1.60	850.00	1,360.00
Kopach, Chad	Partner	12.50	650.00	8,125.00
Stasiuk, Kym	Partner	0.60	575.00	345.00
Leitgeb, Pauline	Law Clerk	10.00	300.00	3,000.00
<b>Total</b>		<b>24.70</b>		<b>\$12,830.00</b>

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

KSV Advisory  
 220 Bay Street, 13th Floor  
 P.O. Box 20  
 Toronto ON M5J 2W4

Invoice Date: November 30, 2024  
 Invoice Number: 811888  
 Matter Number: 205172-0001  
 Client Number: 205172  
 HST Number: R1194444149

Attention: Elevate Condominiums

### REMITTANCE COPY

#### Elevate Condominiums

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Balance Due</u>
<u>Current Invoice</u>		
2024-11-30	811888	\$14,497.90
<b>Balance Due</b>		<b>\$14,497.90</b>

**Please Remit to:** **To pay by Visa, Mastercard or Amex**  
 please [Click here to pay](#)

To ensure that your payment is applied correctly, please send us an email, including the invoice number(s) being paid and the file number, to: [clientservices@blaney.com](mailto:clientservices@blaney.com)

**To pay by Wire (CAD):**  
 TD Canada Trust, Bank No. 004, Transit No. 10252,  
 General Account No. 0680-5215022  
 Swift Code: TDOMCATTOR

**For USD Payments:**  
 Bank No: 004; Transit No: 10252  
 Beneficiary Acct Name: Blaney McMurtry LLP  
 2 Queen Street East Suite 1500 Toronto ON Canada  
 USD General Acct: 0680-7309161  
 Swift Code: BDF AUS3NXXX  
 ABA Routing No: 026009593  
 US Intermediary Bank: Bank of America New York, NY

**(Please Reference Invoice Number)**

This is Exhibit "E" referred to in the Affidavit of Chad Kopach sworn May 21, 2026.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive style with a large, looped "V".

---

*Commissioner for Taking Affidavits (or as may be)*

**KELLY VICKERS (P13560)**

KSV Advisory  
220 Bay Street, 13th Floor  
P.O. Box 20  
Toronto ON M5J 2W4

Invoice Date: January 31, 2025  
Invoice Number: 816786  
Matter Number: 205172-0001  
Client Number: 205172  
HST Number: R119444149

Attention: Elevate Condominiums

## INVOICE

Matter: Elevate Condominiums

*To our professional services up to and including January 31, 2025.*

	Tax Rate	Amount (CAD)
Professional Fees	13.00%	12,162.50
	Subtotal	12,162.50
	Tax @ 13.00%	1,581.13
	<b>Amount payable</b>	<b>\$13,743.63</b>

**BLANEY McMURTRY LLP**

Eric Golden  
E. & O.E

### Invoice due on receipt

**Terms:** Terms: Payment upon receipt. Interest as allowed in the Solicitors Act at a rate of 12.0% per annum, calculated monthly will be added to all amounts overdue 30 days or more.

Matter Number: 205172-0001

Invoice Date:

January 31, 2025

Matter: Elevate Condominiums

Invoice Number:

816786

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2024-12-02	CK	Correspondence exchanged with Tower A purchaser regarding response to Tower A Sales Plan;	0.30
2024-12-03	CK	Correspondence with Tower A purchasers (x2) regarding anticipated timing of contact by sales team;	0.20
2024-12-05	EG	email from Skyline lawyer re settlement payments from debtor; communications with Kopach re same; revise email to Skyline;	0.10
2024-12-05	CK	Correspondence from unsecured judgment creditor with request for information on restart of settlement payments; draft response including appointment order and stay provisions therein, request for particulars of judgment, and directing inquiry to lawyer for debtors to address questions following receiver's discharge;	0.70
2024-12-08	CK	Communications with Tower A purchaser regarding contact information for Tower A sales team;	0.40
2024-12-09	CK	Communications with Tower A purchasers regarding status of sales plan;	0.50
2024-12-10	EG	email from KSV with updated costs tracker; review same;	0.10
2024-12-11	EG	email from and to Chad re Tower C [REDACTED]	0.10
2024-12-11	CK	Review correspondence from estate trustee of Tower C; draft correspondence to counsel to purchaser group regarding estate trustee request for return of deposit for [REDACTED]	0.70
2024-12-12	EG	emails from Elm and Garfinkle Biderman re Tower A APS's; communications with Kopach re same;	0.10
2024-12-13	EG	email from and to BJ re Jan 23 motion to extend APA disclaimer deadline re Tower A;	0.10
2024-12-16	CK	Attend on call with Tower A purchaser regarding status of Tower A Sales Plan; receipt of request for documents from purchaser group's lawyer;	0.50
2024-12-19	EG	communications with Chad re Elm requests;	0.10
2025-01-03	CK	Correspondence exchanged with Tower A purchasers regarding status of negotiations, and timing for determination from new owner group;	0.40
2025-01-13	EG	email from Garfinkle Biderman re Unit APS purchaser details; email to same re same; email to and from BJ re status of purchaser disclaimer extension request	0.50
2025-01-13	CK	Attend on call with Unit purchaser (Tower A); correspondence exchanged with Tower B unit holders regarding pending deposit return applications; correspondence from M. Frost (counsel to new owner group) regarding deposit form information; correspondence to M. Frost and to S. Zweig regarding proposed motion to extend time to proceed with Tower	1.60

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date:

January 31, 2025

Matter: Elevate Condominiums

Invoice Number:

816786

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		A Sales Process;	
2025-01-14	EG	review draft Order; communications with Kopach, BJ and KSV re same; revise email to BJ re Order and motion; review draft affidavit and communications with Kopach, BJ and KSV re same;	1.40
2025-01-14	CK	Correspondence from owner's counsel regarding motion to extend time to complete Tower A Sales Plan; reply correspondence with updated contact details for purchasers; correspondence with Tower A unit purchasers with Tower A sales team contact information;	0.70
2025-01-15	KS	email correspondence with E. Golden regarding agreement of purchase and sale and cash security held by city; reviewing file and agreement of purchase and sale; various email correspondence with E. Golden regarding same;	1.30
2025-01-15	EG	emails with KSV re Elevate motion position; call with BJ re same; emails to and from K. Stasiuk re Kitchener LC and obligations/ownership under Elevate APA; emails with KSV re same;	1.10
2025-01-16	EG	briefly review extension motion;	0.30
2025-01-21	EG	emails with KSV re Kitchener LC;	0.10
2025-01-21	EG	communications with KSV, BJ and Chad re service and responses to date	0.20
2025-01-22	EG	review purchaser Motion Record and Westmount responding record;	0.80
2025-01-23	CK	Correspondence regarding opposition from Westmount; memorandum regarding outcome of motion to extend time to complete Tower A Sales Plan;	0.40
2025-01-23	EG	complete review of purchaser motion material and attend motion re extension of AVO disclaimer date for Tower A; emails with BJ re status of Westmount-purchaser issues; communications with KSV and BJ following motion; review Endorsement; communications with KSV re payment of property taxes following closing;	1.50
2025-01-23	KS	various email and telephone correspondence with emailing regarding realty tax payment and post-closing matters; reviewing file; email correspondence with client regarding realty tax payment; instructing S. Li regarding same;	1.00
2025-01-23	SLi	Phone call with City re tax payment; preparing accounting forms and letter to City re taxes;	0.60
2025-01-25	EG	review Kym emails re City LC; email to KSV re same;	0.90
2025-01-27	EG	emails b/w City and KSV re LC; emails with KSV re	0.30

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date: January 31, 2025

Matter: Elevate Condominiums

Invoice Number: 816786

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		same; call from Dorr re disclaimer motion;	
<b>Total</b>			<b>17.00</b>

**Timekeeper Summary**

<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Golden, Eric	Partner	7.70	850.00	6,545.00
Kopach, Chad	Partner	6.40	650.00	4,160.00
Stasiuk, Kym	Partner	2.30	575.00	1,322.50
Li, Sherry	Law Clerk	0.60	225.00	135.00
<b>Total</b>		<b>17.00</b>		<b>\$12,162.50</b>

KSV Advisory  
220 Bay Street, 13th Floor  
P.O. Box 20  
Toronto ON M5J 2W4

Invoice Date: January 31, 2025  
Invoice Number: 816786  
Matter Number: 205172-0001  
Client Number: 205172  
HST Number: R119444149

Attention: Elevate Condominiums

### REMITTANCE COPY

#### Elevate Condominiums

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Balance Due</u>
<u>Current Invoice</u>		
2025-01-31	816786	\$13,743.63
<b>Balance Due</b>		<b>\$13,743.63</b>

**Please Remit to:** **To pay by Visa, Mastercard or Amex**  
please [Click here to pay](#)

To ensure that your payment is applied correctly, please send us an email, including the invoice number(s) being paid and the file number, to: [clientservices@blaney.com](mailto:clientservices@blaney.com)

**To pay by Wire (CAD):**  
TD Canada Trust, Bank No. 004, Transit No. 10252,  
General Account No. 0680-5215022  
Swift Code: TDOMCATTOR

**For USD Payments:**  
Bank No: 004; Transit No: 10252  
Beneficiary Acct Name: Blaney McMurtry LLP  
2 Queen Street East Suite 1500 Toronto ON Canada  
USD General Acct: 0680-7309161  
Swift Code: BDF AUS3NXXX  
ABA Routing No: 026009593  
US Intermediary Bank: Bank of America New York, NY

**(Please Reference Invoice Number)**

This is Exhibit "F" referred to in the Affidavit of Chad Kopach sworn May 21, 2026.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive style with a large, stylized "K" and "V".

---

*Commissioner for Taking Affidavits (or as may be)*

**KELLY VICKERS (P13560)**

KSV Advisory  
 220 Bay Street, 13th Floor  
 P.O. Box 20  
 Toronto ON M5J 2W4

Invoice Date: May 31, 2025  
 Invoice Number: 827214  
 Matter Number: 205172-0001  
 HST Number: R119444149

Attention: Elevate Condominiums

## INVOICE

Matter: Elevate Condominiums

*To our professional services up to and including May 31, 2025.*

	Tax Rate	Amount (CAD)
Professional Fees	13.00%	14,370.00
<b>Costs (Taxable)</b>		
Colour Copies	13.00%	1.50
Cyberbahn Agent Service Fee	13.00%	14.40
Courier	13.00%	35.56
Agent's Fees & Disbursements	13.00%	65.00
<b>Costs (Non-Taxable)</b>		
Filing Fees* - Non-Taxable		8.00
	Subtotal	14,494.46
	Tax @ 13.00%	1,883.24
	<b>Amount payable</b>	<b>\$16,377.70</b>

**BLANEY McMURTRY LLP**

Eric Golden  
 E. & O.E

### Invoice due on receipt

**Terms:** Terms: Payment upon receipt. Interest as allowed in the Solicitors Act at a rate of 12.0% per annum, calculated monthly will be added to all amounts overdue 30 days or more.

Matter Number: 205172-0001

Invoice Date:

May 31, 2025

Matter: Elevate Condominiums

Invoice Number:

827214

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2025-02-07	JK	Conducted Federal and Ontario Corporate searches on 9702920 Canada Inc.;	0.20
2025-02-11	EG	briefly review M. Young affidavit for Feb 20 disclaimer motion;	0.30
2025-02-19	EG	email from BJ re Chris Abbott disclaimer and hearing tomorrow; communications with Kopach re same;	0.20
2025-02-20	EG	review Gentai extension motion supp. affidavit; review initial affidavit; emails with KSV re same; attend hearing; review Endorsement; communications with KSV, Elm and Dorr re same;	2.50
2025-02-25	EG	email from BLG re DRP; instructions to Kopach re same and emails b/w Chad and BLG re same; email to BLG re same; communications with KSV re same;	0.30
2025-02-27	EG	email from and to KSV re status with BLG position;	0.10
2025-02-28	EG	review and revise updated disclaimer; communications with Chad and KSV re same; email to BLG re same;	1.50
2025-03-05	CK	Receipt of revised disclaimer wording from BLG; finalize wording, and correspondence to Receiver with redrafted disclaimer and contact details for MNP (agent for processing DRP);	0.60
2025-03-05	EG	emails from and to BLG with revisions to disclaimer; communications with Kopach re same and review and revise disclaimer; emails with KSV re same;	0.50
2025-03-19	CK	Attend on call with Tower A purchaser;	0.20
2025-04-08	EG	emails with KSV and communications with Kopach re Elm purchaser plan to disclaim Tower A APS's and have Unit purchasers direct funds from insurer to Elm;	0.50
2025-04-11	EG	review and revise response to KSV re proposed disclaimer of latest Unit APS following Elm-unit purchaser settlement; communications with Koapch re same;	0.30
2025-04-15	EG	communications with Chad re latest disclaimer request from Elm; revise email from same to BJ; emails from BJ re latest disclaimer request;	0.30
2025-04-15	CK	Receipt and review of new APS for existing Tower A purchaser; correspondence exchanged with counsel for new owner (SZ at BJ);	0.80
2025-04-21	EG	communications with Kopach re email to Garfinkles re purchaser APS's and direction of deposit return monies;	0.10
2025-04-21	CK	Correspondence exchanged with counsel to new buyers (MF at GB) regarding issues with Schedule Y to APS for Tower A replacement APSs; attend on call with MF regarding discussions with BLG to address concerns;	0.50

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date:

May 31, 2025

Matter: Elevate Condominiums

Invoice Number:

827214

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2025-04-22	EG	communications with Koapch re his call with Garfinkkes; revise email to KSV re same and disclaimers; revise draft email to BJ and Garfinkles re same;	0.80
2025-04-22	CK	Correspondence to Receiver regarding potential loophole given wording of new Tower A APS, and draft correspondence to co-counsel to new owner (BJ and Garfinkle);	1.20
2025-04-23	EG	communications with KSV and Kopach re disclaimers and Unit APS's;	0.30
2025-04-24	CK	Correspondence exchanged with MF (Garfinkles, for new owners) regarding issues with new unit APSs for former Tower A purchasers, and Receiver's position regarding processing disclaimers when and as directed;	0.30
2025-04-24	EG	communications with Kopach re response to Elm counsel re disclaimers; review and revise same;	0.30
2025-04-25	CK	Correspondence exchanged with lawyer for new owner group (MF at GB) regarding next steps with disclaimers and timing given extended disclaimer deadline; correspondence exchanged with Receiver (BL) regarding next steps and holding off on issuing notices of disclaimer pending confirmation from MF;	0.80
2025-04-25	EG	communications with Kopach and KSV re disclaimers;	0.20
2025-04-28	CK	Prepare for and attend on call with counsel for purchasers (GF) and with counsel for Aviva regarding issues arising from failure to obtain irrevocable direction; receipt of correspondence from lawyer for new purchasers (GF) regarding need to obtain order directing Aviva to pay proceeds to GF;	1.40
2025-05-05	EG	revise disclaimer email to Garfinkles; instructions to Kopach re steps going forward;	0.30
2025-05-07	EG	call with KSV re status of disclaimers;	0.10
2025-05-12	CK	Correspondence from receiver regarding status of discussions with counsel to ownership group; draft correspondence to Garfinkle; correspondence from Zweig regarding draft order to address [REDACTED];	0.90
2025-05-12	EG	instructions to Kopach re follow up to Garfinkles re disclaimers; emails b/w Blaneys, KSV and Garfinkles re same;	0.20
2025-05-15	EG	email from BJ re draft order; emails from BLG and KSV re same; review same and communications with Kopach re same; email to BJ/KSV/BLG re same;	0.60
2025-05-15	CK	Receipt and review of correspondence from owner counsel and from Aviva counsel regarding proposed motion seeking order directing Aviva/MNP to pay	1.10

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date:

May 31, 2025

Matter: Elevate Condominiums

Invoice Number:

827214

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		Tower A DRP funds to new owner, and not to unit purchasers; review draft order; comments regarding same; correspondence from receiver regarding draft language in order and request to review affidavit;	
<b>Total</b>			<b>17.40</b>

**Timekeeper Summary**

<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Golden, Eric	Partner	9.40	900.00	8,460.00
Kopach, Chad	Partner	7.80	750.00	5,850.00
Kroupis, John	Clerk	0.20	300.00	60.00
<b>Total</b>		<b>17.40</b>		<b>\$14,370.00</b>

**Disbursement Summary**

<u>Description</u>	<u>Amount</u>
Agent's Fees & Disbursements	65.00
Colour Copies	1.50
Courier	35.56
Cyberbahn Agent Service Fee	14.40
Filing Fees* - Non-Taxable	8.00
<b>Total</b>	<b>\$124.46</b>

\*HST is not charged

KSV Advisory  
 220 Bay Street, 13th Floor  
 P.O. Box 20  
 Toronto ON M5J 2W4

Invoice Date: May 31, 2025  
 Invoice Number: 827214  
 Matter Number: 205172-0001  
 HST Number: R119444149

Attention: Elevate Condominiums

### REMITTANCE COPY

#### Elevate Condominiums

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Balance Due</u>
<u>Current Invoice</u>		
2025-05-31	827214	\$16,377.70
<b>Balance Due</b>		<b><u>\$16,377.70</u></b>

**Please Remit to:**

**To pay by Visa, Mastercard, Amex, or Interac e-Transfer please [Click here to pay](#)**

*To ensure that your payment is applied correctly, please send us an email, including the invoice number(s) being paid and the file number, to: [clientservices@blaney.com](mailto:clientservices@blaney.com)*

**To pay by Wire (CAD):**

TD Canada Trust, Bank No. 004, Transit No. 10252,  
 General Account No. 0680-5215022  
 Swift Code: TDOMCATTOR

**For USD Payments:**

Bank No: 004; Transit No: 10252  
 Beneficiary Acct Name: Blaney McMurtry LLP  
 2 Queen Street East Suite 1500 Toronto ON Canada  
 USD General Acct: 0680-7309161  
 Swift Code: BOFAUS3NXXX

ABA Routing No: 026009593

US Intermediary Bank: Bank of America New York, NY

**(Please Reference Invoice Number)**

This is Exhibit "G" referred to in the Affidavit of Chad Kopach sworn May 21, 2026.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive style with a large, looped "V" at the end.

---

*Commissioner for Taking Affidavits (or as may be)*

**KELLY VICKERS (P13560)**

KSV Advisory  
220 Bay Street, 13th Floor  
P.O. Box 20  
Toronto ON M5J 2W4

Invoice Date: October 14, 2025  
Invoice Number: 836670  
Matter Number: 205172-0001  
HST Number: R119444149

Attention: Elevate Condominiums

## INVOICE

Matter: Elevate Condominiums

*To our professional services up to and including July 31, 2025.*

	<b>Tax Rate</b>	<b>Amount (CAD)</b>
Professional Fees	13.00%	7,110.00
	Subtotal	7,110.00
	Tax @ 13.00%	924.30
	<b>Amount payable</b>	<b>\$8,034.30</b>

**BLANEY McMURTRY LLP**

Eric Golden  
E. & O.E

### Invoice due on receipt

**Terms:** Terms: Payment upon receipt. Interest as allowed in the Solicitors Act at a rate of 12.0% per annum, calculated monthly will be added to all amounts overdue 30 days or more.

Matter Number: 205172-0001

Invoice Date:

October 14, 2025

Matter: Elevate Condominiums

Invoice Number:

836670

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2025-06-01	CK	Receipt and review of affidavit and revised draft order; correspondence to all counsel regarding comments on affidavit;	0.90
2025-06-01	EG	review draft affidavit and NOM following Kopach revisions and instructions to same re next steps;	0.30
2025-06-03	EG	emails b/w KSV, BJ and BLG re motion issues;	0.10
2025-06-05	EG	email from BJ with final order and NOM; email from BLG re same; communications with Chad re same;	0.10
2025-06-06	CK	Receipt and review of draft affidavit and order; review memorandum regarding issues with proceeding absent order directing MNP/Aviva/Westmount to pay Tower A deposits directly to new owner's counsel; correspondence to relevant stakeholders regarding receiver's position on draft material;	1.60
2025-06-16	EG	communications with Kopach re status/adjournment of disclaimer extension motion and next steps; emails from KSV and BJ re same;	0.20
2025-06-17	CK	Prepare for and attend on motion regarding directions to be delivered as part of DRP; status update to Receiver following motion;	1.70
2025-06-17	EG	email from BJ to SL with motion record returnable Jun 26, 2025; communications with Kopach re same; emails with KSV and Kopach re steps going forward;	0.20
2025-06-18	CK	Correspondence with new owner regarding status of Tower A APSs, and status/timing for entering into new APSs;	0.40
2025-06-25	CK	Review correspondence from new owner's counsel regarding pending motion to extend time to notify Receiver of Tower A disclaimers;	0.40
2025-06-26	CK	Attend on call with counsel to new purchaser regarding correspondence from Tower purchasers and anticipated positions to be taken on closing; review material filed in support of application; correspondence to receiver with positions expected and link to hearing; attend on application and correspondence to receiver regarding outcome;	2.80
2025-06-26	EG	communications with Kopach re outcome of extension motion; review Order and Endorsement;	0.20
2025-07-25	EG	communication with Elliott re status of Unit APS assumptions/disclaimers;	0.30
<b>Total</b>			<b>9.20</b>

**Timekeeper Summary**

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date: October 14, 2025

Matter: Elevate Condominiums

Invoice Number: 836670

---

<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Golden, Eric	Partner	1.40	900.00	1,260.00
Kopach, Chad	Partner	7.80	750.00	5,850.00
<b>Total</b>		<b>9.20</b>		<b>\$7,110.00</b>

KSV Advisory  
 220 Bay Street, 13th Floor  
 P.O. Box 20  
 Toronto ON M5J 2W4

Invoice Date: October 14, 2025  
 Invoice Number: 836670  
 Matter Number: 205172-0001  
 HST Number: R119444149

Attention: Elevate Condominiums

### REMITTANCE COPY

#### Elevate Condominiums

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Balance Due</u>
<u>Current Invoice</u>		
2025-10-14	836670	\$8,034.30
<b>Balance Due</b>		<b>\$8,034.30</b>

**Please Remit to:**

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To ensure that your payment is applied correctly, please send us an email, including the invoice number(s) being paid and the file number, to: [clientservices@blaney.com](mailto:clientservices@blaney.com)

**To pay by Wire (CAD):**

TD Canada Trust, Bank No. 004, Transit No. 10252,  
 General Account No. 0680-5215022  
 Swift Code: TDOMCATTOR

**For USD Payments:**

Bank No: 004; Transit No: 10252  
 Beneficiary Acct Name: Blaney McMurtry LLP  
 2 Queen Street East Suite 1500 Toronto ON Canada  
 USD General Acct: 0680-7309161  
 Swift Code: BOFAUS3NXXX

ABA Routing No: 026009593

US Intermediary Bank: Bank of America New York, NY

**(Please Reference Invoice Number)**

This is Exhibit "H" referred to in the Affidavit of Chad Kopach sworn May 21, 2026.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive style with a large, stylized "K" and "V".

---

*Commissioner for Taking Affidavits (or as may be)*

**KELLY VICKERS (P13560)**

KSV Advisory  
220 Bay Street, 13th Floor  
P.O. Box 20  
Toronto ON M5J 2W4

Invoice Date: November 30, 2025  
Invoice Number: 841509  
Matter Number: 205172-0001  
HST Number: R119444149

Attention: Elevate Condominiums

## INVOICE

Matter: Elevate Condominiums

*To our professional services up to and including November 30, 2025.*

	<b>Tax Rate</b>	<b>Amount (CAD)</b>
Professional Fees	13.00%	15,195.00
<b>Costs (Taxable)</b>		
Cyberbahn Agent Service Fee	13.00%	54.75
<b>Costs (Non-Taxable)</b>		
Filing Fees* - Non-Taxable		24.00
	Subtotal	15,273.75
	Tax @ 13.00%	1,982.47
	<b>Amount payable</b>	<b>\$17,256.22</b>

**BLANEY McMURTRY LLP**

Eric Golden  
E. & O.E

### Invoice due on receipt

**Terms:** Terms: Payment upon receipt. Interest as allowed in the Solicitors Act at a rate of 12.0% per annum, calculated monthly will be added to all amounts overdue 30 days or more.

Matter Number: 205172-0001

Invoice Date: November 30, 2025

Matter: Elevate Condominiums

Invoice Number: 841509

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2025-08-11	CK	Review amending orders to AVO regarding timing for disclaimer of Tower A Unit APSs; review timing to bring back on motion to direct Aviva/MNP to pay DRP funds;	0.60
2025-08-11	EG	email from KSV re Elevate assumptions of purchaser APS's; communications with Kopach re same;	0.10
2025-08-14	EG	email from KSV re disclaimers steps; communications with Chad re same and status of Direction motion rescheduling; review and revise email to KSV re same; review and revise email to BJ re same; email from same re same; communications with Kopach and KSV re same;	1.20
2025-08-14	CK	Receipt of notice from purchaser regarding APSs to be assumed; lengthy update to counsel to purchaser regarding next steps vis-a-vis disclaimer, and timing to bring back on motion to compel Schedule Y direction re: payment of DRP proceeds; review endorsement regarding adjournment of motion to compel compliance with direction;	3.50
2025-08-18	EG	email from BJ re disclaimers; instructions to Kopach re same; emails from A&B re same;	0.10
2025-08-19	CK	Correspondence exchanged with Receiver regarding timing of disclaimers; correspondence to owner's lawyer regarding timing, and regarding notice to remaining APS purchasers that APSs being assumed;	0.70
2025-08-19	EG	communications with Chad re KSV and BJ and MNP next steps;	0.10
2025-09-10	CK	Receipt and review of Release and Termination Agreements with Tower A purchasers, including language of release, and direction of funds other than in release;	0.30
2025-09-11	EG	communications with Kopach re MNP requests for DRP, and its communications with KSV re same;	0.10
2025-09-15	EG	communications with Kopach re DRP release and direction subsequently signed by APS purchasers;	0.20
2025-10-10	EG	communications with Kopach re DRP issues b/w purchaser, BJ and KSV; review relevant emails; instructions to Chad re same; review and revise email to Garfinkles re same;	0.90
2025-10-10	CK	Attend on call with purchaser's counsel regarding notice from Receiver to Tower A purchasers who have entered into new APSs; attend on call with B. Luder regarding instructions received from new purchaser not to make claim under DRP; review correspondence from new purchaser to this effect; correspondence to M. Frost regarding instructions from new purchaser, and proposed resolution of issue to have Tower A	1.60

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date: November 30, 2025

Matter: Elevate Condominiums

Invoice Number: 841509

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
		purchasers file DRP claims;	
2025-10-14	JK	Verified corporate name and conducted PPSA search on [REDACTED]	0.30
2025-10-31	EG	review debtor claim; review COR claim; call with M. Mignardi re same; update to KSV;	0.90
2025-11-03	EG	detailed email to EQB re background, status, strategy and proposed next steps re Guarantors claim; emails with EQB re same; email to KSV re status;	1.60
2025-11-04	EG	call with EQB and Gentai re Elevate claim; email from Gentai with tolling agreement;	0.50
2025-11-06	EG	emails with EQB/Gentai re status and next steps; detailed email to counsel for EQB/Gentai/CMLS re same; emails from and to same re same; email to KSV re same; emails from and to EQB/CS re same;	2.90
2025-11-10	EG	emails from and to counsel for lenders re next steps re guarantors' claim;	0.30
2025-11-11	EG	emails with BJ re email to guarantors' lawyers re status and next steps; call with EQB and Computershare;	0.70
2025-11-12	EG	email from Gentai re next steps; emails with BJ re same; begin to draft email to counsel for plaintiffs re status and next steps;	0.30
2025-11-13	EG	finalize email to Guarantors' counsel; email to EQB/Gentai re same; emails with KSV re SRD and reserve; emails from and to Guarantors' counsel re same;	0.80
2025-11-27	EG	email from guarantor plaintiffs counsel responding to procedural issues; review AOS's provided; email to lenders re next steps; emails with KSV re same;	0.50
<b>Total</b>			<b>18.20</b>

**Timekeeper Summary**

<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Golden, Eric	Partner	11.20	900.00	10,080.00
Kopach, Chad	Partner	6.70	750.00	5,025.00
Kroupis, John	Clerk	0.30	300.00	90.00
<b>Total</b>		<b>18.20</b>		<b>\$15,195.00</b>

**Disbursement Summary**

<u>Description</u>	<u>Amount</u>
Cyberbahn Agent Service Fee	54.75

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001  
Matter: Elevate Condominiums

Invoice Date: November 30, 2025  
Invoice Number: 841509

---

<u>Description</u>	<u>Amount</u>
Filing Fees* - Non-Taxable	24.00
<b>Total</b>	<b>\$78.75</b>

\*HST is not charged

KSV Advisory  
 220 Bay Street, 13th Floor  
 P.O. Box 20  
 Toronto ON M5J 2W4

Invoice Date: November 30, 2025  
 Invoice Number: 841509  
 Matter Number: 205172-0001  
 HST Number: R119444149

Attention: Elevate Condominiums

### REMITTANCE COPY

#### Elevate Condominiums

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Balance Due</u>
<u>Current Invoice</u>		
2025-11-30	841509	\$17,256.22
<b>Balance Due</b>		<b><u><u>\$17,256.22</u></u></b>

**Please Remit to:**

**To pay by Visa, Mastercard, Amex, or Interac e-Transfer please [Click here to pay](#)**

*To ensure that your payment is applied correctly, please send us an email, including the invoice number(s) being paid and the file number, to: [clientservices@blaney.com](mailto:clientservices@blaney.com)*

**To pay by Wire (CAD):**

TD Canada Trust, Bank No. 004, Transit No. 10252,  
 General Account No. 0680-5215022  
 Swift Code: TDOMCATTOR

**For USD Payments:**

Bank No: 004; Transit No: 10252  
 Beneficiary Acct Name: Blaney McMurtry LLP  
 2 Queen Street East Suite 1500 Toronto ON Canada  
 USD General Acct: 0680-7309161  
 Swift Code: BOFAUS3NXXX

ABA Routing No: 026009593  
 US Intermediary Bank: Bank of America New York, NY

**(Please Reference Invoice Number)**

This is Exhibit "I" referred to in the Affidavit of Chad Kopach sworn May 21, 2026.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive style with a large, stylized "K" and "V".

---

*Commissioner for Taking Affidavits (or as may be)*

**KELLY VICKERS (P13560)**

KSV Advisory  
220 Bay Street, 13th Floor  
P.O. Box 20  
Toronto ON M5J 2W4

Invoice Date: December 31, 2025  
Invoice Number: 843295  
Matter Number: 205172-0001  
HST Number: R119444149

Attention: Elevate Condominiums

## INVOICE

Matter: Elevate Condominiums

*To our professional services up to and including December 31, 2025.*

	<b>Tax Rate</b>	<b>Amount (CAD)</b>
Professional Fees	13.00%	2,325.00
	Subtotal	2,325.00
	Tax @ 13.00%	302.25
	<b>Amount payable</b>	<b>\$2,627.25</b>

**BLANEY McMURTRY LLP**

Eric Golden  
E. & O.E

### Invoice due on receipt

**Terms:** Terms: Payment upon receipt. Interest as allowed in the Solicitors Act at a rate of 12.0% per annum, calculated monthly will be added to all amounts overdue 30 days or more.

Matter Number: 205172-0001

Invoice Date: December 31, 2025

Matter: Elevate Condominiums

Invoice Number: 843295

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2025-12-02	EG	communications with KSV re status and next steps; emails with lenders' counsel re same;	0.30
2025-12-07	EG	email from EQB counsel re status and next steps; emails to and from same re same;	0.50
2025-12-08	EG	communications with Chad re Cor and Dean Lane claims, and tying them in to guarantors' claim; email from Chad to A&B re same;	0.20
2025-12-08	CK	Correspondence exchanged regarding guarantor claims; review Dean Lane claim regarding allegations/causes of action not dealt with by payment of holdback; correspondence to A&B regarding remaining Dean Lane causes of action;	1.90
<b>Total</b>			<b>2.90</b>

**Timekeeper Summary**

<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Golden, Eric	Partner	1.00	900.00	900.00
Kopach, Chad	Partner	1.90	750.00	1,425.00
<b>Total</b>		<b>2.90</b>		<b>\$2,325.00</b>

KSV Advisory  
 220 Bay Street, 13th Floor  
 P.O. Box 20  
 Toronto ON M5J 2W4

Invoice Date: December 31, 2025  
 Invoice Number: 843295  
 Matter Number: 205172-0001  
 HST Number: R119444149

Attention: Elevate Condominiums

### REMITTANCE COPY

#### Elevate Condominiums

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Balance Due</u>
<u>Current Invoice</u>		
2025-12-31	843295	\$2,627.25
<b>Balance Due</b>		<b><u><u>\$2,627.25</u></u></b>

**Please Remit to:**

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**To pay by Wire (CAD):**

TD Canada Trust, Bank No. 004, Transit No. 10252,  
 General Account No. 0680-5215022  
 Swift Code: TDOMCATTOR

**For USD Payments:**

Bank No: 004; Transit No: 10252  
 Beneficiary Acct Name: Blaney McMurtry LLP  
 2 Queen Street East Suite 1500 Toronto ON Canada  
 USD General Acct: 0680-7309161  
 Swift Code: BOFAUS3NXXX

ABA Routing No: 026009593

US Intermediary Bank: Bank of America New York, NY

**(Please Reference Invoice Number)**

This is Exhibit "J" referred to in the Affidavit of Chad Kopach sworn May 21, 2026.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive style with a large, looped initial "K".

---

*Commissioner for Taking Affidavits (or as may be)*

**KELLY VICKERS (P13560)**

KSV Advisory  
220 Bay Street, 13th Floor  
P.O. Box 20  
Toronto ON M5J 2W4

Invoice Date: January 31, 2026  
Invoice Number: 847559  
Matter Number: 205172-0001  
HST Number: R119444149

Attention: Elevate Condominiums

## INVOICE

Matter: Elevate Condominiums

*To our professional services up to and including January 31, 2026.*

	<b>Tax Rate</b>	<b>Amount (CAD)</b>
Professional Fees	13.00%	11,905.00
<b>Costs (Taxable)</b>		
Cyberbahn Agent Service Fee	13.00%	32.65
<b>Costs (Non-Taxable)</b>		
Filing Fees* - Non-Taxable		16.00
	Subtotal	11,953.65
	Tax @ 13.00%	1,551.89
	<b>Amount payable</b>	<b>\$13,505.54</b>

**BLANEY McMURTRY LLP**

Eric Golden  
E. & O.E

### Invoice due on receipt

**Terms:** Terms: Payment upon receipt. Interest as allowed in the Solicitors Act at a rate of 12.0% per annum, calculated monthly will be added to all amounts overdue 30 days or more.

Matter Number: 205172-0001

Invoice Date:

January 31, 2026

Matter: Elevate Condominiums

Invoice Number:

847559

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2026-01-16	SKelly	Review of correspondence re guarantor claims;	0.10
2026-01-16	EG	communications with Kopach re Dean Land and Cor claims; email from and to KSV re discharge motion and related report; email from Trung re position of lenders; email to and from A&B re same; email from and to BJ re same; email to all lenders' counsel re same; emails from and to same re scheduling conference call re sale; email to Trung re status of lenders' position;	2.80
2026-01-23	EG	emails from and to KSV re Werner claim to Tarion credits re Tower B; communications with Kopach re same and Tower B disclaimers; communications with Wolfson re same;	0.30
2026-01-26	EG	email to KSV re response to Bennett Jones and Werner lawyer re response to claim for Tarion credits; email to Werner lawyer re same; email to purchaser lawyer re same;	0.50
2026-01-27	JK	Conducted Corporate and PPSA searches on Confinancial Corp.;	0.40
2026-01-27	CK	Review COR and Dean Lane claims; draft and revise summary of claims for upcoming lender call; review damages claim in Dean Lane claim, including basis for damages claim in light of purported May 2023 agreement with CMLS;	4.20
2026-01-27	EG	briefly review Dean Lane and COR claims; revise email from Kopach to lenders and KSV re COR and Dean Lane claims, for Jan 29 call to also discuss guarantor claim; communications with Chad re same; vm from Maria Ruberto (counsel for Dean Lane); call with Ruberto re same; emails from same re same and with proposed lift stay order; instructions to Chad to respond to Ruberto re lien issues;	2.20
2026-01-28	CK	Receipt of correspondence from Dean Lane counsel regarding intention to prosecute claim against COR and CMLS; revisions to and finalize [REDACTED]	0.90
2026-01-28	EG	email from Dean Lane Lawyer with order to continue; communications with Kopach re same and response; revise email to lenders re status and background of Dean Lane and COR claims, and potential defences, and communications with Kopach re same;	1.10
2026-01-29	EG	communications with Chad re strategy on three claims; call with lenders' counsel re same; review APS re definition of purchased assets/excluded assets; email to lenders' counsel with draft email to lawyers for plaintiffs in guarantors' claim, Dean Lane claim and COR claim;	1.90

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001  
 Matter: Elevate Condominiums

Invoice Date: January 31, 2026  
 Invoice Number: 847559

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
<b>Total</b>			<b>14.40</b>

**Timekeeper Summary**

<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Golden, Eric	Partner	8.80	900.00	7,920.00
Kopach, Chad	Partner	5.10	750.00	3,825.00
Kelly, Steven	Associate	0.10	400.00	40.00
Kroupis, John	Clerk	0.40	300.00	120.00
<b>Total</b>		<b>14.40</b>		<b>\$11,905.00</b>

**Disbursement Summary**

<u>Description</u>	<u>Amount</u>
Cyberbahn Agent Service Fee	32.65
Filing Fees* - Non-Taxable	16.00
<b>Total</b>	<b>\$48.65</b>

\*HST is not charged

KSV Advisory  
 220 Bay Street, 13th Floor  
 P.O. Box 20  
 Toronto ON M5J 2W4

Invoice Date: January 31, 2026  
 Invoice Number: 847559  
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 HST Number: R119444149

Attention: Elevate Condominiums

### REMITTANCE COPY

#### Elevate Condominiums

<u>Invoice Date</u>	<u>Invoice Number</u>	<u>Balance Due</u>
<u>Current Invoice</u>		
2026-01-31	847559	\$13,505.54
<b>Balance Due</b>		<b>\$13,505.54</b>

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 USD General Acct: 0680-7309161  
 Swift Code: BOFAUS3NXXX

ABA Routing No: 026009593  
 US Intermediary Bank: Bank of America New York, NY

**(Please Reference Invoice Number)**

This is Exhibit "K" referred to in the Affidavit of Chad Kopach sworn May 21, 2026.

A handwritten signature in blue ink that reads "K. Vickers". The signature is written in a cursive style with a large, stylized "K" and "V".

---

*Commissioner for Taking Affidavits (or as may be)*

**KELLY VICKERS (P13560)**

KSV Advisory  
220 Bay Street, 13th Floor  
P.O. Box 20  
Toronto ON M5J 2W4

Invoice Date: March 31, 2026  
Invoice Number: 851823  
Matter Number: 205172-0001  
HST Number: R119444149

Attention: Elevate Condominiums

## INVOICE

Matter: Elevate Condominiums

*To our professional services up to and including March 31, 2026.*

	<b>Tax Rate</b>	<b>Amount (CAD)</b>
Professional Fees	13.00%	12,380.00
	Subtotal	12,380.00
	Tax @ 13.00%	1,609.40
	<b>Amount payable</b>	<b>\$13,989.40</b>

**BLANEY McMURTRY LLP**

Eric Golden  
E. & O.E

### Invoice due on receipt

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Matter Number: 205172-0001

Invoice Date:

March 31, 2026

Matter: Elevate Condominiums

Invoice Number:

851823

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2026-02-03	EG	communications with Kopach re response to Dean Lane lawyer request for lift stay order;	0.10
2026-03-12	EG	emails from Trung (counsel for guarantors) re inquiry into lenders position to guarantors' claim; review most recent emails to lenders' counsel re guarantors claim, COR claim and Dean Lane claim; email from Trung with surety claim; review Aviva/Liberty claim against guarantors Werner Leuschner, Kamal Patel, 1639993 Ontario Ltd. and Jaykam Developers Limited; emails between Trung and BLG re positions on stay applying to surety claim; email to lenders' counsel re status and next steps/case conference; emails from and to counsel for lenders re case conference dates and next steps; email to counsel for COR/guarantors/Dean Lane/sureties re case conference;	3.20
2026-03-13	EG	emails from and to KSV re next steps and potential bankruptcies; follow-ups to Gowlings re case conference; email to BLG and Trung re surety action and case conference; emails from and to BLG re surety action being brought into case conference;	0.50
2026-03-13	EG	emails with lenders' counsel re case conference date; email to counsel for guarantors and sureties counsel re same;	0.20
2026-03-16	EG	finalize and send email to all plaintiffs' counsel re case conference; emails from and to various plaintiffs counsel; emails from and to various plaintiffs' counsel re same; email to and from Court re same; call with Derek Ketelaars re same; email from Dean Lane counsel re position on Dean Lan claim v. lenders;	1.50
2026-03-17	EG	follow-up to Ketelaars re case conference date;	0.10
2026-03-18	EG	email to distribution list re scheduling case conference for April 15; follow-up email to Ketelars; draft case conference form for Court re issues and relationship of claims to each other; instructions to clerk re counsel details for CL request form; review and finalize same; email to Court re same; email to stakeholders re same;	2.00
2026-03-19	EG	emails from court requesting updated form with Court File Nos and title of proceedings for the four claims; update form and emails to Court re same;	0.30
2026-03-20	EG	email from Court re case conference date; email to counsel for plaintiffs and lenders re same;	0.20
2026-03-30	CK	Review and revise draft AM; review pleadings referenced in AM;	0.80
2026-03-30	EG	draft case conference brief; email to Bennett Jones re Gentai guarantee position; email to KSV with draft brief for review;	2.80

*Fees may include charges for services provided by Lawco Limited. Details are available upon request.*

Matter Number: 205172-0001

Invoice Date:

March 31, 2026

Matter: Elevate Condominiums

Invoice Number:

851823

<u>Date</u>	<u>Initials</u>	<u>Description</u>	<u>Hours</u>
2026-03-31	EG	email from KSV with revisions to case conference brief; revise same and further email to and from KSV re same; finalize brief and and instructions to clerk to assemble and serve; emails with Bennett Jones re Gentai guarantee; email to SL with brief and next steps; email from and to Court re case conference bundle;	1.50
<b>Total</b>			<b>13.20</b>

**Timekeeper Summary**

<u>Name</u>	<u>Title</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Golden, Eric	Partner	12.40	950.00	11,780.00
Kopach, Chad	Partner	0.80	750.00	600.00
<b>Total</b>		<b>13.20</b>		<b>\$12,380.00</b>

KSV Advisory  
 220 Bay Street, 13th Floor  
 P.O. Box 20  
 Toronto ON M5J 2W4

Invoice Date: March 31, 2026  
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Attention: Elevate Condominiums

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<u>Current Invoice</u>		
2026-03-31	851823	\$13,989.40
<b>Balance Due</b>		<b>\$13,989.40</b>

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**(Please Reference Invoice Number)**

**GENESIS MORTGAGE INVESTMENT CORPORATION**  
Applicant

and

**1776411 ONTARIO LTD. et al.**  
Respondents

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

Proceeding commenced at Toronto

**AFFIDAVIT OF CHAD KOPACH**

**BLANEY McMURTRY LLP**

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

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

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

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

**GENESIS MORTGAGE INVESTMENT CORPORATION**  
Applicant

and

**1776411 ONTARIO LTD. et al.**  
Respondents

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

Proceeding commenced at Toronto

**MOTION RECORD OF KSV RESTRUCTURING INC.,  
IN ITS CAPACITY AS COURT-APPOINTED RECEIVER**

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

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

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

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