



Court File No.

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

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

**FORGESTONE MORTGAGE FUND LP**

Applicant

- and -

**72 JAMES INVESTMENTS INC., FORGE & FOSTER HOLDINGS INC.  
and CLIFTON BLAKE PARTNERS LP**

Respondents

**APPLICATION UNDER** Section 243 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

**NOTICE OF APPLICATION**

**TO THE RESPONDENT(S)**

**A LEGAL PROCEEDING HAS BEEN COMMENCED** by the Applicant. The claim made by the Applicant appears on the following page.

**THIS APPLICATION** will come on for a hearing

- In writing
- In person
- By telephone conference
- By video conference

at the following location:

on a date to be scheduled in Chambers before a Judge presiding over the Commercial List.

**IF YOU WISH TO OPPOSE THIS APPLICATION**, to receive notice of any step in the application or to be served with any documents in the application, you or an Ontario lawyer acting for you must forthwith prepare a notice of appearance in Form 38A prescribed by the *Rules of Civil Procedure*, serve it on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in this court office, and you or your lawyer must appear at the hearing.

**IF YOU WISH TO PRESENT AFFIDAVIT OR OTHER DOCUMENTARY EVIDENCE TO THE COURT OR TO EXAMINE OR CROSS-EXAMINE WITNESSES ON THE APPLICATION**, you or your lawyer must, in addition to serving your notice of appearance, serve a copy of the evidence on the Applicant's lawyer or, where the Applicant does not have a lawyer, serve it on the Applicant, and file it, with proof of service, in the court office where the application is to be heard as soon as possible, but at least four days before the hearing.

**IF YOU FAIL TO APPEAR AT THE HEARING, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF YOU WISH TO OPPOSE THIS APPLICATION BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.**

Date \_\_\_\_\_ Issued by \_\_\_\_\_  
Local Registrar

Address of court office: 330 University Avenue, 8<sup>th</sup> Floor  
Toronto, ON M5G 1R7

**TO: 72 JAMES INVESTMENTS INC.**  
67 Frid Street, #12  
Hamilton, ON L8P 4M3

**AND TO: FORGE & FOSTER HOLDINGS INC.**  
67 Frid Street, #12  
Hamilton, ON L8P 4M3

**AND TO: CLIFTON BLAKE PARTNERS LP**  
370 King Street West, Box 35  
Toronto, Ontario M5V 1J9

## APPLICATION

1. The Applicant, Forgestone Mortgage Fund LP (“**Forgestone**”), makes an application for an Order:
  - (a) if necessary, abridging the time for service of the Notice of Application and Application Record herein, validating service of the Notice of Application and Application Record, and dispensing with further service thereof;
  - (b) pursuant to section 243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43 (the “**CJA**”), substantially in the form of the draft Order attached as Schedule “A” hereto, appointing KSV Restructuring Inc. (“**KSV**”) as receiver and manager (in such capacities, the “**Receiver**”), without security:
    - (i) of all of the current and future assets, undertaking and property (collectively, the “**Property**”) of the Respondent 72 James Investment Inc. (the “**Debtor**”), including but not limited to the property municipally known as 72-76 James Street North, Hamilton, Ontario (the “**James Property**”); and,
    - (ii) over the right, title and interest in the James Property of the two beneficial owners of the James Property, the Respondents Clifton Blake Partners LP (“**Clifton LP**”) and Forge & Foster Holdings Inc. (“**Forge Holdings**”), pursuant to s.243 of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 (the “**BIA**”) and s.101 of the *Courts of Justice Act*, R.S.O. 1990,c.C.43 (the “**CJA**”);

- (c) costs on a full indemnity scale against all Respondents; and,
- (d) such further and other relief as this Honourable Court may deem just.

2. The grounds for the Application are:

**The Parties**

- (a) Forgestone is a mortgage lending firm with offices in Toronto that provides commercial real estate financing;
- (b) the Debtor is incorporated pursuant to the laws of Ontario. Joseph Accardi (“**Accardi**”) is one of two officers and directors of the Debtor, and one of the guarantors of the Loan (as defined below);
- (c) Clifton LP is a limited partnership registered in the province of Ontario. Clifton LP holds 75 of the 100 outstanding Class B Common Shares of the Debtor;
- (d) Clifton Blake Partners (GP) Ltd. (“**Clifton GP**”) is the general partner of Clifton LP;
- (e) Forge Holdings is a corporation registered in the province of Ontario. Forge Holdings holds the remaining 25 Class B Common Shares of the Debtor;
- (f) the principal place of business for Clifton LP and the registered office address for Clifton GP are 370 King Street West, Box 35, 805, Toronto, Ontario;

## The Loan and Security

- (g) pursuant to the terms of a commitment letter dated January 10, 2022 (the “**Commitment Letter**”), Forgestone made a loan to the Debtor in the amount of \$5,675,000;
- (h) the term of the Loan was for 24 months, with a maturity date of February 1, 2024. The Loan provided for payment of interest only, on a monthly basis;
- (i) as security for the Loan, the Debtor granted Forgestone, among other things, the following security:
  - (i) a charge/mortgage in the amount of \$5,675,000 registered in first position against title to the James Property on January 18, 2022 (the “**James Mortgage**”); and
  - (ii) a General Security Agreement dated January 18, 2022 (the “**James GSA**”).
- (j) the James Property is a 32-unit multi-residential apartment building, with 29 residential units and 3 commercial units;
- (k) on or about January 18, 2022, Forge & Foster Partners Inc. (“**Forge Partners**”) and Accardi (collectively, the “**Guarantors**”), provided Forgestone with a Guarantee and Postponement of Claim, in respect of the Debtor’s debts and liabilities under the Loan (the “**Guarantee**”). Accardi’s liability under the Guarantee is limited to fifty percent of the Loan and associated costs;

## The Beneficial Charge Agreement

- (l) on or about January 18, 2022, Forgestone entered into a beneficial charge agreement with Clifton LP and Forge Holdings (collectively the “**Beneficial Owners**”) and with the Debtor, pursuant to which, among other things, the Beneficial Owners agreed to be bound to the terms of the Commitment Letter and the James Mortgage (the “**Beneficial Charge Agreement**”);
- (m) Terms 4 and 5 of the Beneficial Charge Agreement provide as follows:
4. The Beneficial Owner hereby agrees to be bound, jointly and severally with the Nominee, by all of the terms and conditions of the Commitment and the Security Documents as if the Beneficial Owner had executed such documents in the place and stead of the Nominee and all references in the documents to the Nominee were to the Beneficial Owner. It is acknowledged and agreed by the Beneficial Owner and the Nominee that the Security Documents shall bind both the legal and beneficial interest of the Nominee and the Beneficial Owner respectively, in the subject matter thereof including, without limitation, the Property.
5. The Beneficial Owner hereby charges, assigns and creates a security interest in favour of the Lender as security for the indebtedness evidenced by the Mortgage, in all of its right, title and interest in and to the Property, Proceeds and Assets, including, without limitation, all contracts, leases and other agreements pertaining to the Property and income derived therefrom and all other personal property charged by the Security Documents.
- (n) Forgestone registered its security over the Beneficial Owners under the *PPSA*;

## Defaults and Demands

- (o) there have been numerous defaults under the Loan;
- (p) the monthly Loan payments due May 1, 2023 and December 1, 2023, were not made when due, although those two defaults were remedied;

- (q) however, the monthly Loan payment for \$49,718.75 due January 1, 2024, was also not made and that default was not remedied;
- (r) furthermore, the Loan matured on February 1, 2024, and that default has also not been remedied such that the entire amount owing under the Loan remains due and owing;
- (s) in addition, based on the most current rent roll provided to Forgestone, 6 of the 29 residential units at the James Property are currently vacant and one of three commercial units is also vacant;
- (t) the James Property is also in a state of disrepair. There are several missing or broken windowpanes exposing residential units to the elements, burnt out lights in several of the residential areas, as well as a broken windowpane at the front of the James Property in one of the three street-front commercial units, all of which pose a significant health, safety and security risks;
- (u) as of January 10, 2024, \$5,626,259.38 was outstanding under the Loan;
- (v) by letter dated January 10, 2024, Forgestone made formal written demand on the Debtor, the Beneficial Owners and the Guarantors for repayment of the Loan in full, and gave notice of its intention to enforce its security pursuant to section 244(1) of the *BIA*;
- (w) neither the Debtor, the Beneficial Owners nor the Guarantors have honoured Forgestone's demands for payment;

### **Appointment of a Receiver**

- (x) the James Mortgage and the James GSA each provide for the appointment of a receiver over the Debtor's assets, including the James Property, upon default by the Debtor
  - (y) given the Debtor's conduct as described above, Forgestone believes the appointment of a receiver is just and convenient and is the most effective and appropriate manner to address the stabilization and realization of the property of the Debtor, which includes the James Property, and all related issues, including the distribution of sale proceed to creditors;
  - (z) KSV has consented to act as Receiver over the Debtor and over the Beneficial Owners' interest in the James Property;
  - (aa) section 243(1) of the *BIA* and section 101 of the *CJA*;
  - (bb) Rules 2.03, 3.02, 14.05(3)(h), 16.01, 16.08 and 38 of the *Rules of Civil Procedure*;  
and
  - (cc) Such further and other grounds as counsel may advise and this Honourable Court may permit;
3. The following documentary evidence will be used at the hearing of the application:
- (a) the Affidavit of Stefan Simonyi, to be sworn; and
  - (b) such further and other material as counsel may advise and this Honourable Court may permit.



February , 2024

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Barristers & Solicitors  
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Toronto, ON M5C 3G5

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Lawyers for the Applicant

**SCHEDULE "A"**

Court File No.

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

THE HONOURABLE ) \_\_\_\_\_, THE \_\_\_  
JUSTICE )  
) DAY OF \_\_\_\_\_, 2024

**FORGESTONE MORTGAGE FUND LP**

Applicant

- and -

**72 JAMES INVESTMENTS INC., FORGE & FOSTER HOLDINGS INC. and  
CLIFTON BLAKE PARTNERS LP**

Respondents

**APPLICATION UNDER** Section 243 of the *Bankruptcy and Insolvency Act* R.S.C.1985 c. B-3, as amended, and under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**ORDER  
(Appointing Receiver)**

**THIS APPLICATION** made by 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, (i) of all of the assets, undertakings and properties of the Respondent 72 James Investments Inc. (the "**Debtor**"), including the real property owned by the Debtor legally described as Part Lot 56, Nathaniel Hughson Survey; East Side of James Street between Rebecca Street and Gore Street as in CD394562; City of Hamilton Regional Municipality of Hamilton-Wentworth, and being all of PIN 17165-0018 (LT) in LRO #62 ("**Real Property**"), acquired for, or used in

relation to a business carried on by the Debtor, and (ii) over the right, title and interest in the Real Property of the two beneficial owners of the Real Property, the Respondents Clifton Blake Partners LP (“**Clifton LP**”) and Forge & Foster Holdings Inc. (“**Forge Holdings**”, collectively with Clifton LP, the “**Beneficial Owners**”), was heard this day at Toronto, Ontario, by Zoom videoconference.

**ON READING** the Notice of Application issued \_\_\_\_\_, 2024 (the “**Notice of Application**”), the Affidavit of Stefan Simonyi sworn February \_\_\_\_\_, 2024, and the Exhibits thereto, and on hearing the submissions of counsel for the Applicant, the proposed Receiver, and the Respondents, 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 Record dated \_\_\_\_\_, 2024, is hereby abridged and validated so that this Application 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 (i) all of the assets, undertakings and properties of the Debtor, acquired for, or used in relation to a business carried on by the Debtor, including all proceeds thereof (the “**Property**”), and, (ii) over the right, title and interest in the Real Property of the Beneficial Owners. For greater certainty, in this Order, Property includes, without limitation, the Real Property listed in Schedule “A” hereto, and all proceeds thereof.

### **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 contracts or agreements in connection therewith (including any amendments and modifications thereto), repudiate or disclaim any contracts or 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, modify, disclaim and/or terminate any contracts or agreements to which the Debtor is a party;
- (d) to engage construction managers, contractors, subcontractors, tradespersons, quantity surveyors, engineers, consultants, appraisers, agents, real estate brokers, experts, auditors, accountants, managers, including a property manager, mortgage brokers or administrators, 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 renovations, repairs and/or construction at the Real Property necessary to ensure the Real Property is well maintained and rentable, and is compliance with applicable laws and building codes;
- (f) to market available rental units, enter into new rental agreements, or renew expiring rental agreements for the Real Property, where applicable;
- (g) 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;

- (h) to receive and collect all monies and accounts now owed or hereafter owing to the Debtor (including, without limitation, any rent or lease payments in respect of the Real Property) and to exercise all remedies of the Debtor in collecting such monies and accounts, including, without limitation, to enforce any security held by the Debtor;
- (i) to settle, extend or compromise any indebtedness owing to the Debtor;
- (j) 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;
- (k) 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;
- (l) 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;
- (m) to market any or all of the Property, including advertising and soliciting offers in respect of 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 \$250,000.00, provided that the aggregate consideration for all such transactions does not exceed \$500,000.00; 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 authority and execute any 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, including opening any mail or other correspondence addressed to the Debtor or to the Beneficial Owners,

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, including the Debtor and the Beneficial Owners, 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 and the Beneficial Owners, (ii) all of their, as applicable, current and former directors, officers, employees, agents, partners, accountants, legal counsel and shareholders, and all other persons acting on their 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 aspect(s) or portion(s) of the 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, information and cloud-based data of any kind related to the business or affairs of the Debtor, and of the Beneficial Owners in respect of the Real Property, and any

computer programs, computer tapes, computer disks, cloud 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, cloud 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, in a cloud 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, cloud or other system and providing the Receiver with any and all access codes, account names, account numbers and account-creating credentials that may be required to gain access to the information.

7. **THIS COURT ORDERS** that, without limiting the generality of paragraphs 4-6 of this Order, all Persons shall be required to cooperate, and share information, with the Receiver in connection with all books and records, contracts, agreements, permits, licenses and insurance policies and other documents in respect of the Debtor and/or the Property. In addition to the foregoing general cooperation and information sharing requirements, the Debtor and the Beneficial Owners shall be required to do the following:



(a) in respect of any and all such contracts, agreements, permits, licenses and insurance policies and other documents relevant to the Debtor and/or the Property:

(1) maintain them in good standing and provide immediate notice and copies to the Receiver of any communications received from regulators or providers in respect thereof;

(2) provide immediate notice to the Receiver of any material change and/or pending material change to the status quo in respect thereof; and

(3) provide thirty (30) days' notice of any renewal date, termination date, election date or similar date in respect thereof; and

(b) assist, and cooperate with, the Receiver in obtaining any further permits and licenses that may be required or requested with respect to the exercise of the Receiver's authority hereunder.

8. **THIS COURT ORDERS** that the Receiver shall provide each of the relevant landlords with notice of the Receiver's intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Receiver's entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Receiver, or by further Order of this Court upon application by the Receiver on at least two (2) days notice to such landlord and any such secured creditors.

#### **NO PROCEEDINGS AGAINST THE RECEIVER**

9. **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**

10. **THIS COURT ORDERS** that no Proceeding against or in respect of the Debtor or the Property, against the Beneficial Owners in respect of the Real Property, or any assets located on premises belonging to the Debtor 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, against the Beneficial Owners in respect of the Real Property, or any assets located on premises belonging to the Debtor are hereby stayed and suspended pending further Order of this Court.

## **NO EXERCISE OF RIGHTS OR REMEDIES**

11. **THIS COURT ORDERS** that all rights and remedies against the Debtor, the Receiver, or affecting the Property, including but not limited to rights and remedies against the Beneficial Owners in respect of the Real Property, 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**

12. **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**

13. **THIS COURT ORDERS** that all Persons having oral or written agreements with the Debtor and to the Beneficial Owners in respect of the Real Property, or statutory or regulatory mandates for the supply of goods and/or services, including without limitation, all computer

software, communication and other data services, accounting services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Debtor (and to the Beneficial Owners in respect of the Real Property), 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 (and the Beneficial Owners' in respect of the Real Property) 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, and the Beneficial Owners in respect of the Real Property, 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.

14. **THIS COURT ORDERS** that subject to Court Order, in the event that an account for the supply of goods and/or services is transferred from the Debtor and or the Beneficial Owners 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**

15. **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**

16. **THIS COURT ORDERS** that all employees of the Debtor (or the Beneficial Owners in respect of the Real Property) shall remain the employees of the Debtor or the Beneficial Owners

until such time as the Receiver, on the Debtor's behalf (or on behalf of the Beneficial Owners in respect of the Real Property), 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**

17. **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**

18. **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**

19. **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**

20. **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 (including, without limitation, deemed 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*.

21. **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.

22. **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**

23. **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 \$250,000.00 (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 (including, without limitation, deemed 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*.

24. **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.

25. **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.

26. **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

27. **THIS COURT ORDERS** that the E-Service Guide of the Commercial List (the “**Guide**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Guide (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/>) 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 13 of the Guide, service of documents in accordance with the Guide will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Guide with the following URL: ‘<\*>’.

28. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Guide 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, including the Beneficial Owners’ creditors, at their respective addresses as last shown on the records of the Debtor and of the Beneficial Owners, 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.

29. **THIS COURT ORDERS** that the Applicant, the Receiver and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by electronic message to the Debtor’s creditors or other interested parties, including the Beneficial Owners’ creditors, and their advisors. For greater certainty, any such distribution or service shall be deemed to be in satisfaction of a legal or juridical obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 8100-2-175 (SOR/DORS).

## GENERAL

30. **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.

31. **THIS COURT ORDERS** that nothing in this Order shall prevent the Receiver from acting as a trustee in bankruptcy of the Debtor or of the Beneficial Owners.

32. **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.

33. **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.

34. **THIS COURT ORDERS** that the Applicant shall have its costs of this application, 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, and/or from the Beneficial Owners' interest in the Real Property, with such priority and at such time as this Court may determine.

35. **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.



36. **THIS COURT ORDERS** that, notwithstanding Rule 59.05, this Order is effective from the date it is made, and it is enforceable without any need for entry and filing. In accordance with Rules 77.07(6) and 1.04, no formal Order need be entered and filed unless an appeal or motion for leave to appeal is brought to an appellate court. Any party may nonetheless submit a formal Order for original signing, entry and filing, as the case may be.

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**SCHEDULE "A"**

**REAL PROPERTY**

PIN 17165-0018 (LT) in LRO #62

Part Lot 56, Nathaniel Hughson Survey; East Side of James Street between Rebecca Street and  
Gore Street as in CD394562; City of Hamilton Regional Municipality of Hamilton-Wentworth

## SCHEDULE "B"

### RECEIVER CERTIFICATE

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

1. **THIS IS TO CERTIFY** that KSV Restructuring Inc., the receiver (the "**Receiver**") of (i) the assets, undertakings and properties of 72 James Investments Inc. (the "**Debtor**") acquired for, or used in relation to a business carried on by the Debtor, including the real property owned by the Debtor legally described as Part Lot 56, Nathaniel Hughson Survey; East Side of James Street between Rebecca Street and Gore Street as in CD394562; City of Hamilton Regional Municipality of Hamilton-Wentworth, and being all of PIN 17165-0018 (LT) in LRO #62 ("**Real Property**"), and all proceeds thereof (collectively, the "**Property**"), and (ii) the right, title and interest in the Real Property of the two beneficial owners of the Real Property, the Respondents Clifton Blake Partners LP ("**Clifton LP**") and Forge & Foster Holdings Inc. ("**Forge Holdings**", collectively with Clifton LP, the "**Beneficial Owners**"), appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated \_\_\_\_\_, 2024 (the "**Order**") made in an application having Court file number \_\_\_\_\_, 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 \$ \_\_\_\_\_ 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:

**FORGESTONE MORTGAGE FUND LP**

Applicant

and

Court File No.

**72 JAMES INVESTMENTS INC. et al.**

Respondents

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

Proceeding commenced at Toronto

**ORDER  
(Appointing Receiver)**

**BLANEY McMURTRY LLP**  
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Lawyers for the Applicant

**FORGESTONE MORTGAGE FUND LP**

Applicant

and

Court File No.

**72 JAMES INVESTMENTS INC. et al.**

Respondents

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

Proceeding commenced at Toronto

**NOTICE OF APPLICATION**

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