



**Second Report to Court of
KSV Restructuring Inc. as
Receiver and Manager
of 72 James Investments Inc.,
Forge & Foster Holdings Inc. and
Clifton Blake Partners LP**

April 24, 2024

Contents

	Page
1.0	Introduction..... 1
1.1	Purposes of this Report.....2
1.2	Restrictions 3
2.0	Background 3
3.0	Creditors.....4
3.1	Forgestone Mortgage Fund LP.....4
3.2	Other Creditors 4
4.0	Sale Process 5
4.1	Marketing Process 5
4.2	Sale Process Results 6
5.0	The Transaction..... 6
5.1	The APS 6
5.2	The Transaction Recommendation..... 8
5.3	Sealing 8
6.0	Distributions..... 9
7.0	Receiver’s Activities..... 9
8.0	Professional Fees 10
9.0	Conclusion..... 11

Appendices

Appendix	Tab
KSV Fee Affidavit	A
Paliare Fee Affidavit.....	B
Affidavit of Stefan Simonyi (without attachments)	C
Receiver’s First Report.....	D
Summary of the Sale Process conducted by Colliers (redacted).....	E
APS (redacted).....	F
Assignment and Assumption Agreement.....	G
Confidential Appendix	Tab
Summary of Sale Process conducted by Colliers (unredacted).....	1
Offer Summary	2
APS (unredacted).....	3



COURT FILE NO.: CV-24-00714866-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

FORGESTONE MORTGAGE FUND LP

Applicant

- and -

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

Respondents

SECOND REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER
APRIL 24, 2024

1.0 Introduction

1. On February 26, 2024, the Ontario Superior Court of Justice (the “**Court**”) issued an order (the “**Receivership Order**”) appointing KSV Restructuring Inc. (“**KSV**”) as the receiver and manager (the “**Receiver**”), without security, of:
 - a) all current and future property, assets and undertaking (collectively, the “**Property**”) of 72 James Investment Inc. (the “**Debtor**”), including but not limited to the real properties municipally known as 72-76 James Street North, Hamilton, Ontario (the “**Real Property**”); and
 - b) the right, title and interest in the Real Property of the two beneficial owners of the Real Property (the “**Beneficial Owners**”), being Clifton Blake Partners LP (“**Clifton LP**”) and Forge & Foster Holdings Inc. (“**F&F Holdings**”).
2. The Real Property is a 32-unit multi-residential property, with 29 residential units and three commercial units. As of the date of this report (the “**Report**”), nine residential units and one commercial unit were vacant.
3. The principal focus of the receivership proceeding has been to continue a sale process for the Real Property that was commenced by the Debtor prior to the date of the Receivership Order. In this regard, prior to the commencement of these proceedings, the Debtor retained Colliers Macaulay Nicolls Inc. (“**Colliers**”), a national real estate brokerage, to list the Real Property for sale. The Receiver retained Colliers, subsequent to its appointment, to continue to market the Real Property for sale (the “**Sale Process**”).

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about these proceedings;
 - b) summarize the Sale Process and the results thereof;
 - c) summarize a proposed transaction (the “**Transaction**”) in respect of the Real Property between the Receiver and 2793530 Ontario Inc. (the “**Purchaser**”), pursuant to an agreement of purchase and sale dated April 19, 2024 (the “**APS**”);
 - d) recommend that the Receiver be discharged of its duties and obligations under the Receivership Order subject to filing a certificate with the Court confirming that all outstanding receivership matters have been completed (the “**Discharge Certificate**”); and
 - e) recommend that the Court issue the following Orders:
 - i. an Approval and Vesting Order (the “**AVO**”), among others:
 - approving the Transaction;
 - transferring and vesting all of the Debtor’s and Beneficial Owners’ right, title and interest in and to the Real Property in the Purchaser (or such affiliated assignee as the Purchaser may advise), free and clear of all liens, charges, security interests and encumbrances, other than permitted encumbrances following the Receiver’s delivery of the Receiver’s certificate substantially in the form attached as Schedule “A” to the proposed AVO;
 - sealing in Confidential Appendix “1”, “2” and “3”, respectively, an unredacted summary of the Sale Process conducted by Colliers, a summary of the offers submitted in the Sale Process (the “**Offer Summary**”), and an unredacted copy of the APS, until closing of the Transaction or further order of the Court;
 - ii. an Ancillary Matters and Distribution Order (the “**Distribution Order**”), among other things:
 - authorizing and directing the Receiver to make a distribution or distributions from the sale proceeds of the Transaction to repay in full the amounts owing to Forgestone Mortgage Fund LP (“**Forgestone**”) in respect of the Debtor’s obligations to it, which are projected to total \$5,895,803¹ as of May 2, 2024;

¹ Fees and interest will continue to accrue until closing.

- approving the fees and disbursements of the Receiver and Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”), as detailed in the fee affidavits provided in Appendix “A” and “B” (the “**Fee Affidavits**”);
- approving this Report and the Receiver’s conduct and activities described herein;
- discharging the Receiver upon filing the Discharge Certificate; and
- releasing the Receiver, upon the Receiver’s discharge, from any and all liabilities that it now has or may hereafter have by any reason of, or in any way arising out of, its acts or omissions, save and except for its gross negligence or wilful misconduct.

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon information provided by the Debtor, Forgestone, Colliers and Markland (as defined below). The Receiver has not performed an audit or other verification of such information.
2. The Receiver is not in possession of any of the Beneficial Owners’ financial information.
3. The Receiver has not audited or otherwise attempted to verify the accuracy or completeness of the information relied upon to prepare this Report in a manner that complies with Canadian Auditing Standards (“CAS”) pursuant to the Chartered Professional Accountants of Canada Handbook and, accordingly, the Receiver expresses no opinion or other form of assurance contemplated under the CAS in respect of such information. Any party wishing to place reliance on the financial information should perform its own due diligence.

2.0 Background

1. The Affidavit of Stefan Simonyi, the President of Mortgage Investments for Forgestone, sworn in support of Forgestone’s application for the appointment of the Receiver provides, *inter alia*, a summary of the events that led to the commencement of these proceedings (the “**Affidavit**”). A copy of the Affidavit is provided in Appendix “C”, without attachments. Background information concerning these proceedings is also provided in the Receiver’s First Report to Court dated February 28, 2024 (the “**First Report**”), a copy of which is provided in Appendix “D”. Accordingly, a detailed discussion of the events leading to these proceedings has not been repeated in this Report.
2. Forgestone provided financing to the Debtor to fund the purchase of the Real Property and certain capital expenditures for the Real Property.

3. Following its appointment, the Receiver retained Markland Property Management Inc. (“**Markland**”) to provide property management services for the Real Property. Markland identified various issues with the Real Property which it worked to address during these proceedings, including certain safety and tenancy issues. Markland has been working diligently to collect rents from tenants, many of whom were significantly in arrears as of the date these proceedings commenced. Markland has commenced eviction proceedings in respect of certain non-rent paying tenants. As of the date of this Report, certain of the eviction proceedings are ongoing, while some tenants have since brought their rent current, resulting in a discontinuation of their eviction proceedings. As was the case prior to these proceedings, the monthly rental revenue collected from tenants is significantly less than the monthly mortgage payments due from the Debtor to Forgestone.
4. The summarized statement of receipts and disbursements (the “**R&D**”) provided below for the period February 26 to April 16, 2024 reflects the operations of the Real Property since the commencement of these proceedings.

(unaudited; \$000s)	Amount
Receipts	
Cash from Debtor's bank account	3
Balance in Markland's account	6
Rental income	37
	46
Disbursements	
Repairs and maintenance	18
Property management	6
Insurance	6
HST	3
Utilities	1
	34
Balance before accrued liabilities	12

3.0 Creditors

3.1 Forgestone Mortgage Fund LP

1. Forgestone has a senior ranking mortgage on the Real Property (the “**Forgestone Mortgage**”), as well as a general security agreement in respect of the Property. As of January 10, 2024, Forgestone was owed approximately \$5,626,000 (the “**Loan**”), plus interest and costs that continue to accrue. The Loan matured on February 1, 2024 and remains unpaid as of the date of this Report.
2. Paliare Roland has provided the Receiver with an opinion on Forgestone’s security. The security opinion confirms the validity, enforceability and priority of Forgestone’s security, subject to standard qualifications and assumptions. A copy of the opinion can be made available for the Court’s review.

3.2 Other Creditors

1. Based on information provided by the Debtors, as at the date of the Receivership Order, the Debtor’s unsecured obligations totalled approximately \$323,000, of which approximately \$207,000 is reflected as owing to Forge & Foster Partners Inc., a party related to the Debtor.

2. Based on an HST audit recently performed by Canada Revenue Agency (the "**CRA**"), CRA has assessed that the Debtor has an HST obligation in the amount of \$35,491, relating to the period from April 1 to September 30, 2023 (the "**CRA Claim**").
3. The Receiver has not yet conducted a claims process given the uncertainty as to whether the net proceeds from the sale of the Real Property would be sufficient to repay Forgestone's debt in full. The Receiver will consider in due course the most efficient way to make distributions to other creditors, if any, following completion of the Transaction.

4.0 Sale Process

4.1 Marketing Process

1. Colliers was retained by the Debtor on January 10, 2024 to list the Real Property for sale. Colliers began marketing the Real Property shortly thereafter. Section 2 of the First Report detailed Colliers' pre-filing marketing efforts. Colliers provided the Receiver with a summary of those efforts, which is included in Appendix "A" of the First Report.
2. Prior to and immediately following its appointment, the Receiver consulted with Forgestone regarding the retention of Colliers for the purpose of continuing the Sale Process. Forgestone advised the Receiver that it would consent to the retention of Colliers, subject to revising its listing agreement, including its fee structure. A revised listing agreement was finalized with Colliers on February 28, 2024.
3. At the receivership application, the Receiver advised the Court of its intention to retain Colliers for the purpose of marketing the Real Property. Given that Colliers' pre-filing sale process was well advanced, and to avoid any interruption in that process, the Receiver advised the Court that it would summarize its proposed sale process in the First Report, which it would serve on the service list in these proceedings, and that it would only seek Court approval of that process if someone objected to it. The Receiver served the First Report on the service list on February 28, 2024. No objections were received.
4. Colliers carried out a broad marketing campaign using marketing techniques commonly used to sell real property, including, among other things, email campaigns, social media, visible signage and direct solicitation of parties that Colliers felt would be most interested in this opportunity.
5. Colliers prepared and distributed an investment summary (the "**Teaser**") to its database of prospective buyer contacts. Colliers facilitated due diligence by parties who signed a confidentiality agreement (the "**CA**"), including providing interested parties with access to a virtual data room (the "**VDR**"), which included financial and other information about the Real Property. The VDR also included third-party consultant reports that were commissioned by the Receiver during the proceeding (the "**Consultant Reports**"), as well as a template asset purchase agreement (the "**Template APS**"). At the guidance of the Receiver, Colliers recommended that prospective purchasers submit offers in the form of the Template APS, together with a blackline against the Template APS.
6. The Receiver commissioned the Consultant Reports with the objective of assisting prospective purchasers to complete their due diligence in advance of the bid deadline so that they could submit unconditional offers.

7. The original bid deadline was 5:00pm (Toronto time) on March 25, 2024; however, based on feedback from Colliers, the bid deadline was extended to April 2, 2024 to allow interested parties an opportunity to complete their due diligence and to review the Consultant Reports, which were only finalized around the original bid deadline.

4.2 Sale Process Results

1. A summary of the results of the Sale Process is as follows:
 - a) 69 parties executed the NDA and were provided access to the VDR; and
 - b) two offers were received.
2. A summary of the Sale Process conducted by Colliers, redacted only for the offers received, is provided in Appendix "E" and an unredacted version is provided in Confidential Appendix "1". The Offer Summary is provided in Confidential Appendix "2". The Receiver's recommendation for sealing these documents is provided in Section 5.3 below.
3. The Receiver reviewed the bids with Colliers. Thereafter, Colliers engaged in discussions with the bidders concerning their bids, including their conditionality, financing and remaining due diligence.
4. For the reasons listed in Section 5.2 below, the Receiver selected the Purchaser as the successful bidder.

5.0 The Transaction

5.1 The APS

1. The following section summarizes the APS and the Transaction. A copy of the APS with the purchase price and deposit amount redacted is provided in Appendix "F". A copy of the unredacted APS is provided in Confidential Appendix "3". The Receiver's rationale for sealing the unredacted APS is also provided in Section 5.3 below.
2. The key terms of the APS are provided below.
 - **Vendor:** Receiver
 - **Purchaser:** 2793530 Ontario Inc.
 - **Purchased Assets:** all right, title and interest, if any, of the Debtor and the Beneficial Owners in and to the following:
 - a) the Real Property;
 - b) pre-paid rent (which was \$3,121.75 as at the date of the APS);
 - c) the Contracts; and
 - d) the Permits, but only to the extent transferable to the Purchaser or the Purchaser's permitted assignees.

- **Excluded Assets:** all property, assets and undertaking other than the Purchased Assets, including:
 - a) the Debtor's cash or cash equivalents;
 - b) the Debtor's 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 the Debtor or the Purchased Assets;
 - d) the benefit of any prepaid expenses or deposits with any Person (other than any prepaid rent), public utility or Governmental Authority; and
 - e) the benefit of any refundable Taxes payable or paid by the Debtor 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 the Debtor or the Receiver to any refund, rebate, or credit of Taxes for the period prior to the Closing Date.

- **Purchase Price:** for the reasons provided in Section 5.3, the Receiver is seeking an order sealing the purchase price pending further order of the Court or closing of the Transaction.

The purchase price is to be adjusted on closing for adjustments standard for a real estate transaction, including property taxes and utilities, as further described in Section 4.5 of the APS.

- **Deposit:** a deposit equal to 10% of the purchase price has been paid to the Receiver. The balance of the purchase price, subject to the adjustments, is to be paid on the Closing Date.

- **Excluded Liabilities:** 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 Closing, including without limitation, all liabilities and obligations under the Contracts that are assumed by the Purchaser in accordance with Section 10.4(2) of the APS.

- **Representations and Warranties:** consistent with the standard terms of an insolvency transaction, i.e., on an "as is, where is" basis, with limited representations and warranties.

- **Closing Date:** the date that is the later of: (i) the first Business Day following the date that is fifteen (15) 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 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.

3. On April 22, 2024, the Purchaser advised the Receiver that it was in the process of incorporating an affiliated company to take title to the Real Property on closing of the Transaction, as contemplated by Section 14.10 of the APS. On April 24, 2024, the Purchaser, 1000870452 Ontario Inc., as assignee (the “**Assignee**”), and the Receiver entered into an Assignment and Assumption Agreement pursuant to which the Purchaser assigned its right, title and interest in the APS to the Assignee and directed that title to the Real Property be taken in the name of the Assignee, provided that the Purchaser shall remain liable for all obligations under the APS. A copy of the Assignment and Assumption Agreement is provided in Appendix “G”.

5.2 The Transaction Recommendation

1. The Receiver recommends the Court issue the proposed AVO approving the Transaction for the following reasons:
 - a) the process undertaken to market the Real Property was commercially reasonable and consistent with processes commonly used to market real property for sale;
 - b) no party objected to the Sale Process as set out in the First Report and the Sale Process was carried out on a basis consistent with the First Report;
 - c) Colliers has extensive experience selling residential properties in and around South-Western Ontario. Colliers widely canvassed the market for prospective purchasers;
 - d) in Collier’s view, it is unlikely that continuing to market the Property will result in a superior transaction;
 - e) the Transaction is unconditional other than Court approval;
 - f) the Receiver and Colliers are of the view that the Transaction provides for the best recovery available for the benefit of Debtor’s creditors in the circumstances;
 - g) Forgestone consents to the Transaction; and
 - h) as at the date of the Second Report, the Receiver is not aware of any objections to the relief being sought pursuant to the proposed AVO.

5.3 Sealing

1. The Receiver recommends that the Summary of Sale Process conducted by Colliers (Confidential Appendix “1”), Offer Summary (Confidential Appendix “2”) and the unredacted APS (Confidential Appendix “3”) be filed with the Court on a confidential basis and remain sealed until further order of the Court or until the Transaction closes. The documents contain confidential information, including with respect to the value of the Transaction.

2. Confidential Appendices “1” and “2” include sensitive information, including the identity of the other bidder and the value of its offer. Making this information publicly available could adversely affect the purchase price if the Transaction does not close and a further sale process is required in respect of the Real Property. Sealing this information is necessary to maximize recoveries in these proceedings and maintain the integrity and confidentiality of key information in the Sale Process.
3. The salutary effects of sealing the Summary of Collier’s sale process, Offer Summary and the unredacted APS from the public record greatly outweigh the deleterious effects of doing so under the circumstances. The Receiver is not aware of any party that will be prejudiced if the information is sealed or of any public interest that will be served if such details are disclosed in full. The Receiver is of the view that the sealing of the Confidential Appendices is consistent with the decision in *Sherman Estate v. Donovan*, 2021 SCC 25. Accordingly, the Receiver believes the proposed sealing of the Confidential Appendices is appropriate in the circumstances.

6.0 Distributions

1. Forgestone is the principal secured creditor of the Debtor and has a first in time registered mortgage on the Real Property and security interest on the Property.
2. Based on the opinion from Paliare Roland, and subject to Court approval, the Receiver intends to distribute sale proceeds sufficient to repay the Forgestone Mortgage in full immediately following closing of the Transaction. The balance of the sale proceeds, if any, net of professional costs and receivership expenses, will be available for distribution to other creditors.
3. The Receiver is not aware of any creditors that would have a claim that ranks in priority to the Forgestone Mortgage. The HST liability arose subsequent to the date of the Forgestone Mortgage. The Debtor does not presently have any employees and any property taxes owing on the Real Property will be paid on closing of the Transaction.

7.0 Receiver’s Activities

1. In addition to dealing with the matters addressed above, the Receiver’s activities since its appointment have included;
 - a) corresponding with the Debtor’s representatives regarding operational issues, such as tenant, utility, maintenance and safety issues;
 - b) corresponding with Forgestone regarding these proceedings, including the Sale Process, the Consultant Reports, operational issues and Transaction related issues;
 - c) corresponding with Colliers regarding the Sale Process, including weekly calls and near daily email correspondence;
 - d) engaging with Markland concerning property management issues, including tenant, maintenance, safety and capital improvement issues;
 - e) reviewing information, including the Consultant Reports, and uploading same to the VDR;
 - f) assisting Colliers to facilitate due diligence requests by prospective purchasers;

- g) corresponding with the Lawrie Group, the Debtor's insurance broker, to add KSV as a loss payee and discuss an insurance refund owing to the Debtor;
- h) corresponding with the Debtor's creditors;
- i) corresponding with the Hamilton Fire Inspector regarding safety inspections;
- j) corresponding with CRA regarding the Debtor's HST accounts;
- k) corresponding with Scotiabank regarding the Debtor's bank account and transferring the balance in that account to the Receiver's estate account;
- l) corresponding with the Debtor's utility companies to continue such services during the receivership; and
- m) drafting this Report and reviewing and commenting on the motion materials in respect of the relief to be sought on the return of this motion.

8.0 Professional Fees

1. Pursuant to paragraph 20 of the Receivership Order, the Receiver and its counsel are to be paid their reasonable fees and disbursements at their standard rates and charges, incurred both before and after the making of the Receivership Order. Pursuant to paragraph 21 of the Receivership Order, the Receiver and its counsel shall pass their accounts from time to time.
2. The Receiver seeks to have its fees and disbursements, including those of its legal counsel, approved by the Court. The Receiver and its counsel have maintained detailed records of their professional time and costs.
3. The total fees for the Receiver from February 13 to April 19, 2024 are \$77,608.25, plus disbursements of \$599.47 and HST of \$10,167.00. The time spent by the Receiver is more particularly described in the Affidavit of Robert Kofman, which is provided in Appendix "A".
4. The total fees for Paliare Roland from February 13 to April 19, 2024 are \$22,710.00, plus HST of \$2,952.30. The time spent by Paliare Roland is more particularly described in the Affidavit of Beatrice Loschiavo, which is provided in Appendix "B".
5. It is the Receiver's opinion that the fees and disbursements of the Receiver and Paliare Roland accurately reflect the work done by the Receiver, and on behalf of the Receiver by Paliare Roland, in connection with the receivership and the administration of the receivership for the dates of their respective invoices.
6. It is also the Receiver's opinion that the fees and disbursements of Paliare Roland are fair and reasonable and justified in the circumstances. The Receiver is of the view that Paliare Roland's hourly rates are consistent with the rates charged by other law firms practicing in the area of insolvency in the Toronto market, and that its fees are reasonable and appropriate in the circumstances. The Receiver recommends approval of Paliare Roland's accounts by this Court.

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)(e) of this Second Report.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS
RECEIVER AND MANAGER OF
72 JAMES INVESTMENTS INC., FORGE & FOSTER HOLDINGS INC.,
AND CLIFTON BLAKE PARTNERS LP AND NOT IN ITS PERSONAL
OR IN ANY OTHER CAPACITY**

Appendix “A”

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

BETWEEN:

FORGESTONE MORTGAGE FUND LP

Applicant

- and -

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

Respondents

**AFFIDAVIT OF ROBERT KOFMAN
(sworn April 23, 2024)**

I, **ROBERT KOFMAN**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY AS FOLLOWS:**

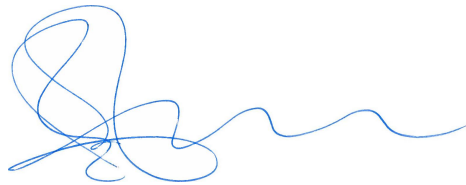
1. I am the President of KSV Restructuring Inc. and, as such, I have knowledge of the matters to which I hereinafter depose. KSV Restructuring Inc. is acting in its capacity as the Court-appointed receiver and manager (in such capacity, the "**Receiver**"), without security, of:
 - (a) all current and future property, assets and undertaking of 72 James Investments Inc., including but not limited to the real properties municipally known as 72-76 James Street North, Hamilton, Ontario; and
 - (b) the right, title and interest in the Real Property of the two beneficial owners of the Real Property, being Clifton Blake Partners LP and Forge & Foster Holdings Inc.

2. The Receiver has prepared an invoice (the “**Invoice**”) detailing its services rendered and disbursements incurred dated April 23, 2024 in the amount of \$77,608.25 (excluding disbursements and HST) for the period February 13, 2024 to April 19, 2024. Attached hereto and marked as **Exhibit “A”** to this Affidavit is a copy of the Invoice. The average hourly rate of the Receiver in respect of the Invoice is \$606.55.
3. Additionally, attached hereto as **Exhibit “B”** is a summary of additional information with respect to all members of KSV who have worked on this matter, including their hours and rates, and I hereby confirm that the list represents an accurate account of such information.
4. 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.
5. I consider the accounts to be fair and reasonable considering the circumstances connected with this receivership.
6. I also confirm that the Receiver has not received, nor expects to receive, nor has the Receiver been promised any remuneration or consideration other than the amount claimed in the accounts.

SWORN before me at the City of
Toronto, in the Province of Ontario,
this 23rd day of April, 2024



Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires February 23, 2027



ROBERT KOFMAN

Attached is Exhibit "A"

Referred to in the

AFFIDAVIT OF ROBERT KOFMAN

Sworn before me

this 23rd day of April, 2024



Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires February 23, 2027



ksv advisory inc.

220 Bay Street, Suite 1300

Toronto, Ontario, M5J 2W4

T +1 416 932 6262

F +1 416 932 6266

ksvadvisory.com

INVOICE

72 James Investments Inc., Forge & Foster Holdings Inc., and
Clifton Blake Partners LP
c/o KSV Restructuring Inc.
220 Bay Street, Suite 1300
Toronto, ON M5J 2W4

April 23, 2024

Invoice No: 3634

HST #: 818808768RT0001

Re: 72 James Investments Inc., Forge & Foster Holdings Inc., and Clifton Blake Partners Inc.

For professional services rendered from February 13 to April 19, 2024 by KSV Restructuring Inc. ("**KSV**") in its capacity as Court-appointed receiver and manager (the "**Receiver**") of a) all current and future assets, undertaking and property (collectively, the "**Property**") of 72 James Investments Inc. (the "**Debtor**"), including but not limited to the properties municipally known as 72-76 James Street North, Hamilton, Ontario (the "**Real Property**") and the right, title and interest of the two beneficial owners (the "**Beneficial Owners**"), Clifton Blake Partners LP ("**Clifton LP**") and Forge & Foster Holdings Inc. in the Real Property, including:

- preparing for the receivership, including reviewing motion materials prepared by Blaney McMurtry LLP ("**Blaney**"), legal counsel to Forgestone Mortgage Fund LP ("**Forgestone**"), seeking the appointment of KSV as Receiver;
- dealing with Forgestone in advance of these proceedings to obtain background information regarding the Real Property and the Debtor, events leading to the commencement of these proceedings and the purpose of these proceedings, primarily being a sale process for the Property (the "**Sale Process**");
- corresponding with Paliare Roland Rosenberg Rothstein LLP ("**Paliare Roland**"), legal counsel to the Receiver, concerning the receivership application, the Sale Process, operational issues, and the sale of the Real Property, as further detailed below;
- attending at the receivership application on February 26, 2024;
- engaging Tert & Ross Ltd., a third-party contractor, to complete a building and site inspection, take photos and videos of the Real Property, and provide a report in respect of same;
- attending at the Debtor's head office on February 27, 2024 to obtain rent cheques and Property-related information required by the Receiver;

- corresponding with the Debtor to:
 - arrange access to the Real Property; and
 - obtain, *inter alia*,
 - financial and other information concerning the Debtor, including concerning rent and operating expenses;
 - tenant-related information, including copies of leases and the status of rent owing; and
 - maintenance and system issues;
- opening a receivership bank account (the “**Receivership Account**”) and corresponding with Scotiabank, the Debtor’s bank, to freeze the Debtor’s bank account and transfer the balance in that account to the Receivership Account;
- corresponding with utility companies to continue services during the receivership;
- preparing the Receiver’s First Report to Court dated February 28, 2024 (“**First Report**”) concerning the retention of Colliers Macaulay Nicolls Inc. (“**Colliers**”), as the listing agent to market the Real Property for sale and the Sale Process;
- corresponding with Paliare Roland regarding the First Report;
- negotiating a listing agreement with Colliers dated February 28, 2024;
- discussing the Sale Process with Colliers, including staying apprised of Colliers’ marketing efforts, feedback from prospective purchasers and reviewing periodic updates prepared by Colliers;
- engaging Markland Property Management Inc. (“**Markland**”) as property manager for the Real Property pursuant to an engagement letter dated February 23, 2024;
- working with Markland concerning property management issues, including tenant, accounting, maintenance, safety and capital improvement issues;
- reviewing reports prepared by Markland concerning tenant issues and the condition of the Real Property, including issues requiring immediate attention and working with Markland to attend to same;
- reviewing and finalizing rent attornment letters that were hand delivered to tenants by Markland;
- corresponding routinely with Forgestone regarding these proceedings, including the Sale Process, transaction-related issues and operating issues;
- working with Forgestone to obtain various consulting reports (the “**Consulting Reports**”) that were made available in a virtual data room (the “**VDR**”) to facilitate due diligence by prospective purchasers in the Sale Process;
- reviewing financial and other information concerning the Debtor and the Real Property and uploading same to the VDR;

- preparing, with Paliare Roland, a template asset purchase agreement (the “**APA**”) which was uploaded to the VDR, and directing Colliers to recommend that prospective purchasers submit offers using the APA;
- corresponding with the Lawrie Group, the Debtor’s insurance broker, to add KSV as a loss payee and discuss an insurance refund owing to the Debtors (the “**Insurance Refund**”);
- corresponding with Paliare Roland concerning the Insurance Refund;
- corresponding with Markland to obtain quotes for a roof repair, and discussing same with Forgestone;
- reviewing quotes from various trades and consultants regarding improvements recommended by Markland, and discussing the same with Forgestone;
- reviewing, approving, and processing invoices for repairs and maintenance recommended by Markland;
- attending calls on March 12 and 20, 2024 with Clifton LP regarding these proceedings and the Sale Process;
- corresponding with Markland regarding the negotiation of a commercial lease in respect of a unit being used by an existing tenant;
- corresponding with Markland regarding “Landlord Merit Hearings” at the Ontario Landlord and Tenant Board;
- corresponding with Pinchin Ltd. regarding a building condition report it finalized on March 27, 2024;
- reviewing offers submitted for the Real Property on the Sale Process offer deadline, being April 2, 2024, and discussing same with Colliers and Forgestone;
- corresponding with Colliers and Forgestone regarding the offers received in the Sale Process;
- dealing with Colliers and Forgestone regarding the offer received from 2793530 Ontario Inc. (the “**Purchaser**”) and negotiating with the Purchaser concerning its offer;
- reviewing and commenting on several changes to the Purchaser’s asset purchase agreement (the “**APA**”) and executing the APA;
- working with Purchaser and Paliare Roland to finalize the transaction documents and Court materials seeking approval of the transaction with the Purchaser;
- preparing the Receiver’s Second Report to Court dated April 23, 2024 (“**Second Report**”) recommending approval of the transaction with the Purchaser, as well as other matters;
- reviewing and discussing a Sale Process report prepared by Colliers, which is included in a confidential appendix to the Second Report;
- preparing statements of receipts and disbursements for the receivership;

- preparing a calculation of the proceeds available for distribution to creditors resulting from the transaction with the Purchaser;
- corresponding with the Hamilton Fire Inspector regarding safety inspections;
- corresponding with the Debtor's unsecured creditors regarding pre-filing amounts owing to them;
- corresponding with Canada Revenue Agency regarding pre-filing HST returns;
- corresponding with the CRA regarding an HST audit commenced prior to the receivership;
- maintaining the Receiver's case website;
- convening internal meetings; and
- to all other meetings, correspondence, etc. pertaining to this matter.

Total fees and disbursements per attached time summary	\$	78,207.72
HST		<u>10,167.00</u>
Total Due	\$	<u><u>88,374.72</u></u>

KSV Restructuring Inc.
72 James Investments Inc., Forge & Foster Holdings Inc. and
Clifton Blake Partners LP

Time Summary

For the Period Ending April 19, 2024

Personnel	Rate (\$)	Hours	Amount (\$)
Robert Kofman	850	50.10	42,585.00
Meg Ostling	475	70.25	33,368.75
Other Staff and Administration		7.60	1,654.50
Total Fees		127.95	77,608.25
Add: Out of Pocket Disbursements			
Photocopy			14.00
Ascend Fee			325.00
Postage			23.38
Travel			237.09
Out of pocket disbursements			<u>599.47</u>
Total Fees and Disbursements			<u><u>78,207.72</u></u>


Attached is Exhibit "B"

Referred to in the

AFFIDAVIT OF ROBERT KOFMAN

Sworn before me

this 23rd day of April, 2024



Rajinder Kashyap, a Commissioner, etc.,
Province of Ontario, for KSV Restructuring Inc.
Expires February 23, 2027

72 James Investments Inc., Forge & Foster Holdings Inc. and Clifton Blake Partners LP
Time Summary
For the Period of February 13 to April 19, 2024

Name	Role	Hours	Billing Rate (Per Hour) (\$)	Total Fees by Professional (\$)
Robert Kofman	Overall responsibility	50.10	850.00	42,585.00
Meg Ostling	All aspects of mandate	70.25	475.00	33,368.75
Other staff and administrative		<u>7.60</u>	195 - 225	<u>1,654.50</u>
Total		<u>127.95</u>		<u>77,608.25</u>
Average hourly rate				<u>606.55</u>

Appendix “B”

**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**

**AFFIDAVIT OF BEATRICE LOSCHIAVO
(Sworn April 19, 2024)**

I, Beatrice Loschiavo, of the Town of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am an assistant at the law firm of Paliare Roland Rosenberg Rothstein LLP (“**Paliare Roland**”). I have personal knowledge of the matters to which I hereinafter refer.
2. Paliare Roland has provided legal services to and incurred disbursements on behalf of the Receiver. The detailed invoices attached hereto and marked as **Exhibit “A”** are dockets (the “**Dockets**”) which set out Paliare Roland’s fees and disbursements from February 13, 2024 to April 19, 2024. The Dockets describe the services provided and the amounts charged by Paliare Roland.

3. The following is a summary of the professionals whose services are reflected in the Dockets, including hourly rates, fees billed, hours billed, and the average hourly rate charged by Paliare Roland. The hourly rates charged are the usual hourly rates charged by Paliare Roland for the listed professionals.

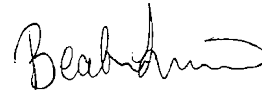
Professional	Hourly Rate	Hours Billed	Fees Billed
Jeff Larry	\$950/hr	19.70	\$18,715.00
Daniel Rosenbluth	\$650/hr	5.10	\$3,315.00
Ryan Shah	\$425/hr	1.60	\$680.00
Subtotal		26.40	\$22,710.00

4. Inclusive of HST and disbursements, the total amount of the Dockets are **\$25,662.30**

SWORN remotely by Beatrice Loschiavo at)
 the City of Toronto, in the Province of)
 Ontario before me, on this 19th day of April)
 2024 in accordance with *O. Reg. 431/20*,)
 Administering Oath or Declaration)
 Remotely)



 A Commissioner for taking Affidavits



BEATRICE LOSCHIAVO

Catherine Michelle Dunne, a Commissioner, etc.,
 Province of Ontario, while a Student-at-Law.
 Expires May 18, 2026.

This is **Exhibit "A"**
Referred to in the Affidavit of Beatrice Loschiavo
Affirmed remotely before me this 19th day of April 2024



A Commissioner for Taking Affidavits (or as may be)

**Catherine Michelle Dunne, a Commissioner, etc.,
Province of Ontario, while a Student-at-Law.
Expires May 18, 2026.**



35th Floor
155 Wellington St. West
Toronto, Ontario M5V 3H1
Canada

416.646.4300
paliareroland.com

Private and Confidential
KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, Ontario M5H 1J9

April 19, 2024
Invoice No.: 126200
Our File No.: 38004-102038

RE: Forgestone

FOR PROFESSIONAL SERVICES RENDERED on this matter for the period ending April 19, 2024:

OUR FEES	\$ 22,710.00
Total HST	<u>2,952.30</u>
INVOICE TOTAL	<u><u>\$ 25,662.30</u></u>

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP

Per:

Jeffrey Larry



35th Floor
155 Wellington St. West
Toronto, Ontario M5V 3H1
Canada

416.646.4300
paliareroland.com

Private and Confidential
KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, Ontario M5H 1J9

April 19, 2024
Invoice No.: 126200
Our File No.: 38004-102038

RE: Forgestone

FOR PROFESSIONAL SERVICES RENDERED on this matter for the period ending April 19, 2024:

DATE	LYR	DESCRIPTION	RATE	HOURS	AMOUNT
13/02/24	JL	Review draft Affidavit and Notice of Application; correspondence with B. Kofman;	950.00	0.50	475.00
21/02/24	JL	Review materials; correspondence with B. Kofman; revise management agreement;	950.00	1.50	1,425.00
21/02/24	RS	Review and revise property management agreement;	425.00	1.50	637.50
22/02/24	JL	Prepare for and attend at court; correspondence with B. Kofman;	950.00	0.40	380.00
22/02/24	JL	Correspondence with B. Kofman; discussion with R. Shah re amendments to management agreement; review and consider changes to management agreement;	950.00	0.50	475.00
22/02/24	RS	Email J. Larry re. property management agreement;	425.00	0.10	42.50
25/02/24	JL	Various email correspondence; review and comment on sales process report;	950.00	0.50	475.00

DATE	LYR	DESCRIPTION	RATE	HOURS	AMOUNT
25/02/24	JL	Review and comment on draft sales process report; correspondence with B. Kofman;	950.00	0.50	475.00
26/02/24	JL	Discussions with D. Rosenbluth; correspondence;	950.00	0.30	285.00
26/02/24	DR	Calls and emails with counsel and client re property management issues; attending court re appointment order;	650.00	0.90	585.00
27/02/24	JL	Correspondence; call with D. Rosenbluth;	950.00	0.30	285.00
28/02/24	DR	Review and finalize first receiver's report;	650.00	0.30	195.00
29/02/24	DR	Call with counsel to Clifton and Blake; discuss with J. Larry re issues raised by counsel;	650.00	0.40	260.00
05/03/24	DR	Preparing letter to insurance broker re proceeds of claim; letter to debtors re information production;	650.00	0.90	585.00
06/03/24	JL	Draft form of Agreement of Purchase and Sale;	950.00	1.10	1,045.00
06/03/24	DR	Revise and finalize letter re information request;	650.00	0.20	130.00
07/03/24	DR	Emails with client re information request; finalizing letter to insurance broker re proceeds;	650.00	0.20	130.00
11/03/24	JL	Review amendments to APS; call and correspondence with D. Rosenbluth;	950.00	0.60	570.00
11/03/24	DR	Review and comment on draft template APS; emails with	650.00	0.30	195.00

DATE	LYR	DESCRIPTION	RATE	HOURS	AMOUNT
		counsel to applicant re same;			
26/03/24	DR	Preparing draft letter to Intact re insurance claim;	650.00	0.40	260.00
01/04/24	JL	Finalize and send letter to counsel; correspondence with KSV;	950.00	0.30	285.00
01/04/24	DR	Drafting letter re outstanding information requests;	650.00	0.20	130.00
02/04/24	JL	Discussions with D. Rosenbluth re next steps and motion;	950.00	0.40	380.00
06/04/24	JL	Discussions with B. Kofman; revise Agreement of Purchase and Sale; correspondence;	950.00	1.50	1,425.00
09/04/24	JL	Further revisions to APS; correspondence with KSV;	950.00	0.90	855.00
10/04/24	JL	Further revisions to APS; discussion with B. Kofman; correspondence;	950.00	0.40	380.00
11/04/24	JL	Correspondence and revisions to APS;	950.00	0.30	285.00
14/04/24	JL	Discussions and correspondence with Colliers and KSV; revise APS; email correspondence re next steps and revised APS;	950.00	1.30	1,235.00
15/04/24	JL	Changes to APS; correspondence with counsel;	950.00	0.40	380.00
16/04/24	JL	Further revisions to APS; calls and correspondence with KSV; correspondence with Colliers and counsel; drafting security opinion;	950.00	2.40	2,280.00

DATE	LYR	DESCRIPTION	RATE	HOURS	AMOUNT
17/04/24	JL	Revisions to APS; correspondence with W. Rostom; correspondence with B. Kofman;	950.00	1.40	1,330.00
18/04/24	JL	Final revisions to APS: calls with W. Rostom; call with B. Kofman; email correspondence regarding revisions to APS; review and provide comments on draft Receiver's report;	950.00	2.90	2,755.00
18/04/24	DR	Preparing draft AVO and supporting orders	650.00	1.10	715.00
19/04/24	JL	Review and revise Approval and Vesting Order and Ancillary Relief and Discharge Order; discussion with D. Rosenbluth; correspondence with B. Kofman;	950.00	1.30	1,235.00
19/04/24	DR	Revisions to draft orders;	650.00	0.20	130.00

TIME SUMMARY

MEMBER	HOURS	RATE	VALUE
Shah, Ryan (RS)	1.60	425.00	680.00
Larry, Jeffrey (JL)	19.70	950.00	18,715.00
Rosenbluth, Daniel (DR)	5.10	650.00	3,315.00
	<u>26.40</u>		

OUR FEES \$ 22,710.00
 HST at 13% 2,952.30

INVOICE TOTAL \$ 25,662.30



35th Floor
155 Wellington St. West
Toronto, Ontario M5V 3H1
Canada

416.646.4300
paliareroland.com

Private and Confidential
KSV Restructuring Inc.
150 King Street West, Suite 2308
Toronto, Ontario M5H 1J9

April 19, 2024
Invoice No.: 126200
Our File No.: 38004-102038

RE: Forgestone

**REMITTANCE COPY
PLEASE REMIT WITH PAYMENT**

OUR FEES	\$ 22,710.00
Total HST	<u>2,952.30</u>
INVOICE TOTAL	<u><u>\$ 25,662.30</u></u>

FORGESTONE MORTGAGE FUND LP

Applicant

-and-

72 JAMES INVESTMENTS INC. et al.

Respondents

Court File No. CV-24-00714866-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
Proceedings commenced at Toronto**

FEE AFFIDAVIT OF BEATRICE LOSCHIAVO

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington Street West, 35th Floor
Toronto, ON M5V 3H1

Jeffrey Larry (LSO #44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com

Daniel Rosenbluth (LSO #71044U)
Tel: 416.646.6307
daniel.rosenbluth@paliareroland.com

Lawyers for the Receiver

Appendix “C”

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 under section 101 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43

**AFFIDAVIT OF STEFAN SIMONYI
(Sworn February 15, 2024)**

I, **STEFAN SIMONYI**, of the City of Toronto, in the Province of Ontario, **MAKE OATH
AND SAY:**

1. I am the President of Mortgage Investments of the Applicant, Forgestone Mortgage Fund LP (“**Forgestone**”). As such, I have knowledge of the matters to which I hereinafter depose.
2. Where the information in this affidavit is based upon information and belief, I have indicated the source of my information and belief and do verily believe it to be true.
3. To the extent that any information is based on my review of documents, I believe the information in those documents to be true.

Overview

4. I am swearing this Affidavit in support of an Application by Forgestone for an Order 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 Investments 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, being 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**”).

5. The within Application relates to a mortgage loan made by Forgestone to the Debtor in the amount of \$5,675,000 (the “**Loan**”), which Loan is secured by, among other things, a first-ranking mortgage over the James Property.

6. The James Property is a 32-unit multi-residential property (29 units) with ground floor commercial space (3 units). Forgestone made the Loan to the Debtor to, among other things, fund the purchase of the James Property, and to fund the Debtor’s future capital expenditures for the James Property, as approved by Forgestone.

7. However, the Debtor has defaulted under the Loan, and neither it, the Guarantors (defined below), nor the beneficial owners of the Debtor, Forge Holdings and Clifton LP (collectively, the “**Beneficial Owners**”), have honoured Forgestone’s demands for payment.

The Parties

8. Forgestone is a mortgage lending firm with offices in Toronto that provides commercial real estate financing.

9. The Debtor is incorporated pursuant to the laws of Ontario. Joseph Accardi (“**Accardi**”) is one of two officers and directors of the Debtor (the other officer and director of the Debtor is Qasim Daya). Attached hereto and marked as **Exhibit “1”** to this affidavit is a copy of the Corporation Profile Report for the Debtor dated February 8, 2024.

10. At the time the Loan was made to the Debtor, Accardi, on behalf of the Debtor, represented to Forgestone that, among other things, the Beneficial Owners are the sole shareholders of the Debtor. Specifically, Clifton LP holds 75 of the 100 outstanding Class B Common Shares, Forge Holdings holds the remaining 25 Class B Common Shares, and there are no other outstanding shares of the Debtor. Attached hereto and marked as **Exhibit “2”** to this affidavit is a Certificate of Incumbency of the Debtor dated January 18, 2022.

11. Clifton LP represented to Forgestone that Clifton Blake Partners (GP) Ltd. (“**Clifton GP**”) is the general partner of Clifton LP. Attached hereto and marked as **Exhibit “3”** to this affidavit is a Partnership Profile Report for Clifton LP dated February 8, 2024, the corporate profile report for Clifton GP also dated February 8, 2024, and the corporate profile report for Forge Holdings dated February 9, 2024.

12. As set out in Exhibit “3”, both 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

13. Forgestone made the Loan to the Debtor pursuant to the terms of a commitment letter dated January 10, 2022 (the “**Commitment Letter**”). Attached hereto and marked as **Exhibit “4”** to this affidavit is a copy of the Commitment Letter.

14. 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, at the annual rate of the greater of 6%, or the Royal Bank of Canada’s prime rate of interest plus 3.55%.

15. As security for the Loan, the Debtor granted Forgestone, among other things, the following:

- (a) a charge/mortgage in the amount of \$5,675,000 registered in first position against title to the James Property as instrument number WE1576052 in the Land Registry Office for the Land Titles Division of Hamilton (LRO #62) on January 18, 2022 (the “**James Mortgage**”). Attached hereto and marked as **Exhibit “5”** to this affidavit is a copy of the James Mortgage;
- (b) a General Assignment of Rents over the James Property dated January 18, 2022 (the “**James GAR**”). Attached hereto and marked as **Exhibit “6”** to this affidavit is a copy of the James GAR;
- (c) a General Assignment of Material Agreements dated January 18, 2022 of any present or future material agreements entered into by the Debtor (the “**James GAMA**”). Attached hereto and marked as **Exhibit “7”** to this affidavit is a copy of the James GAMA; and

(d) a General Security Agreement dated January 18, 2022 (the “**James GSA**”). Attached hereto and marked as **Exhibit “8”** to this affidavit is a copy of the James GSA.

16. Now shown to me and marked as **Exhibit “9”** to this affidavit is a copy of the parcel register for the James Property dated February 8, 2024, confirming the James Mortgage is registered in first place over the James Property.

17. Forgestone registered its personal property security over the Debtor under the *Personal Property Security Act* (“**PPSA**”). Attached hereto and marked as **Exhibit “10”** to this affidavit is a copy of the *PPSA* registrations over the Debtor as of February 8, 2024.

18. In addition to the security described above, 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. Attached hereto and marked as **Exhibit “11”** to this affidavit is a copy of the Guarantee.

The Beneficial Charge Agreement

19. On or about January 18, 2022, Forgestone entered into a beneficial charge agreement with the Debtor and the Beneficial Owners, pursuant to which, among other things, the Beneficial Owners agreed to be bound to the terms of the Commitment and the James Mortgage (the “**Beneficial Charge Agreement**”). Attached hereto and marked as **Exhibit “12”** is a copy of the Beneficial Charge Agreement dated January 18, 2022.

20. Specifically, 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.
21. Forgestone registered its security over the Beneficial Owners under the *PPSA*. Attached hereto and marked as **Exhibit “13”** and **“14”** to this affidavit is a copy of the *PPSA* search results for Clifton LP as of February 7, 2024, and Forge Holdings as of February 8, 2024.

Defaults and Demands

22. There have been numerous defaults under the Loan.
23. The payment due May 1, 2023 was not made when due, though it was eventually paid.
24. The payment due December 1, 2023 was similarly not made when due. By way of email dated December 6, 2023, Forgestone notified the Debtor (among others) of the payment default, and, among other things, requested an opportunity for me to schedule a tour of the James Property, as well as delivery of an up to date rent roll and operating statement. Attached hereto and marked as **Exhibit “15”** is a copy of an exchange of emails with Accardi and Ev Kotlikov (“**Kotlikov**”), the chief financial officer for Forge Partners, between November 28, 2023 and December 7, 2023, redacted to remove information regarding the valuation of the James Property.

25. I toured the James Property on December 8, 2023, and on December 13, 2023, Kotlikov provided Forgestone with a rent roll (the “**December Rent Roll**”), and an operating statement for the James Property for the period between January 1, 2023, and November 30, 2023. Kotlikov further advised that eight of the 32 units at the James Property were vacant (7 residential and 1 commercial). Attached hereto and marked as **Exhibit “16”** is a copy of my exchange of emails with Kotlikov and Accardi between December 12, 2023 and December 21, 2023, without attachments, and redacted to remove information regarding valuation of the James Property.

26. As part of my response to Kotlikov on December 21, 2023, I noted that, among other things, the James Property was in a state of disrepair. In particular, during the physical inspection, which I carried out, I discovered several missing or broken windowpanes that exposed residential units to the elements and posed a security risk, burnt out lights in several of the residential areas, a detached handrailing in one of the stairwells, as well as a broken window pane at the front of the property in one of the commercial units, all of which posed significant health, safety and security risks to the residents and occupants of the James Property. Attached hereto and marked as **Exhibit “17”** are copies of photographs I took during my December 8, 2023 inspection detailing the broken glass, missing windowpanes, and detached handrail, together with a photograph of the exterior of James Property taken on or about December 13, 2023.

27. By way of emails dated January 2 and 3, 2024, Accardi and Jessica Wright (“**Wright**”), Director of Leasing for the Debtor, addressed some of my comments regarding whether certain units were actually leased (they were reported in the December Rent Roll as having been leased, but appeared vacant during my tour), and provided a further updated rent roll for the property (the “**January Rent Roll**”). Attached hereto and marked as **Exhibit “18”** are copies of the emails from Accardi and Wright dated January 2 and 3, 2024, and a copy of the January Rent Roll

confirming the vacant units at the James Property, redacted to remove information regarding valuation of the James Property, and to remove personally identifiable information regarding the leased units.

28. However, my concerns related to the health, safety and security risks, and the state of repair of the James Property, remained unaddressed.

29. In addition, the Debtor failed to make the monthly interest payment in the amount of \$49,718.75 due under the Loan on January 1, 2024.

30. As set out in the January Rent Roll for the James Property, the rental revenue for the occupied 25 units (7 are now vacant) totals approximately \$38,225.35, being significantly less than the monthly mortgage payment due. Furthermore, these remaining rents are not being remitted to Forgestone, and are not being used to remedy the health, safety and security concerns at the James Property.

31. Furthermore, the Loan then matured on February 1, 2024, and was not repaid. In fact, no payments have been made under the Loan since the monthly payment made on December 1, 2023.

32. As of January 10, 2024, \$5,626,259.38 was outstanding under the Loan.

33. By letter dated January 10, 2024, Forgestone made formal written demand on the Debtor and the Beneficial Owners 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*. Attached hereto and marked as **Exhibit “19”** to this affidavit is a copy of the demand letters and related s. 244 *BIA* Notices issued to the Debtor and the Beneficial Owners.

34. By letter dated January 10, 2024, Forgestone also made formal written demand on each of the Guarantors for repayment of the Loan and gave notice of its intention to enforce its security pursuant to section 244(1) of the *BIA*. Attached hereto and marked as **Exhibit “20”** to this affidavit is a copy of those demands and related BIA Notices issued to the Guarantors.

35. Neither the Debtor, the Beneficial Owners nor or the Guarantors have honoured Forgestone’s demands for payment.

Basis and Need for a Receiver

36. The James Mortgage (Exhibit “5”, subsection 7.02(c)), and the James GSA, (Exhibit “8”, subsection 5.02(1)(a)), each provide for the appointment of a receiver over the Debtor’s assets, including the James Property, upon default by the Debtor.

37. As set out above, Forgestone has the right under its security to apply to the Court for the appointment of a receiver upon default by the Debtor.

38. Given the Debtor’s conduct as described above, and the maturity of the Loan on February 1, 2024, 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.

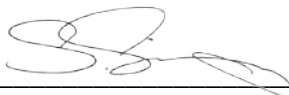
39. KSV has consented to act as Receiver over the Debtor, and over the Beneficial Owners’ interest in the James Property. Attached hereto and marked as **Exhibit “21”** to this affidavit is a copy of the consent to act as Receiver executed by KSV.

40. This affidavit is sworn in support of Forgestone’s application for, among other things, an Order to appoint KSV as receiver over the Debtor, and for no improper purpose.

SWORN BEFORE ME by videoconference)
at the City of Toronto, in the Province of)
Ontario, this 15th day of February 2024)



A Commissioner for Taking Affidavits
STEVEN KELLY (LSO# 87293B)



STEFAN SIMONYI

Appendix “D”



**First Report of
KSV Restructuring Inc. as
Receiver and Manager
of 72 James Investments Inc.,
Forge & Foster Holdings Inc. and
Clifton Blake Partners LP**

February 28, 2024

Contents

	Page
1.0 Introduction.....	1
1.1 Purposes of this Report.....	2
1.2 Restrictions	2
2.0 Sale Process	2

Appendices

Appendix	Tab
Colliers Reporting Letter.....	A



COURT FILE NO.: CV-24-00714866-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

BETWEEN:

FORGESTONE MORTGAGE FUND LP

Applicant

- and -

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

Respondents

FIRST REPORT OF KSV RESTRUCTURING INC.
AS RECEIVER AND MANAGER

FEBRUARY 28, 2024

1.0 Introduction

1. On February 26, 2024, the Ontario Superior Court of Justice (the “**Court**”) issued a receivership order (the “**Receivership Order**”) appointing KSV Restructuring Inc. (“**KSV**”) as the receiver and manager (the “**Receiver**”), without security, of:
 - a) all current and future assets, undertaking and property (collectively, the “**Property**”) of 72 James Investments Inc. (the “**Debtor**”), including but not limited to the properties municipally known as 72-76 James Street North, Hamilton, Ontario (the “**Real Property**”); and
 - b) the right, title and interest of the two beneficial owners (the “**Beneficial Owners**”), Clifton Blake Partners LP (“**Clifton LP**”) and Forge & Foster Holdings Inc. (“**Forge Holdings**”) in the Real Property.
2. The Real Property is a 32-unit multi-residential property, with 29 residential units and three commercial units. At the time of this report, six residential units and one commercial unit are vacant.
3. The principal focus of the receivership proceeding is to continue a sale process for the Real Property that was commenced by the Debtor prior to the date of the Receivership Order (the “**Sale Process**”). The Debtors retained Colliers Macaulay Nicolls Inc. (“**Colliers**”), a well-known national real estate brokerage, to list the Real Property for sale.

1.1 Purposes of this Report

1. The purpose of this report (the “**Report**”) is to summarize the Sale Process and provide interested parties the opportunity to advise the Receiver if they object to any aspect of the Sale Process. If a party with a material interest in these proceedings advises the Receiver that they object to a material aspect of the Sale Process, the Receiver intends to seek Court approval of the Sale Process.
2. This Report is being served on the service list. A copy of the Report can also be found on the Receiver’s case website at <https://www.ksvadvisory.com/experience/case/72-james> (the “**Website**”).

1.2 Restrictions

1. In preparing this Report, the Receiver has relied upon information (the “**Information**”) provided by Forgestone Mortgage Fund LP (the “**Lender**”) and Colliers. The Receiver has not performed an audit or other verification of the Information. The Receiver’s review of the Information is preliminary and subject to further review. The Receiver is not in possession of any of the Beneficial Owners’ financial information.
2. Background information concerning the events leading to these proceedings is provided in the Affidavit of Stefan Simonyi, the President of the Lender, sworn in support of the Lender’s application for the appointment of the Receiver. A copy of the Affidavit is available on the Website.

2.0 Sale Process

1. Colliers was retained by the Debtor on January 10, 2024, to list the Real Property for sale. Colliers listed the Real Property for sale shortly thereafter and has been marketing the Real Property since that time.
2. The Receiver is in the process of entering into a revised listing agreement with Colliers whose current listing agreement with Debtor will be terminated. As the Sale Process is well advanced, the Receiver believes that retaining Colliers to continue to market the Real Property is the most efficient and least disruptive manner to complete the Sale Process.
3. The Receiver consulted with the Lender regarding the continued retention of Colliers. The Lender advised the Receiver that it consents to the continued retention of Colliers.
4. KSV has requested that Colliers prepare and provide it with a reporting letter as to the status of the Sale Process and a summary of the proposed marketing process going forward. A copy of the reporting letter is attached as **Appendix “A”**.
5. In summary, Colliers has carried out a broad marketing campaign using different mass marketing techniques, populated a data room, held discussions with various interested parties, and facilitated due diligence by interested parties who signed a confidentiality agreement (the “**CA**”). Access to the data room has been granted only after the CA is signed.
6. Colliers has advised the Receiver that numerous parties are presently conducting due diligence.

7. Given the foregoing and in consultation with Colliers, the Receiver set a bid deadline of March 25, 2024 for the submission of offers, subject to such extensions as the Receiver believes may be necessary to maximize value.
8. The Receiver is in the process of drafting a template purchase and sale agreement (the "**Template APS**"), which will have provisions customary for a transaction of this nature. The Template APS will be uploaded to the data room. Colliers will recommend that bidders submit offers on the Template APS and that any changes to it be minimized.
9. The Receiver will consider offers based on their value, conditionality, ability to close, and such other factors as the Receiver may consider in its discretion.
10. Additional aspects of the Sale Process include:
 - a) the Real Property will be marketed on an "as is, where is" basis;
 - b) in order to facilitate due diligence or maximize participation by interested parties in the Sale Process, the Receiver will have the right, in its discretion, to extend any of the timelines in the Sale Process, provided the Lender does not unreasonably object to the extension of the timeline;
 - c) the Receiver will have the right to reject any and all offers, including the highest dollar value offer(s), acting reasonably;
 - d) if the highest and best offer received does not generate proceeds sufficient to repay the Lender in full, and the Lender does not consent to the proposed transaction, the Lender will be entitled to submit a credit bid to purchase the Real Property; and
 - e) acceptance of any offer and the approval of any transaction will be subject to Court approval.

* * *

All of which is respectfully submitted,

KSV Restructuring Inc.

**KSV RESTRUCTURING INC.
SOLELY IN ITS CAPACITY AS
RECEIVER AND MANAGER OF
72 JAMES INVESTMENTS INC., FORGE & FOSTER HOLDINGS INC.,
AND CLIFTON BLAKE PARTNERS LP AND NOT IN ITS PERSONAL
OR IN ANY OTHER CAPACITY**

Appendix “A”



Memorandum

To: Bobby Kofman, President, KSV Restructuring Inc.

From: Jeremiah Shames, Executive Vice President, Private Capital Investment Group, Colliers
 Matthew Soper, Associate Vice President, Private Capital Investment Group, Colliers

Date: February 21, 2024

Subject: 72 James Street North, Hamilton, ON ("the Site") Sale & Marketing process and timeline

Municipal Address 72 James Street North, Hamilton, ON
 L8R 2K5

Legal Description PT LT 56 NATHANIEL HUGHSON
 SURVEY (UNREGISTERED) E/S OF
 JAMES ST BTN REBECCA ST & GORE
 ST AS IN CD394562; CITY OF
 HAMILTON

Official Plan Mixed-Use (Retail and Residential)

Secondary Plan Downtown Hamilton Secondary Plan

Site Area 0.19 acres (8,102 SF)

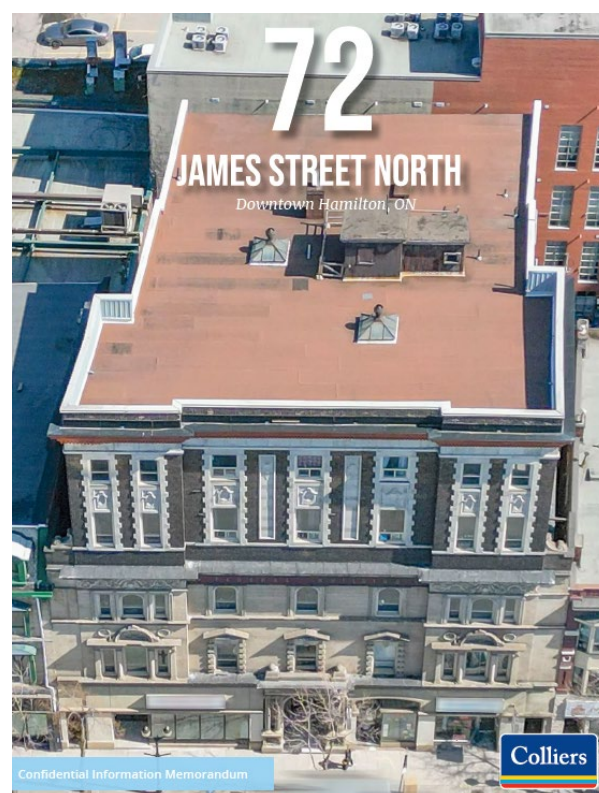
Building Size 30,488 SF

Unit Mix	Count
Studio	4
Bachelor	9
1-Bedroom	12
2-Bedroom	3
3-Bedroom	1
Retail	3

Zoning D2, Holding H17, H19, H20

Frontage 81.19 FT (on James Street North)

Depth 101.33 FT





A: This memo represents the current timeline and context in which Colliers has marketed 72 James Street North for sale and the background of Colliers team on the file, as well as our recommendation moving forward.

1. Colliers was retained by 72 James Investments Inc. pursuant to a listing agreement dated January 10, 2024 signed by Joe Accardi & KC Daya on January 10, 2024 (“listing”). Colliers intends to enter into a new listing agreement with KSV, as receiver and manager of the Company immediately following KSV’s appointment.
2. Marketing process to date. Colliers:
 - has executed an email marketing campaign to a list of 2,258 multi-family investors buyers and private capital investors in Toronto and GTA;
 - executed a LinkedIn marketing on the property which generated 1,422 views; and
 - established a website for the property, which received 1,525 views with 80 flyer downloads.

To date, Colliers has received 61 signed confidentiality agreements have been signed by interested parties. Thereafter, these parties were granted access to a data room (see below).

February 16th, 2024

Marketing Report

72 James Street North, Hamilton



Engagement	Email	Marketing Initiatives
80 Flyer Downloads	2,258 Email Recipients	<input checked="" type="checkbox"/> Website <input checked="" type="checkbox"/> Signage
1,525 Website Views	1,071 Unique Opens	<input checked="" type="checkbox"/> Email Blast <input checked="" type="checkbox"/> Social Media
44% Click Through Rate	01/25/24 Last Send Date	Signed NDA 60

3. The data room includes the following information (further information will be uploaded to the data room as made available to Colliers and/or the Receiver):
 - a. CIM
 - b. Phase One ESA dated November 16, 2021
 - c. Supplemental Phase Two ESA dated April 26, 2022
 - d. Floor Plans inclusive of Floors 1-6, together with a Summary Floor Area of Chart and Basement Floor Plan
 - e. Signed Commercial Leases from Avenn Hair Salon, Red Sea Clothing and a Letter of Intent dated January 12, 2024 for vacant commercial unit 3



- f. Signed Residential Leases for Units 203, 207, 208, 301, 302, 303, 304, 305, 307, 308, 401, 402, 404, 406, 407, 550, 552, 553, 555 and 558
- g. Two folders containing various photos of Unit 550 and Unit 557
- h. Plan of Survey for the property
- i. Folder containing historical utilities data from Alectra, Bell, Cogeco, Enbridge and Laundry Facilities

B: Colliers recommendation moving forward:

Execution and Marketing

Our recommendation is to continue with existing marketing efforts, send notice of an 'offer date' on March 25th, and to have offers presented in the form of a standard agreement of purchase and sale provided by KSV and uploaded to the data room. We believe this will provide existing interested parties enough time to submit offers in the form of a template agreement of purchase and sale, with the objective of receiving unconditional or substantially unconditional offers.

1. Subsequent phases of our marketing process will involve the provision of offers and respective summaries of same and may include negotiations with selected short list parties until an offer deemed sufficient by KSV and is accepted and executed by all parties.
2. Buyer due diligence is to be facilitated by Colliers; however, due to the nature of this sale process, potential buyers will be hereby advised that the ability to conduct comprehensive and exhaustive due diligence may be restricted. Information and access to the property and respective documentation will be provided on an 'as is, where is' basis, with no representations or warranties regarding the completeness or accuracy of such information. Buyers will be encouraged to perform their own due diligence. Buyers will be encouraged to submit offers in the form of the APS with as few changes as possible.

Reporting:

1. Every Friday by 4:00pm (Toronto time), Colliers will provide KSV with a written comprehensive marketing update, including a summary of the parties most interested in the opportunity, the extent of their due diligence, any value guidance provided by interested parties, new parties who entered the process, parties who have advised that they are no longer interested in the opportunity and any other material information relevant to the sale process.

About Colliers:

This specific Colliers team, led by Jeremiah Shames, are experts in downtown Hamilton and have significant experience with investors in the Hamilton node, demonstrated by completing transactions having a value of \$79 million in the past 3 years. Colliers is Canada's largest commercial brokerage, and this specific Colliers team (led by Jeremiah) sold over \$356 million in calendar year 2023.

Appendix “E”

Memorandum

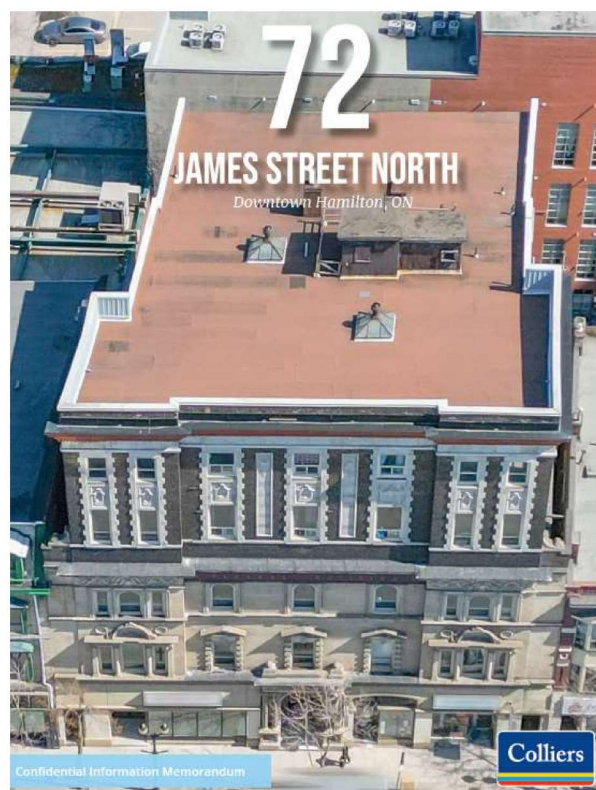
To: Bobby Kofman, President, KSV Restructuring Inc.

From: Jeremiah Shames, Executive Vice President, Private Capital Investment Group, Colliers
 Matthew Soper, Associate Vice President, Private Capital Investment Group, Colliers

Date: April 16, 2024

Subject: 72 James Street North, Hamilton, ON ("the Site") Sale process and Buyer Selection

Municipal Address	72 James Street North, Hamilton, ON L8R 2K5	
Legal Description	PT LT 56 NATHANIEL HUGHSON SURVEY (UNREGISTERED) E/S OF JAMES ST BTN REBECCA ST & GORE ST AS IN CD394562; CITY OF HAMILTON	
Official Plan	Mixed-Use (Retail and Residential)	
Secondary Plan	Downtown Hamilton Secondary Plan	
Site Area	0.19 acres (8,102 SF)	
Building Size	30,488 SF	
Unit Mix	Studio	4
	Bachelor	9
	1-Bedroom	12
	2-Bedroom	3
	3-Bedroom	1
	Retail	3
Zoning	D2, Holding H17, H19, H20	
Frontage	81.19 FT (on James Street North)	
Depth	101.33 FT	



Confidential Information Memorandum



A: Sale Process

1. Colliers was retained by 72 James Investments Inc. (the "Debtor") pursuant to a listing agreement dated January 10, 2024. After the issuance of the receivership order, Colliers was retained by KSV Restructuring Inc. (the "Receiver") to continue to market the Debtor's real property (the "Real Property") and generate offers, with an original offer date of March 25, 2024.
2. Colliers undertook the following in respect of the marketing process:
 - conducted an email marketing campaign, which included preparing a teaser, and sending it to 2,539 multi-family investors, buyers and private capital investors in Hamilton and the GTA;
 - placed a "For Sale" sign on the Real Property;
 - executed a LinkedIn marketing campaign, which generated 2,422 views;
 - established a website for the Real Property, which received 2,095 views, 137 flyer downloads;
 - prepared a confidential information memorandum (the "CIM"); and
 - uploaded information to a data room, which was made available to interested parties.

Colliers received 69 signed confidentiality agreements and conducted 15 property tours throughout the entire listing process, including when the Property was listed with the Debtor. Parties were granted access to the data room after returning a signed confidentiality agreement.

3. Information uploaded to the data room included:
 - a. the CIM, which included financial and other information concerning the Real Property
 - b. Phase One ESA report dated November 16, 2021
 - c. Supplemental Phase Two ESA report dated April 26, 2022
 - d. Property Conditional Assessment report dated March 22, 2024
 - e. Phase 1 Environmental Site Assessment report dated March 22, 2024
 - f. Soil Vapor Due Diligence Risk Assessment report dated May 6, 2022
 - g. Floor Plans, together with a Summary Floor Area of Chart and Basement Floor Plan
 - h. Signed Commercial Leases from Avenn Hair Salon, Red Sea Clothing and a Letter of Intent dated January 12, 2024 for commercial unit 3
 - i. Signed residential leases for units 203, 207, 208, 301, 302, 303, 304, 305, 307, 308, 401, 402, 404, 406, 407, 550, 552, 553, 555 and 558
 - j. Two folders containing various photos of units 550 and 557
 - k. A Real Property survey
 - l. Utility invoices from Alectra, Bell, Cogeco, Enbridge and Laundry Facilities
 - m. Template Agreement of Purchase and Sale (the "APS"), in Microsoft Word
4. The original bid deadline was March 25th, which was communicated via email by Colliers.
 - a. To generate further interest in this opportunity, and to allow prospective purchasers to complete their due diligence, Colliers recommended to the Receiver that the bid deadline be deferred to April 2nd.
 - b. As directed by the Receiver, Colliers recommended that prospective purchasers submit their offers in the form of the APS, with any changes marked against the template.



B: Buyer Selection

1. [REDACTED]
2. With direction from the Receiver, Colliers requested that bidders submit second-round offers by April 5th, without conditions, if possible, and with an expedited closing, together with evidence of financing to close a transaction.
3. [REDACTED]
4. The APS was executed on April 19, 2024, and the deposit was paid to the Receiver on that date. The offer is unconditional except for Court approval.

C: Process Comments

1. Colliers marketed the property using traditional methods for selling real property.
2. The sale process extensively canvassed a large number of parties, including those solicited via the social media campaign. Colliers also directly contacted parties that it felt would be most interested in the opportunity.
3. Colliers is of the view that prospective purchasers were provided sufficient opportunity to perform due diligence, including information provided in a data room.
4. Colliers does not believe that further time marketing the property is likely to result in a superior transaction, particularly after considering that the process to market the Real Property commenced prior to the receivership.
5. Colliers believes that the purchase price represents the best available transaction at this time.

About Colliers:

This specific Colliers team, led by Jeremiah Shames, are experts in downtown Hamilton and have significant experience with investors in the Hamilton node, demonstrated by completing transactions having a value of \$79 million in the past 3 years. Colliers is Canada's largest commercial brokerage, and this specific Colliers team (led by Jeremiah) sold over \$356 million in calendar year 2023.

Appendix “F”

AGREEMENT OF PURCHASE AND SALE

BETWEEN

KSV RESTRUCTURING INC.,
solely in its capacity as the Court-appointed receiver of the
property, assets and undertaking of **72 JAMES INVESTMENTS**
INC., and not in its personal capacity or in any other capacity

- and -

2793530 Ontario Inc.

Dated: April 18th, 2024

TABLE OF CONTENTS

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

TABLE OF CONTENTS
(continued)

7.3	Conditions in Favour of the Purchaser.	13
7.4	Conditions in Favour of Purchaser Not Fulfilled.	13
7.5	Conditions for the Mutual Benefit of the Receiver and Purchaser	14
7.6	Mutual Conditions Not Fulfilled.	14
ARTICLE 8 REPRESENTATIONS & WARRANTIES OF THE RECEIVER.....		14
8.1	Representations and Warranties of Receiver.	14
ARTICLE 9 REPRESENTATIONS & WARRANTIES OF THE PURCHASER.....		15
9.1	Representations and Warranties of Purchaser.	15
ARTICLE 10 COVENANTS		16
10.1	Mutual Covenants.	16
10.2	Receiver Covenants.	16
10.3	Purchaser Covenants.....	16
10.4	Contracts.	16
ARTICLE 11 POSSESSION AND ACCESS PRIOR TO CLOSING.....		17
11.1	Possession of Purchased Assets.....	17
11.2	Examination of Title and Access to the Purchased Assets.	17
11.3	Risk.	18
ARTICLE 12 AS IS, WHERE IS		19
12.1	Condition of the Purchased Assets.	19
ARTICLE 13 TERMINATION.....		20
13.1	Termination by Receiver	20
13.2	Effects of Termination by Receiver.....	20
13.3	Other Termination of this Agreement.....	20
13.4	Remedies for Breach of Agreement.	20
13.5	Termination If No Breach of Agreement.....	21
ARTICLE 14 GENERAL CONTRACT PROVISIONS.....		21
14.1	Further Assurances.	21
14.2	Survival Following Completion.	21
14.3	Notice.....	21
14.4	Waiver.....	23
14.5	Consent.	23

TABLE OF CONTENTS
(continued)

14.6	Governing Law.....	23
14.7	Entire Agreement.....	23
14.8	Time of the Essence.....	23
14.9	Time Periods.....	23
14.10	Assignment.....	23
14.11	Expenses.....	24
14.12	Severability.....	24
14.13	No Strict Construction.....	24
14.14	Cumulative Remedies.....	24
14.15	Currency.....	24
14.16	Receiver’s Capacity.....	24
14.17	Planning Act.....	25
14.18	No Third Party Beneficiaries.....	25
14.19	Number and Gender.....	25
14.20	Non-Registration.....	25
14.21	Counterparts.....	25
SCHEDULE A (APS)		A-1
“Real Property”		A-1
SCHEDULE B (APS) “Approval and Vesting Order”.....		B-1
SCHEDULE C (APS) “Permitted Encumbrances”		C-1

AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made this 18th day of April, 2024.

BETWEEN:

KSV RESTRUCTURING INC.,
solely in its capacity as the Court-appointed receiver and manager
of the property, assets and undertaking of **72 JAMES**
INVESTMENTS INC. and not in its personal capacity or in any
other capacity

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

- and -

2793530 Ontario Inc.

(the “**Purchaser**”)

WHEREAS pursuant to an order of The Honourable Justice Black of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on February 26, 2024 (the “**Receivership Order**”), KSV Restructuring Inc. (“**KSV**”) was appointed as the Receiver, without security, of: (i) the property, assets and undertaking of 72 James Investments Inc. (the “**Debtor**”) including the real property municipally known as 72-76 James Street North, Hamilton, Ontario and having the legal description set out in Schedule “A” hereto (the “**Real Property**”); and (ii) the right, title and interest in the Real Property of the beneficial owners of the Real Property, Clifton Blake Partners LP and Forge & Foster Holdings Inc. (the “**Beneficial Owners**”);

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;

“**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 transactions contemplated by this Agreement and conveying to the Purchaser the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form substantively similar to the draft order attached as **Schedule “B”** hereto;

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

“**Beneficial Owners**” has the meaning given in the recitals hereof;

“**Business**” means the business of the Debtor;

“**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 Debtor, 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 fifteen (15) 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 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;

“**Closing Time**” means 2:00 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 the Debtor is a party;

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

“**Deposit**” has the meaning given in section 4.2 herein;

“**Encumbrances**” means all liens, charges, security interests, pledges, leases, offers to lease, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever affecting the Purchased Assets;

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

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

- (a) the Debtor’s cash or cash equivalents;
- (b) the Debtor’s 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 the Debtor or the Purchased Assets;
- (d) the benefit of any prepaid expenses or deposits with any Person (other than any prepaid rent), public utility or Governmental Authority; and
- (e) the benefit of any refundable Taxes payable or paid by the Debtor 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 the Debtor or the Receiver to any refund, rebate, or credit of Taxes for the period prior to the Closing Date;

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

“**Governmental Authority**” 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 Real 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;

“**HST Certificate**” has the meaning given in section 5.1(2) herein;

“**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;

“**Leases**” means the leases between the Debtor and the Tenants (as defined below) for space in the Real Property;

“**Notice**” has the meaning given in section 14.3 herein;

“**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 Purchased Assets;

“**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;

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

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

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

- (a) the Real Property;
- (b) all pre-paid rent (which the Purchaser acknowledges is \$3,121.75 as at the date hereof);
- (c) the Contracts; and
- (d) the Permits, but only to the extent transferable to the Purchaser or the Purchaser’s permitted assignees;

“**Purchaser**” means 2793530 Ontario Inc., a corporation duly formed and validly subsisting under the laws of Province of Ontario;

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

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

“**Receivership 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;

“**Tenants**” has the meaning given in section 4.5(2) herein;

“**Third Party**” has the meaning given in section 3.1(3) herein; and

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

ARTICLE 2 SCHEDULES

2.1 Schedules.

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

<u>Schedule</u>	<u>Description</u>
Schedule A	Real Property
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 and demands 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 Contracts, 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:

- (1) 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 temporarily holding those Assignable Assets in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment; and
- (2) 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 incurred pursuant to subsection (a) above.

3.2 Excluded Assets.

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

3.3 Assumption of Liabilities.

Subject to section 4.5 hereof, 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 Closing, including without limitation all liabilities and obligations under the Contracts that are assumed by the Purchaser in accordance with Section 10.4(2) (the “**Assumed Liabilities**”) 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 Contracts, in respect of the period from and after Closing. The covenants and agreements to indemnify made by the Purchaser in this section 3.3 shall survive Closing and not be subject to any limitation periods. The Purchaser shall not assume and shall have no obligation to discharge, pay, perform or fulfil any and all Excluded Liabilities. “**Excluded Liabilities**” means any and all liabilities and obligations of the Debtor or in respect of the Business or Purchased Assets, whether known, unknown, direct, indirect absolute contingent or otherwise or arising out of facts, circumstances or events, including, without limitation, the Accounts Payable to the date of Closing, other than the Assumed Liabilities.

ARTICLE 4
PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE

4.1 Purchase Price.

The purchase price for the Purchased Assets shall be the aggregate of [REDACTED] (the “Purchase Price”).

4.2 Deposit.

- (1) The Parties agree that the Purchaser has paid the Receiver a deposit of [REDACTED] (the “Deposit”), which Deposit shall be held in accordance with the provisions of this Agreement pending completion or other termination of this Agreement.
- (2) The Parties agree that the Receiver shall cause the Deposit to be placed in a non-interest bearing account and on completion of the Transaction shall be credited to the Purchaser on the Closing Date.

4.3 Satisfaction of Purchase Price.

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

- (1) payment of the Deposit upon execution of this Agreement; and
- (2) the remainder of the Purchase Price, being the net amount owing after deducting the Deposit, shall be paid by the Purchaser to the Receiver on Closing.

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 of the Agreement 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 the Closing Time 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. For greater certainty, and notwithstanding any provision to the contrary in this Agreement, (i) the Purchaser shall be solely responsible for 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 (ii) the Purchaser shall not be responsible for any Taxes or utilities that relate to the period prior to the Closing Date. 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 five Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined by two Business Days prior to the Closing Date, then, and only then: (i) an estimate shall be agreed upon by the Parties as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably; and (ii) the Parties shall enter into an agreement on or prior to the Closing Date to readjust the adjustments within 60 days after the Closing Date, which readjustment shall serve as a final determination.

- (2) Except for current installments collected from tenants of space in the Real Property (“**Tenants**”) for the month in which the Closing Date occurs, no adjustments shall be made in respect of amounts recoverable from Tenants under their respective Leases with respect to realty taxes, operating expenses and management fees (herein called, collectively, “**Additional Rents**”). The Receiver shall have no obligation or liability of any kind for amounts owing, or which may become payable, to Tenants under their respective Leases on account of adjustments for overpayments of Additional Rents made by Tenants in respect of the current year or any previous year(s).
- (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.

4.7 Rental Arrears.

- (1) The Purchaser shall make reasonable effort to collect any rental arrears, recoveries and any other claims against Tenants that have accrued after February 26, 2024 and prior to the Closing Date (collectively, the “**Post-Appointment Receivables**”). Any Post-Appointment Receivables collected by the Purchaser shall be received in trust for, and shall be promptly paid over to, the Receiver together with an accounting, by unit, of the monies collected. For certainty, any amounts that the Receiver may collect on account of rental arrears, recoveries and any other claims against Tenants for the period following Closing shall be received in trust for, and shall be promptly paid over to, the Purchaser together with an accounting, by unit, of the monies collected.

- (2) Rental arrears, recoveries and any other claims against Tenants that have accrued prior to February 26, 2024 (collectively, the “**Pre-Appointment Receivables**”) shall remain the property of the Receiver. Any amounts received by the Purchaser from Tenants after the Closing Date that are expressly stated to be payable on account of rents or other amounts owing in respect of the Pre-Appointment Receivables shall be received by the Purchaser in trust for, and shall be promptly paid over to, the Receiver. All other amounts received by the Purchaser after the Closing Date from Tenants shall in each case be credited and applied, firstly, to any amounts accrued from and after the Closing Date and then due and owing by the Tenant to the Purchaser, secondly, to any Post-Appointment Receivables and thirdly, to such arrears which remain the property of the Receiver. The Purchaser shall have no obligation, other than as aforesaid, to collect or pursue rental arrears on behalf of the Receiver. After Closing, the Receiver shall have the right to recover Pre-Appointment Receivables from Tenants, by way of an action in debt only.

ARTICLE 5 TAXES

5.1 Taxes.

- (1) 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.
- (2) If the sale of the Purchased Assets is subject to HST, then the Purchaser agrees to self-assess, be liable for and remit to the appropriate Governmental Authority all HST payable in connection with its purchase of the Purchased Assets, and to indemnify the Receiver for any amounts for which the Receiver may become liable as a result of any inaccuracy, misstatement or misrepresentation made by the Purchaser or any failure by the Purchaser to pay the HST payable in respect of the sale of the Property under Part IX of the ETA. The Purchaser shall deliver, on or prior to Closing, its certificate in form acceptable to the Receiver, acting reasonably, certifying (i) that the Purchaser is purchasing the Property as principal for its own account and not as an agent, trustee or otherwise on behalf of another person, (ii) that the Purchaser shall be liable for, shall self assess and shall remit to the appropriate Governmental Entity all HST payable in respect of the Transaction, and (iii) the Purchaser's HST registration number (the “**HST Certificate**”). Such HST Certificate shall also set out the indemnity provided for in the first sentence of this Subsection (2).
- (3) If the Purchaser delivers the HST Certificate as set out in subsection 5.1(2) above, then the Purchaser will not be required to pay to the Receiver, and the Receiver will not be required to collect from the Purchaser, HST in respect of the Purchased Assets. If the Purchaser does not deliver the HST Certificate as set out in subsection 5.1(2) above, then without limiting the generality of the foregoing in this paragraph, the Purchaser shall pay to the Receiver an amount equal to the HST payable on the Purchase Price on Closing.

- (4) The foregoing warranties shall not merge but shall survive the completion of the Transaction.

ARTICLE 6 CLOSING ARRANGEMENTS

6.1 Closing.

Closing shall take place at the Closing Time on the Closing Date, as per the defined Closing Date under Article 1 Defined Terms, or at such other time as the Parties may agree in writing.

6.2 Tender.

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by 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 hereof;
- (3) an undertaking by the Receiver to readjust the adjustments set out in section 4.5 hereof;
- (4) an assignment and assumption agreement for all Contracts, Permits and Consents and Approvals pertaining to the Purchased Assets (to the extent assignable) 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:
 - (1) 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;
 - (2) that all representations, warranties and covenants of the Receiver contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (3) the non-merger specified in section 14.2 and elsewhere herein; and
- (6) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.1 hereof has been fulfilled, performed or waived as of the Closing Time.

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 hereof;
- (2) an undertaking by the Purchaser to readjust the adjustments set out in section 4.5 hereof;
- (3) an acknowledgement, dated as of the Closing Date, that each of the conditions in section 7.3 hereof has been fulfilled, performed or waived as of the Closing Time;
- (4) an assignment and assumption agreement for all Contracts, Permits and Consents and Approvals pertaining to the Purchased Assets (to the extent assignable) relating to the period from and after the Closing Date, and to the extent not assignable, an agreement to hold same in trust for the Purchaser;
- (5) a certificate from the Purchaser, dated as of the Closing Date, certifying:
 - (1) that all representations, warranties and covenants of the Purchaser contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time; and
 - (2) the non-merger specified in section 14.2 and elsewhere herein;
- (6) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, the HST Certificate to the Receiver's satisfaction, acting reasonably, with respect to HST in accordance with Article 5 hereof; and
- (7) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Receiver, acting reasonably, Applicable Law or any Government Authority.

6.5 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.

6.6 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:
 - (a) shall not occur contemporaneously with the registration of the Approval and Vesting Order; and
 - (b) 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.

6.7 Registration Costs.

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

6.8 Indemnity.

The Purchaser indemnifies the Receiver in respect of any and all Claims which arise or accrue during, or relate to, the period after the Closing Date in respect of all Permitted Encumbrances.

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 Date:

- (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 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 Receiver, then the Receiver may, at its sole discretion, and without limiting any rights or remedies available to it at law or in equity:

- (1) 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; or
- (2) 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 Date:

- (1) 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;
- (2) 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;
- (3) the Receiver shall have complied with all the terms contained in this Agreement applicable to the Receiver 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.

7.4 Conditions in Favour of Purchaser Not Fulfilled.

If any of the conditions contained in section 7.3 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:

- (1) 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; or
- (2) 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 on or before the Closing Date:

- (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 hereto.

7.6 Mutual Conditions Not Fulfilled.

If any condition set out in section 7.5 hereof 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 and any Deposit and all interest accrued thereon shall be returned in accordance herewith.

ARTICLE 8 REPRESENTATIONS & WARRANTIES OF THE RECEIVER

8.1 Representations and Warranties of 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. 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;

- (2) 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; and
- (3) the Receiver is not a non-resident of Canada for the purposes of the ITA.

ARTICLE 9 REPRESENTATIONS & WARRANTIES OF THE PURCHASER

9.1 Representations and Warranties of 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. 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;
- (3) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date;
- (4) 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;
- (5) the Purchaser is not a non-resident of Canada for purposes of the ITA. The Purchaser is a Canadian within the meaning of the Investment Canada Act (Canada);
- (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;
- (7) the Purchaser has the financial capability to close the Transaction;

- (8) the Purchaser shall perform its obligations hereunder in accordance with the terms and conditions hereof and all applicable orders of the Court, including the Approval and Vesting Order; and
- (9) 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.

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 hereof.

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 hereof 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 hereof and to execute all necessary forms related thereto.

10.4 Contracts.

- (1) Following the execution of this Agreement by both parties, the Receiver shall not enter into, amend or vary any Contracts (save and except any amendments that are not material and renewals or extensions of Leases that do not require the Receiver's consent) without the prior written approval of the Purchaser, which approval shall not

be arbitrarily withheld. The Purchaser shall advise the Receiver in writing within three (3) Business Days from the receipt of a proposed Contract, or amendment or variation of an existing Contract, whether or not the Purchaser approves such Contract or amendment or variation, failing which the Purchaser shall be deemed to have approved same. If the transaction contemplated in this Agreement is completed, the costs of all tenant inducements, leasing commissions, free rent periods and costs of landlord's work under Leases to Tenants entered into in accordance with this Section following the date of this Agreement shall be for the account of the Purchaser and any amounts paid by the Receiver prior to Closing on account of such items shall be adjusted in favour of the Receiver on Closing.

- (2) No later than ten (10) days prior to Closing, the Purchaser shall advise the Receiver in writing as to which, if any, of the Contracts that the Purchaser will assume on Closing and the Purchaser will be deemed to have only accepted an assignment of, and to have assumed those specified Contracts and the obligations and liabilities thereunder referable to the period from and after the Closing Time and the Purchaser will have no liability or obligation with respect to any other Contracts. If the Purchaser fails to give such notice to the Receiver within such time period, the Purchaser shall be deemed to have elected to assume all of the Contracts on Closing.

ARTICLE 11 POSSESSION AND ACCESS PRIOR TO CLOSING

11.1 Possession of Purchased Assets.

At the Closing Time, the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Receiver has waived all the delivery requirements outlined in section 7.1 hereof.

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 Real Property being in accordance with applicable zoning requirements and satisfy itself that any and all buildings and structures on the Real 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 Governmental Authority. 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 Real Property, accompanied by a representative of the Receiver, 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 Real 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 Real Property conducted by the Purchaser or its authorized representatives, as outlined above, and to return the Real 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 Real 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 of the Closing Date), in which event 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 15% of the total Purchase Price (inclusive of the Deposit).
- (3) If, prior to the Closing Date, all or a material part of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of the Real 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 Debtor 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.

ARTICLE 12 AS IS, WHERE IS

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. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Receiver nor the Debtor 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. 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.
- (2) Except for the representations and warranties of the Receiver expressly set out in in this Agreement, in entering into this Agreement and closing the Transaction, the Purchaser has relied and will continue to rely entirely and solely upon its own inspections and investigations with respect to the Purchased Assets.
- (3) Any materials provided by the Receiver or its solicitors, agents, representatives and advisors are provided to the Purchaser without representation or warranty and the Purchaser will rely entirely and solely upon its own investigations and inspections and shall not rely on such materials or any other information furnished by the Receiver or any other person or entities on behalf of or at the direction of the Receiver in connection therewith.

- (4) 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.
- (5) The Receiver has no liability for, or obligation with respect to, any special, indirect, consequential, punitive or aggravated damages.
- (6) The provisions of this Section 12.1 will survive Closing or the termination of this Agreement.

ARTICLE 13 TERMINATION

13.1 Termination by Receiver

Without derogating from the right of the Receiver to terminate this Agreement as a result of the failure of the Purchaser to complete any of its obligations as set out in this Agreement or as a result of any of the conditions for the benefit of the Receiver (including those conditions for the mutual benefit of the Receiver and Purchaser) as set out in this Agreement having not been met and not being waived, notwithstanding anything to the contrary contained in this Agreement, at any time prior to the date on which the Court makes the Approval and Vesting Order, the Receiver may, in its sole and unfettered discretion, elect by written notice to the Purchaser to terminate this Agreement, and the Receiver will not have any liability to the Purchaser for any loss or damage suffered by it as a result of such termination.

13.2 Effects of Termination by Receiver

If this Agreement is terminated pursuant to section 13.1:

- (1) the Deposit and all accrued interest thereon shall be returned to the Purchaser;
- (2) all further rights and obligations of the parties under or pursuant to this Agreement shall terminate without further liability of any party to the other; and
- (3) 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.

13.3 Other Termination of this Agreement.

This Agreement may (or, in the case of section 13.1(5) below, shall) be validly terminated:

- (1) upon the mutual written agreement of the Parties;
- (2) pursuant to section 7.2 hereof by the Receiver;
- (3) pursuant to section 7.4 hereof by the Purchaser;
- (4) pursuant to section 11.3 hereof; or

- (5) automatically, should Closing have not occurred prior to the discharge of KSV as the Receiver, unless the Receiver's interest in this Agreement has been assigned prior to (or as part of) the Receiver's discharge.

13.4 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, without deduction, shall be returned to the Purchaser forthwith (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).

13.5 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, then:

- (1) all obligations of each of the Receiver and the Purchaser hereunder shall end completely, except those that survive the termination of this Agreement;
- (2) the Deposit, without deduction, shall be returned to the Purchaser forthwith; and
- (3) 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, article 8, article 9, section 13.4 and section 13.5 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:

(1) to the Receiver:

KSV Restructuring Inc.
220 Bay Street, 14th Floor
PO Box 20
Toronto, ON M5J 2W4

Attention: Bobby Kofman and Meg Ostling
Email: bkofman@ksvadvisory.com,
and mostling@ksvadvisory.com

and a copy to the Receiver’s counsel to:

Paliare Roland Rosenberg Rothstein LLP
155 Wellington Street West, 55th Floor
Toronto, ON M5V 3H1
Attention: Jeffrey Larry and Daniel Rosenbluth
Email: jeff.larry@paliareroland.com
and daniel.rosenbluth@paliareroland.com

(2) to the Purchaser:

2793530 Ontario Inc.
113 Sparkhall Avenue
Toronto, ON M4K 1G7
Attention: Brenden Hewko
Email: BrendenHewko@gmail.com

and a copy to the Purchaser’s counsel to:

George Street Law
10 George Street Suite 200
Hamilton, ON L8P 1C8
Attention: Matt Campbell
Email: MattC@GeorgeStreeLaw.ca

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 ensure 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. Up until the granting of the Approval and Vesting Order, the Purchaser shall have the right to direct that title to the Purchased Assets be vested in the name of another person, entity, joint venture, partnership or corporation that is an affiliate (as defined in the Business Corporations Act (Ontario)) of the Purchaser, provided that the Purchaser notifies the Receiver of the name of the assignee at least 7 Business Days prior to issuance of the Approval and Vesting Order and that the assignee shall, in writing, agree 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.

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 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, 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.

14.21 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 Debtor and not in its personal capacity or in any other capacity

Per:  _____

Name: Bobby Kofman

Title: President

ACCEPTED by the Purchaser this 18th day of April, 2024

2793530 Ontario Inc.

Per:  _____
Name: Brenden Hewko
Authorized Signing Officer

SCHEDULE A (APS)

“Real Property”

Legal Description: Part Lot 56, Nathaniel Hughson Survey (Unregistered); East Side of James Street between Rebecca Street and Gore Street as in CD394562; City of Hamilton, and being all of PIN 17165-0018 (LT) in LRO #62

**SCHEDULE B (APS)
“Approval and Vesting Order”**

Court File No. CV-24-00714866-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

BETWEEN

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**

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: (i) the assets, undertakings and properties of 72 James Investments Inc. (the “**Debtor**”) including the real property municipally known as 72-76 James Street North, Hamilton, Ontario (the “**Real Property**”); and (ii) the right, title and interest in the Real Property of the beneficial owners of the

Real Property, Clifton Blake Partners LP and Forge & Foster Holdings Inc., 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**”) and vesting in the Purchaser the Purchased Assets (as defined in the Sale Agreement), was heard this day.

ON READING the Receiver’s Report to the Court 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 Debtor's right, title and interest in and to the real property listed on **Schedule “B”** hereto (the “**Real Property**”), 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 Justice Black made February 26, 2024; (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 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 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 and Court Orders 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 the Debtor and any bankruptcy order issued pursuant to any such applications; and
- (c) any assignment in bankruptcy made in respect of the Debtor,

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 the Debtor and shall not be void or voidable by creditors of any of the Debtor, 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.

7. **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.

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

Schedule “A” (AVO) – Form of Receiver’s Certificate

Court File No. CV-24-00714866-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

BETWEEN

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

RECEIVER’S CERTIFICATE

WHEREAS pursuant to an Order of The Honourable Justice Black of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) made on February 26, 2024, KSV Restructuring Inc. was appointed as receiver and manager (in such capacity, the “**Receiver**”), without security, of: (i) the assets, undertakings and properties of 72 James Investments Inc. (the “**Debtor**”) including the real property municipally known as 72-76 James Street North, Hamilton, Ontario (the “**Real**

Property”); and (ii) the right, title and interest in the Real Property of the beneficial owners of the Real Property, Clifton Blake Partners LP and Forge & Foster Holdings Inc.;

AND WHEREAS 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.

AND WHEREAS unless otherwise indicated herein, terms with initial capitals have the meanings set out in the Sale Agreement.

NOW THEREFORE THE RECEIVER CERTIFIES the following:

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

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

Per: _____

Name: Bobby Kofman

Title: President

Schedule “B” (AVO) – Real Property

Legal Description: Part Lot 56, Nathaniel Hughson Survey (Unregistered); East Side of James Street between Rebecca Street and Gore Street as in CD394562; City of Hamilton, and being all of PIN 17165-0018 (LT) in LRO #62

Schedule “C” (AVO) – Instruments to Be Deleted from Title

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
WE1576051	January 18, 2022	Transfer	\$6,525,000	Ivicon Construction Co. Ltd.	72 James Investments Inc.
WE1576052	January 18, 2022	Charge	\$5,675,000	72 James Investments Inc.	Forgestone Mortgage Fund GP Inc. Forgestone Mortgage Fund LP
WE1576053	January 18, 2022	No Assn Rent Gen		72 James Investments Inc.	Forgestone Mortgage Fund GP Inc. Forgestone Mortgage Fund LP
WE1724902	February 27, 2024	APL Court Order		Ontario Superior Court of Justice – Commercial List	KSV Restructuring Inc.

Schedule “D” (AVO) – Permitted Encumbrances

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To

FORGESTONE MORTGAGE FUND LP

-and-

72 JAMES INVESTMENTS INC. et al.

Applicant

Respondent

Court File No. CV-24-00714866-00CL

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

Proceedings commenced at Toronto

APPROVAL AND VESTING ORDER

PALIARE ROLAND ROSENBERG ROTHSTEIN LLP
155 Wellington St. West, 35th Floor
Toronto, ON M5V 3H1

Jeffrey Larry (LSO #44608D)
Tel: 416.646.4330
jeff.larry@paliareroland.com

Lawyers for the Receiver

SCHEDULE C (APS)

“Permitted Encumbrances”

A. General Encumbrances

1. Leases.
2. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including (without limitation) subdivision agreements, development agreements and engineering, grading or landscaping agreements.
3. Registered easements for the supply of utilities or telephone services to the Property and for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services and all licences, easements, rights-of-way, rights in the nature of easements and agreements with respect thereto not registered on title to the properties, including without limitation, agreements, easements, licences, rights-of-way and interests in the nature of easements for sidewalks, public ways, sewers, drains, utilities, gas, steam and water mains or electric light and power, or telephone telegraphic conduits, poles, wires and cables.
4. Any registered easements or rights of way in favour of any Governmental Authority, any private or public utility, any railway company or any adjoining owner.
5. Any other easements and servitudes (collectively, the “**Easements**”), including those registered on title, provided that:
 - (a) the Easements do not materially and adversely impair the use of the Property for the purpose for which it is presently held or used; or
 - (b) the Receiver has made satisfactory arrangements prior to Closing for relocation so that the Easements will not materially and adversely impair the use of the Property for the purpose for which it is presently held or used.
7. Minor encroachments by the Property over neighbouring lands which do not materially and adversely impair the use of the Property.
8. Title defects or irregularities which are of a minor nature and either individually or in aggregate do not and will not materially impair the value, use or marketability of the Property.
9. Any zoning by-law violations.
10. Any rights of expropriation, access or user or any other similar rights conferred or reserved by or in any statutes of Canada or the Province of Ontario.

- 11. The reservations, limitations, provisos, conditions, restrictions and exceptions (including, without limitation, royalties, reservation of mines, mineral rights, access to navigable waters and similar rights) expressed in the letters patent or grant from the Crown, as varied by statute, of the lands of which the properties form a part and any statutory limitations, exceptions, reservations and qualifications.
- 12. With respect to instruments registered via Teraview Electronic Registration System (“TER System”), any error or omission in the receipt, transmission or recording of such instrument, or of any of the particulars contained in such instruments, subsequent to creation and electronic delivery of same to Teranet Land Information Services Inc. via the TER System.
- 13. Zoning, land use and building restrictions, bylaws, regulations and ordinances of federal, provincial, municipal or other Governmental Entity or regulatory authorities, including, without limitation, municipal by-laws and regulations and airport zoning regulations.

B. Applicable to Ontario Land Titles Absolute Properties

- 1. Those additional matters constituting statutory exceptions or reservations pursuant to the Land Titles Act (Ontario) (save and except subsection 44 (1) paragraph 11 (Planning Act)).

C. Specific Encumbrances

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To

Appendix “G”

ASSIGNMENT AND ASSUMPTION OF AGREEMENT

THIS ASSIGNMENT made April 24th, 2024 (the “**Effective Date**”).

BETWEEN:

2793530 ONTARIO INC., a corporation incorporated under the laws of Ontario

(the “**Assignor**”)

AND:

1000870452 ONTARIO INC., a corporation incorporated under the laws of Ontario

(the “**Assignee**”)

AND:

KSV RESTRUCTURING INC., solely in its capacity as the Court-appointed receiver of the property, assets and undertaking of **72 James Investments Inc.**, and not in its personal capacity

(the “**Receiver**”)

RECITALS:

- A. The Assignor is a party to an agreement of purchase and sale with the Receiver dated April 18, 2024 pursuant to which the Receiver has agreed to sell and the Assignor has agreed to purchase, inter alia, the property municipally known as 72-76 James Street North, Hamilton, Ontario (the “**Agreement**”); and
- B. The Assignor has agreed to assign and the Assignee has agreed to assume the Agreement.
- C. The Receiver has approved the assignment to and the assumption of the Agreement by the Assignee, subject to the Assignor and Assignee entering into this Assignment and Assumption Agreement pursuant to Section 14.10 of the Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth in this Assignment and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties covenant and agree as follows:

1. Assignment of Agreement

The Assignor hereby assigns, transfers and sets over unto the Assignee, for the Assignee's sole use and benefit, all of the right, title and interest of the Assignor in and to the Agreement.

2. Assumption of Agreement

Effective from and after the Effective Date, the Assignee hereby assumes all of the obligations, duties and liabilities of the Assignor arising from and after the Effective Date under the Agreement.

The Assignee covenants and agrees with the Assignor and the Receiver to be bound by, and to perform all obligations of the Assignor to be performed in the Agreement in respect of the interest to be acquired by the Assignor therefrom to the same extent as if the Agreement had been originally executed by the Assignee. The Assignor acknowledges that it remains liable for all obligations and liabilities under the Agreement and is not released therefrom.

3. Direction of Vesting of Purchased Assets

Pursuant to Section 14.10 of the Agreement, the Assignor hereby directs that the title to the Purchased Assets be vested in the name of the Assignee.

4. Further Assurances

Each party shall from time to time promptly execute and deliver all further documents and take all further action reasonably necessary to give effect to the provisions and intent of this Assignment.

5. Enurement

This Assignment enures to the benefit of and binds the parties and their respective successors and permitted assigns.

6. Governing Law

This Assignment is governed by, and is to be construed and interpreted in accordance with, the laws of the Province of British Columbia and the laws of Canada applicable therein.

7. Definitions

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

8. Counterparts

This Assignment and Assumption Agreement may be executed and delivered in counterparts, each of which when executed and delivered is an original but all of which taken together constitute one and the same instrument.


9. Delivery by Electronic Transmission


To evidence the execution of this Assignment or any one of its counterparts, a party may transmit a copy of its original or e-signature on the execution page hereof to the other party by email or another form of electronic transmission contemplated by the parties and such transmissions shall constitute effective delivery of an executed copy of this waiver to the receiving party for all purposes.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF each of the parties hereto have duly executed this Assignment as of the date first written above.

Per: 
2793530 Ontario Inc. (Assignor)
Name: Brenden Hewko
Title: Director

Per: 
1000870452 Ontario Inc. (Assignee)
Name: Brenden Hewko
Title: Director


Per: _____
KSV Restructuring Inc. (Receiver),
solely in its capacity as receiver of 72
James Investments Inc. and not in its
personal capacity
Name: Bobby Kofman
Title: President and Managing Director