

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE)
JUSTICE *HAIXEY*)) MONDAY, THE 28TH DAY
OF JANUARY, 2019

IN THE MATTER OF THE PROPOSAL OF 58 OLD KENNEDY DEVELOPMENT INC., 76 OLD KENNEDY DEVELOPMENT INC. AND 82 OLD KENNEDY DEVELOPMENT INC., ALL CORPORATIONS INCORPORATED UNDER THE LAWS OF ONTARIO

APPROVAL AND VESTING ORDER



THIS MOTION, made by 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc. and 82 Old Kennedy Development Inc. (collectively, the “**Vendors**”) for an order, *inter alia*, approving:

- (a) an agreement of purchase and sale dated as of December 8, 2018 (as amended by an amendment dated January 15, 2019, the “**58 Old Kennedy APA**”) between 58 Old Kennedy Development Inc. and Cheng Yi Wei, in trust for a company to be incorporated (the “**Purchaser**”) for the purchase of 58 Old Kennedy Road and 20 Thelma Avenue in the City of Markham (“**58 Old Kennedy**”);
- (b) an agreement of purchase and sale dated as of December 8, 2018 (as amended by an amendment dated January 15, 2019, the “**76 Old Kennedy APA**”) between 76 Old Kennedy Development Inc. and the Purchaser for the purchase of 64-76 Old Kennedy Road in the City of Markham (“**76 Old Kennedy**”); and

- (c) an agreement of purchase and sale dated as of December 8, 2018 as amended, (as amended by an amendment dated January 15, 2019, the “**82 Old Kennedy APA**”) between 82 Old Kennedy Development Inc. and the Purchaser for the purchase of 82 Old Kennedy Road in the City of Markham (“**82 Old Kennedy**”),

(collectively, the “**Sale Agreements**”),

copies of which are attached as Exhibits “A”, “B” and “C” respectively, to the Affidavit of Yuan Hua Wang sworn January 21, 2019 (the “**Wang Affidavit**”) and vesting in the Designated Purchaser (as defined below) all the Vendors’ right, title and interest in and to the property described identified in each of the Sale Agreements and legally described on Schedule “B” hereto, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Wang Affidavit, the Fourth Report of KSV Kofman Inc. (the “**Proposal Trustee**”) dated January 22, 2019 (the “**Fourth Report**”), and on hearing the submissions of counsel for the Vendors, the Proposal Trustee, and such other counsel as were present as reflected on the counsel sheet, no one appearing for any other person on the service list, although properly served as appears from the affidavit of Katie Parent sworn January 22, 2019, filed,

1. **THIS COURT ORDERS AND DECLARES** that the time for service of the Notice of Motion, the Fourth Report and the supporting materials herein is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS AND DECLARES** that the transactions contemplated by the Sale Agreements (collectively, the “**Transactions**”) are hereby approved and the execution of the Sale Agreements by the Vendors are hereby authorized and approved, with such minor amendments as the Vendors (with the consent of the Proposal Trustee) may deem necessary, save

and except that no extension of the closing date beyond January 31, 2019 shall occur without the consent of all mortgagees or further Order of the Court. The Vendors are 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 Transactions and for the conveyance of the Property contemplated by each Sale Agreement to the Designated Purchaser.

3. **THIS COURT ORDERS AND DECLARES** that upon the delivery of one or more closing certificates to the Purchaser substantially in the form attached as **Schedule "A"** hereto (each a "**Closing Certificate**" and collectively, the "**Closing Certificates**"), all of the applicable Vendor's right, title and interest in and to the applicable Property; as each such Property is more particularly described in in **Schedule "B"** hereto (the "**Real Property**"), shall vest absolutely in 5008830 Ontario Inc. (the "**Designated Purchaser**"), the designee of 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, licences, restrictions, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, 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**") (other than those Claims which are permitted encumbrances (the "**Permitted Encumbrances**"), including, without limiting the generality of the foregoing: ; (i) 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 (ii) 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, leases, easements and restrictive covenants listed on **Schedule "D"**) and, for greater certainty, this Court orders and declares that all of the

Encumbrances affecting or relating to the Property are hereby expunged and discharged as against the Property and are non-enforceable and non-binding as against the Purchaser or the Designated Purchaser.

4. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the appropriate Land Titles Division of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Designated Purchaser as the owner of the subject Real Property in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "C"** hereto, but for greater certainty not the Permitted Encumbrances on **Schedule "D"** hereto.

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

6. **THIS COURT ORDERS AND DIRECTS** the Proposal Trustee to file with the Court a copy of the Closing Certificate, forthwith after delivery thereof.

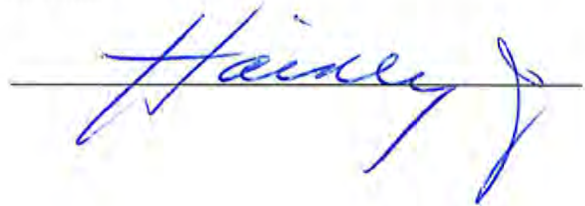
7. **THIS COURT ORDERS** that, notwithstanding:

- (a) the pendency of these proceedings;

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

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

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Proposal Trustee 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 Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Proposal Trustee and its agents in carrying out the terms of this Order.



SCHEDULE "A"
FORM OF CLOSING CERTIFICATE

Estate No. 31-2436538

ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST

IN THE MATTER OF THE PROPOSAL OF 58 OLD KENNEDY
DEVELOPMENT INC., 76 OLD KENNEDY DEVELOPMENT
INC. AND 82 OLD KENNEDY DEVELOPMENT INC., ALL
CORPORATIONS INCORPORATED UNDER THE LAWS OF
ONTARIO

CLOSING CERTIFICATE

[58/76/82 Old Kennedy]

RECITALS

I. On October 26, 2018, 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc. and 82 Old Kennedy Development Inc. (the "**Vendors**"), each filed a notice of intention to make a proposal (the "**NOI**") pursuant to section 50.4(9) of the *Bankruptcy and Insolvency Act* (the "**BIA**") naming KSV Kofman Inc. as proposal trustee under the NOI (the "**Proposal Trustee**").

II. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued on December 21, 2018 (the "**Sales Process Order**"), the Proposal Trustee was authorized to, among other things, market the property described as the "Property" in the Sale Agreements (as defined below) (the "**Property**").

III. Pursuant to an Order of the Court dated [●], 2019, the Court approved agreements of purchase and sale between the Vendors and [●] (the “**Purchaser**”), as purchaser, dated [●], 2019 (as amended, the “**Sale Agreements**”), and provided for the vesting in the Designated Purchaser, of all the Vendors’ right, title and interest in and to the Property, which vesting is to be effective with respect to the Property upon the delivery by the Proposal Trustee to the Purchaser of one or more certificates confirming: (i) the payment by the Purchaser of the purchase price for a Property contemplated by a Sale Agreement; (ii) that the conditions to closing as set out in such Sale Agreement have been satisfied or waived by the Vendors and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Proposal Trustee.

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

THE PROPOSAL TRUSTEE CERTIFIES the following:

1. The Purchaser has paid and the Proposal Trustee has received the purchase price for the Property 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 Vendors and the Purchaser;
3. The transaction has been completed to the satisfaction of the Proposal Trustee; and

4. This Certificate was delivered by the Proposal Trustee at _____ [TIME] on _____ [DATE].

KSV KOFMAN INC., in its capacity as proposal trustee for the Vendors, and not in its personal capacity or in any other capacity

Per: _____

Name:

Title:

SCHEDULE "B"
LEGAL DESCRIPTION OF THE REAL PROPERTY

58 Old Kennedy Road and 20 Thelma Avenue, Markham, Ontario

PT LT 1 CON 5 MARKHAM AS IN R609686; CITY OF MARKHAM, BEING ALL OF PIN 02953-0015 (LT); and

LT 8 PL 2687 MARKHAM; LT 9 PL 2687 MARKHAM; LT 10 PL 2687 MARKHAM; LT 11 PL 2687 MARKHAM; LT 12 PL 2687 MARKHAM ; CITY OF MARKHAM, BEING ALL OF PIN 02953-0017 (LT)

64-76 Old Kennedy Road, Markham, Ontario

PT LT 1 CON 5 MARKHAM AS IN R649696; MARKHAM; CITY OF MARKHAM, BEING ALL OF PIN 02953-0016 (LT)

82 Old Kennedy Road, Markham, Ontario

LT 3 PL 3580 MARKHAM; MARKHAM; S/T EASE OVER PT 2, 65R25475, AS IN YR301388; S/T EASE OVER PT 3, 65R25475, AS IN YR301389, BEING ALL OF PIN 02953-0018 (LT)

SCHEDULE "C"
INSTRUMENTS TO BE DELETED FROM PIN NO.
02953-0015(LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
YR2788190	2018/01/25	Charge	\$5,000,000.00	58 Old Kennedy Development Inc.	Danan Investments Inc.
YR2788277	2018/01/25	Notice of Assignment of Rents - General		58 Old Kennedy Development Inc	Danan Investments Inc.
YR2877145	2018/09/24	Transfer of Charge		Danan Investments Inc.	Boulder View Holdings Inc.
YR2877301	2018/09/24	Notice of Assignment of Rents - General		Danan Investments Inc.	Boulder View Holdings Inc.
YR2877629	2018/09/24	Transfer of Charge		Boulder View Holdings Inc.	Matthew Castelli
YR2877636	2018/09/24	Notice of Assignment of Rents - General		Boulder View Holdings Inc.	Matthew Castelli

INSTRUMENTS TO BE DELETED FROM PIN NO.
02953-0017 (LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
YR2788190	2018/01/25	Charge	\$5,000,000.00	58 Old Kennedy Development Inc.	Danan Investments Inc.

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
YR2788277	2018/01/25	Notice of Assignment of Rents - General		58 Old Kennedy Development Inc	Danan Investments Inc.
YR2877145	2018/09/24	Transfer of Charge		Danan Investments Inc.	Boulder View Holdings Inc.
YR2877301	2018/09/24	Notice of Assignment of Rents - General		Danan Investments Inc.	Boulder View Holdings Inc.
YR2877629	2018/09/24	Transfer of Charge		Boulder View Holdings Inc.	Matthew Castelli
YR2877636	2018/09/24	Notice of Assignment of Rents - General		Boulder View Holdings Inc.	Matthew Castelli

**INSTRUMENTS TO BE DELETED FROM PIN NO.
02953-0016(LT)**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
YR2787960	2018/01/25	Charge	\$2,800,000.00	76 Old Kennedy Development Inc.	Danan Investments Inc.
YR2787978	2018/01/25	Charge	\$5,000,000.00	76 Old Kennedy Development Inc.	Danan Investments Inc.
YR2788083	2018/01/25	Notice of Assignments of Rents General		76 Old Kennedy Development Inc.	Danan Investments Inc.

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
YR2788086	2018/01/25	Notice of Assignments of Rents General		76 Old Kennedy Development Inc.	Danan Investments Inc.
YR2877142	2018/09/24	Transfer of Charge		Danan Investments Inc.	Boulder View Holdings Inc.
YR2877144	2018/09/24	Transfer of Charge		Danan Investments Inc.	Boulder View Holdings Inc.
YR2877251	2018/09/24	Notice of Assignments of Rents General		Danan Investments Inc	Boulder View Holdings Inc.
YR2877573	2018/09/24	Transfer of Charge		Boulder View Holdings Inc	Matthew Castelli
YR2877595	2018/09/24	Transfer of Charge		Boulder View Holdings Inc	Matthew Castelli
YR2877610	2018/09/24	Notice of Assignments of Rents General		Boulder View Holdings Inc	Matthew Castelli

**INSTRUMENTS TO BE DELETED FROM PIN NO.
02953-0018(LT)**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
YR2739662	2017/10/02	Charge	\$8,625,000.00	82 Old Kennedy Development Inc.	Wu's International Group Inc.
YR2787977	2018/01/25	Charge	\$5,000,000.00	82 Old Kennedy Development Inc.	Danan Investments Inc.

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
YR2788090	2018/01/25	Notice of Assignments of Rents General		82 Old Kennedy Development Inc.	Danan Investments Inc.
YR2877143	2018/09/24	Transfer of Charge		Danan Investments Inc.	Boulder View Holdings Inc.
YR2877264	2018/09/24	Notice of Assignments of Rents General		Danan Investments Inc.	Boulder View Holdings Inc.
YR2877612	2018/09/24	Transfer of Charge		Boulder View Holdings Inc.	Matthew Castelli
YR2877624	2018/09/24	Notice of Assignments of Rents General		Boulder View Holdings Inc.	Matthew Castelli

SCHEDULE "D"

PERMITTED ENCUMBRANCES FOR PIN 02953-0015(LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
R609095	1992/12/04	Agreement			The Town of Markham
YR2788189	2018/01/25	Charge	\$5,100,000.00	58 Old Kennedy Development Inc.	All Season Recycle Inc. and Sasikala Sivasorusban

PERMITTED ENCUMBRANCES FOR PIN 02953-0017(LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
R609095	1992/12/04	Agreement			The Town of Markham
YR2788189	2018/01/25	Charge	\$5,100,000.00	58 Old Kennedy Development Inc.	All Season Recycle Inc. and Sasikala Sivasorusban

PERMITTED ENCUMBRANCES FOR PIN 02953-0016(LT)

None.

PERMITTED ENCUMBRANCES FOR PIN 02953-0018(LT)

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
YR301388	2003/05/15	Transfer Easement	\$2.00	Wu's International Group Inc.	The Corporation of the Town of Markham

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
YR301389	2003/05/15	Transfer Easement	\$2.00	Wu's International Group Inc.	The Corporation of the Town of Markham
YR301475	2003/05/15	Notice (Site Plan Control)		The Corporation of the Town of Markham	Wu's International Group Inc.
Unregistered	2017/10/02	Lease (Terms described in a Lease Summary dated January 25, 2019)	\$2.00	82 Old Kennedy Development Inc.	Wu's International Group Inc.

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LAWS OF ONTARIO

Estate File No: 31-2436538

ONTARIO

**SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced TORONTO

APPROVAL AND VESTING ORDER

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