

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

PROPOSAL
(58 Old Kennedy Development Inc.)

58 Old Kennedy Development Inc. (the “**Company**”) hereby submits the following Proposal under Part III, Division I of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3.

ARTICLE 1
INTERPRETATION

1.01 Definitions

In this Proposal, capitalized terms have the following meanings:

- (a) “**Administration Fees and Expenses**” means the fees and expenses, including legal fees and disbursements of counsel to the Company, the Trustee and the Trustee’s counsel for and incidental to the Company’s restructuring;
- (b) “**Approval**” means:
 - (i) acceptance of this Proposal by the statutory majority of Creditors entitled to vote thereon in accordance with the relevant provisions of the BIA; and
 - (ii) the approval of this Proposal by the Court by the granting of the Approval Order;
- (c) “**Approval Motion**” means the Trustee’s motion for approval of this Proposal before the Court as more specifically set out in Section 8.01;
- (d) “**Approval Order**” means an order of the Court, *inter alia*, approving the Proposal;
- (e) “**BIA**” means the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended;
- (f) “**BIA Proceedings**” means the Company’s proceedings pursuant to the BIA;

- (g) “**Business Day**” means any day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable therein;
- (h) “**Claim**” means a claim provable in bankruptcy against the Company and includes any indebtedness, liability, action, cause of action, suit, debt, due, account, bond, covenant, contract, counterclaim, demand, claim, right and obligation of any nature whatsoever of the Company to any person, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, by surety or otherwise and whether or not such right is executory in nature, including, without limitation, the right or ability of any person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future based in whole or in part on facts which existed prior to or at the Filing Date and, in respect of a Director Claim but excluding Unaffected Claim;
- (i) “**Company**” has the meaning given to it in the recitals above;
- (j) “**Court**” means the Ontario Superior Court of Justice (Commercial List);
- (k) “**Court Approval Date**” means the date on which the Court makes the Approval Order;
- (l) “**Creditor**” means any person who holds one or more Claims;
- (m) “**Crown**” means Her Majesty in Right of Canada or of any Province of Canada and their agents;
- (n) “**Crown Claims**” means the Claims of the Crown set out in Section 60(1.1) of the BIA outstanding as at the Filing Date against the Company, if any, payment of which will be made in priority to the payment of the Preferred Claims and to distributions in respect of the Ordinary Claims, and specifically excludes any other claims of the Crown;
- (o) “**Director Claim**” means a Claim against the Directors, that relate to the obligations of the Company where the Directors are by law liable in their capacity as directors for the payment of such obligations and, for greater certainty, excludes any claim against a Director for guarantees he made in respect of any obligations of the Company or any other Company owned directly or indirectly by him;
- (p) “**Directors**” means all former and current officers and directors of the Company as at the Filing Date;
- (q) “**Event of Default**” has the meaning given to it in Article 9 of this Proposal;
- (r) “**Filing Date**” means the date the Trustee filed this Proposal under the BIA;
- (s) “**OBCA**” means the *Ontario Business Corporations Act*, R.S.O. 1990, c. B. 16;
- (t) “**Ordinary Claims**” means all Claims other than Preferred Claims, Secured Claims and Unaffected Claims;

- (u) **“Preferred Claims”** means the Claims set out in Sections 136(1)(a) to 136(1)(g) of the BIA, outstanding as at the Filing Date against the Company, if any, the payment of which will be made in priority to distributions in respect of the Ordinary Claims;
- (v) **“Property”** means all of the assets, undertakings and property of the Company wherever situate including proceeds of sale from the sale of the Real Property;
- (w) **“Proposal”** means this Proposal made pursuant to the BIA, as further amended or supplemented from time to time;
- (x) **“Real Property”** means the property municipally known as 58 Old Kennedy Road and 20 Thelma Ave, Markham, Ontario;
- (y) **“Trustee”** means KSV Kofman Inc., in its capacity as proposal trustee in this Proposal;
- (z) **“Unaffected Claims”** means the Administration Fees and Expenses;

1.02 Headings

The division of this Proposal, into parts, paragraphs and subparagraphs, and the insertion of headings, is for convenience only and is not to affect the construction or interpretation of this Proposal.

1.03 Business Days

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

1.04 Successors and Assigns

This Proposal will be binding upon and will enure to the benefit of all persons named or referred to herein including, without limitation, all Creditors and their heirs, estate administrators, personal representatives, successors and assigns as the case may be.

ARTICLE 2 PURPOSE AND EFFECT OF THIS PROPOSAL

2.01 Purpose

The purpose of this Proposal is to effect a proposal for the distribution of funds arising from the sale of the Real Property.

2.02 Persons Affected

On and after receipt of the Approval Order, this Proposal will become effective on and, subject to the fulfillment by the Company of its obligations hereunder, shall be binding on the Company, the Creditors and the shareholders of the Company.

2.03 Effect of Proposal Implementation

Effective on receipt of the Approval Order, the Claims of the Creditors shall be discharged, and the Company shall thereupon be released from all Claims of Creditors, other than the obligation

to make payment in the manner and to the extent described in this Proposal or as otherwise described.

2.04 Unaffected Claims

Unaffected Claims will not be affected by this Proposal and are to continue in the ordinary course under their present arrangements.

ARTICLE 3 PREFERRED CLAIMS AND MANDATORY PAYMENTS

3.01 Crown Claims

Within thirty (30) Business Days following the granting of the Approval Order, the Crown Claims, if any, will be paid by the Trustee, in full with related interest and penalties as prescribed by the applicable laws, regulations and decrees.

3.02 Preferred Claims

Within thirty (30) Business Days following the granting of the Approval Order, the Preferred Claims, if any, will be paid in full by the Trustee.

3.03 The Levy

The levy payable to the Superintendent of Bankruptcy under the BIA shall be paid in respect of the Preferred Claims and Ordinary Claims.

ARTICLE 4 ORDINARY CLAIMS

4.01 Within five (5) Business Days following the distributions set out in Article 3, the Trustee shall distribute on a pro rata basis as a final and complete payment of the Ordinary Claims up to a maximum of 100 cents on the dollar of Ordinary Claims.

4.02 Creditors with Ordinary Claims will accept the payment provided for in this Article 4 in complete satisfaction of all their Claims and all liens, certificates of pending litigation, executions or any other similar charges or actions or proceedings in respect of such Claims will have no effect in law or in equity against the Property or the Company. Upon the making of the payments provided for in this section, any and all such claims and all such liens, certificates or pending litigation, executions or other similar charges or actions will be discharged, dismissed or vacated without cost to the Company.

ARTICLE 5 VOTING ON THE PROPOSAL

5.01 For the purpose of voting on the Proposal, there shall be one class of creditors.

5.02 In order to be eligible to vote at the meeting of Creditors, each Creditor shall file a proof of claim with the Trustee in accordance with the applicable provisions of the BIA and thereafter

the Trustee shall administer the claims in accordance with the provisions of section 135 of the BIA.

5.03 In order to receive a distribution from the Proposal, a Creditor must submit a Proof of Claim prior to the time the Trustee distributes funds in accordance with the Proposal.

ARTICLE 6 CLAIMS AGAINST DIRECTORS

6.01 In accordance with Section 50(13) of the BIA, effective on receipt of the Approval Order, the Proposal shall be deemed, for all purposes whatsoever, to constitute the complete compromise, release and discharge of all Director Claims which arose before the Filing Date and which relate to obligations of the Company where such Directors are by law liable in their capacity as directors for payment of such obligations, provided however that nothing herein shall release or discharge or be deemed to have released or discharged any Claims against Directors that cannot be released or discharged pursuant to Section 50(14) of the BIA or any other claims against Directors in respect of any personal guarantees provided by the Directors in respect of the Company or any other Companies owned by them.

6.02 Nothing in the Proposal shall be deemed, in any manner whatsoever, to constitute any acknowledgement of any liability or obligations of the Directors.

ARTICLE 7 PREFERENCES, TRANSFERS AT UNDER VALUE, ETC.

7.01 In conformity with Section 101.1 of the BIA, Sections 95-101 of the BIA and any provincial statute related to preference, fraudulent conveyance, transfer at undervalue, or the like shall not apply to this Proposal.

7.02 As a result of and in accordance with Section 7.01 hereof and all of the rights, remedies, recourses and Claims described therein:

- (a) all such rights, remedies and recourses and any Claims based thereon shall be completely unavailable to the Trustee or any Creditors against the Company, any of the Company's Property, any other Creditor or any other person whatsoever; and
- (b) the Trustee and all of the Creditors shall be deemed, for all purposes whatsoever, to have irrevocably and unconditionally waived and renounced such rights, remedies and recourses and any Claims based thereon against the Company, the Company's Property any other Creditor or any other persons.

**ARTICLE 8
NOTICE OF PRESENTATION OF APPROVAL MOTION**

8.01 Each of the Creditors and the Official Receiver (as defined in and appointed under the BIA) are hereby given notice that, after acceptance of this Proposal by the requisite majority of Creditors in accordance with the relevant provisions of the BIA, the Trustee will present a motion to the Court seeking the Approval Order before the Court on March 14, 2019 at 10:00 o'clock a.m. or as soon as possible thereafter.

**ARTICLE 9
EVENT OF DEFAULT**

9.01 The non-payment of any amount required to be paid hereunder within ten (10) Business Days of the date on which such payment is due will constitute an event of default for the purposes of Section 62.1 of the BIA and otherwise under this Proposal.

**ARTICLE 10
TRUSTEE**

10.01 KSV Kofman Inc. is the Trustee under this Proposal. The Trustee is acting solely in its capacity as Trustee under this Proposal, and not in its personal capacity, and shall not incur any liabilities or obligations in connection with this Proposal or in respect of the business, liabilities, obligations of the Company, whether existing as at the Filing Date or incurred subsequent thereto.

10.02 The Trustee will continue to monitor the Company's cash receipts and disbursements and perform all other obligations until this Proposal is either accepted by the Creditors and implemented or rejected by the Creditors.

10.03 All notices sent by the Trustee or to be sent to the Trustee pursuant to the BIA may be sent by email or ordinary prepaid, first class mail.

**ARTICLE 11
CONDITIONS PRECEDENT**

11.1 As provided for in the BIA, the arrangements set out in this Proposal will not take effect unless the conditions set forth below are satisfied:

- (a) requisite majority of Creditors have approved the Proposal; and
- (b) the Approval Order has been obtained.

**ARTICLE 12
MISCELLANEOUS**

12.01 On receipt of the Approval Order, all Creditors will be deemed to have consented and agreed to all of the provisions of this Proposal in its entirety, including, without limitation the

terms of the Approval Order. For greater certainty, each such Creditor will be deemed to have waived any default by the Company in any provision, express or implied, in any agreement existing between the Creditors and the Company that has occurred on or prior to the Filing Date, and to have agreed that, to the extent that there is any conflict between the provisions of any such agreement and the provisions of the Proposal, the provisions of this Proposal take precedence and priority and the provisions of any such agreement are amended accordingly.

12.02 The payment, compromise or other satisfaction of any Claim under this Proposal will be binding on the Creditors and their respective heirs, executors, administrators, successors and assigns for all purposes.

12.03 The Proposal shall be governed by and construed in accordance with the Laws of Ontario and the federal laws of Canada applicable therein. Any disputes as to the interpretation or application of the Proposal and all proceedings taken in connection with the Proposal shall be subject to the exclusive jurisdiction of the Court.

Dated at Toronto this 13th day of February, 2019.

**58 OLD KENNEDY DEVELOPMENT
INC.**

Per: 

We have the authority to bind the Company