



**Fourth Report to Court of
KSV Kofman Inc. as
Proposal Trustee of
58 Old Kennedy Development Inc.,
76 Old Kennedy Development Inc. and
82 Old Kennedy Development Inc.**

January 22, 2019

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ESTATE FILE NO.: 31-2436538

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

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

FOURTH REPORT OF KSV KOFMAN INC.
AS PROPOSAL TRUSTEE
JANUARY 22, 2019

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") in its capacity as proposal trustee ("Proposal Trustee") in connection with Notices of Intention to Make a Proposal ("NOI") filed on October 26, 2018 by 58 Old Kennedy Development Inc. ("58 Old Kennedy"), 76 Old Kennedy Development Inc. ("76 Old Kennedy") and 82 Old Kennedy Development Inc. ("82 Old Kennedy", and together with 58 Old Kennedy and 76 Old Kennedy, the "Companies") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*, as amended ("BIA").
2. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) ("Court") made on November 26, 2018 (the "November 26th Order"), the Companies' NOI proceedings were administratively consolidated. A copy of the November 26th Order is attached as Appendix "A".
3. Subject to further Order of the Court, the current deadline for each of the Companies to file a proposal is February 22, 2019.
4. KSV is filing this Report in its capacity as Proposal Trustee of the Companies.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Companies and these proceedings;

- b) summarize the terms of three agreements of purchase and sale dated December 8, 2018, as amended January 15, 2019 (collectively, the “Sale Agreements”), pursuant to which 5008830 Ontario Inc.¹ (the “Purchaser”) has agreed to purchase (the “Transactions”) the Companies’ real property at 58 Old Kennedy Road and 20 Thelma Avenue², 76 Old Kennedy Road and 82 Old Kennedy Road, in the City of Markham (collectively, the “Real Property”);
- c) discuss the rationale for the Proposal Trustee’s recommendation that the Transactions should be approved and completed at this time;
- d) set out the anticipated next steps in these proceedings; and
- e) recommend that the Court make an order, *inter alia*:
 - i. approving the Transactions; and
 - ii. vesting in the Purchaser the Companies’ right, title and interest in and to the Real Property, free and clear of all liens, charges, security interests and encumbrances, other than the permitted encumbrances.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Companies’ management, their books and records and discussions with management. The Proposal Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
2. The Proposal Trustee expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee in preparing this Report. Any party wishing to place reliance on the Companies’ financial information should perform its own diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.

¹ The purchaser under the Sale Agreements is Cheng Yi Wei in trust for a company to be incorporated. The Proposal Trustee understands that 5008830 Ontario Inc. is that incorporated company and will be the purchaser of all of the Real Property.

² 58 Old Kennedy Road and 20 Thelma Avenue merged on title.

2.0 Background

1. The Companies are affiliates of Forme Development Group Inc. as well as approximately 30 other real estate development companies (collectively, the “Forme Group”). Yuan Hua Wang is the sole director of each entity in the Forme Group. He is also believed to be the sole shareholder of each entity in the Forme Group.
2. The Forme Group is a commercial and residential real estate development group specializing in low-rise, high-rise, mixed-use and hospitality developments. The Forme Group’s projects are primarily located in the Greater Toronto Area, with a few located in Southwestern Ontario.
3. Pursuant to a Court order made on November 30, 2018 (as amended and restated, the “Initial Order”), Forme Development Group Inc. and certain affiliated entities were granted protection under the *Companies’ Creditors Arrangement Act, R.S.C. 1985, c. C-36*, as amended (the “CCAA”), and KSV was appointed monitor. The Companies are not subject to the CCAA proceedings.
4. The Real Property forms an assembly that is intended to be a single development project (the “Assembly”). The mortgagees on each of the Companies’ properties are provided in the table below.

Property	Mortgagee	Principal Amount (\$000s)	Priority
58 Old Kennedy Rd. and 20 Thelma Ave.	All Season Recycle Inc. (“All Season”)	5,100	First
76 Old Kennedy Rd.	Matthew Castelli (“Castelli”)	2,800	First
82 Old Kennedy Rd.	Wu’s International Group Inc. (“Wu’s”)	8,625	First
58/76/82 Old Kennedy Rd.	Castelli	5,000	Second on all three parcels

(All Season, Castelli and Wu’s are collectively referred to as the “Mortgagees”).

5. KSV filed its First Report to Court dated November 6, 2018 (the “First Report”) in its joint capacities of Proposal Trustee and proposed CCAA monitor. KSV filed three supplements to the First Report (the “Supplemental Reports”). Detailed information about the Companies, real property value estimates, the reasons for filing the NOIs and the intended restructuring plan is set out in the First Report and the Supplemental Reports and, accordingly, that information is not repeated in this Report. Copies of the First Report and the Supplemental Reports are attached as Appendices “B” and “C”, respectively, each without appendices.
6. Based on the Companies’ unaudited books and records used to compile the creditor listings for the purposes of the Companies’ NOI filings, the Companies’ unsecured claims are summarized in the table below. The claims against the Companies have not been confirmed and will be determined through a claims process to be conducted in these proceedings.

Entity	Unsecured Claim Amount (C\$000s)
58 Old Kennedy	94
76 Old Kennedy	47
82 Old Kennedy	106

7. The Proposal Trustee is not currently aware of any creditors with secured claims against the Companies other than the Mortgagees.
8. The First Report, Supplemental Reports and all other materials filed in these proceedings are available on KSV's website at <https://www.ksvadvisory.com/insolvency-cases/case/58-old-kennedy-development-inc-76-old-kennedy-development-inc-82-old-kennedy-development-inc>.

3.0 Sale Process

1. Pursuant to a Court order made on December 21, 2018 (the "December 21st Order"), TD Cornerstone Commercial Realty Inc. ("TD") was retained by the Companies to list the Real Property for sale. The December 21st Order approved a listing agreement with TD and the sale process contemplated thereby.
2. The sale process was detailed in the Proposal Trustee's Third Report to Court dated December 14, 2018 (the "Third Report"), a copy of which is attached as Appendix "D", without appendices.
3. The sale process launched on January 9, 2019. The offer deadline is February 7, 2019 and the anticipated closing date of any transaction generated from that process is three weeks following the offer deadline (i.e. end of February 2019, at the earliest).
4. The Third Report referenced that the Proposal Trustee had received, in advance of the launch of the sale process, unsolicited offers or expressions of interest for the Real Property. The unsolicited offers included the offers submitted by the Purchaser.

4.0 Enforcement Proceedings

1. Pursuant to the November 26th Order, the Mortgagees are not subject to the automatic stay of proceedings under the BIA. Accordingly, certain of the Mortgagees have advanced their enforcement remedies under their respective mortgages.
2. Under Notices of Sale issued by Castelli and Wu's, the 35-day remediation periods are set to expire on or around January 28, 2019 and February 6, 2019, respectively, at which time both Mortgagees can sell the real estate subject to their mortgage or mortgages. A sale of any individual property in the Assembly (as opposed to a sale of the Assembly as a whole) will impair value.
3. At least one Mortgagee has advised that it intends to conclude a transaction for the property subject to its mortgage in early February 2019.

4. Given the risk of a sale by a Mortgagee prior to the conclusion of the sale process, the Proposal Trustee has worked with the Companies and its legal counsel to consider the transaction opportunities that were submitted directly to the Companies in advance of the launch of the sale process, while contemporaneously working with TD to advance the sale process.

5.0 The Sale Agreements

1. Copies of the Sale Agreements for 58 Old Kennedy, 76 Old Kennedy and 82 Old Kennedy are attached as Appendices “E”, “F” and “G”, respectively. The material terms of the Sale Agreements are summarized in the table below.

Term	58 Old Kennedy	76 Old Kennedy	82 Old Kennedy
Purchaser	5008830 Ontario Inc.		
Purchased Assets	58 Old Kennedy Road / 20 Thelma Ave.	76 Old Kennedy Road	82 Old Kennedy Road
Purchase Price	\$11 million	\$4 million	\$15 million
Deposit	\$300,000	\$150,000	\$300,000
First Mortgagee	All Season	Castelli	Wu's
Satisfaction of Purchase Price	Assumption of the All Season mortgage (principal of \$5.1 million), and cash. (All Season has consented to the assumption of its mortgage).	Cash	Cash
Closing Proceeds	On closing, the Purchaser will: a) assume the All Season mortgage in the principal amount of \$5.1 million; b) pay \$5 million plus interest and costs to Castelli in satisfaction of its second mortgage (which is registered against all three properties); and c) pay the balance of the purchase price in cash to the Proposal Trustee.	On closing, the Purchaser will: a) pay \$2.8 million plus interest and costs to Castelli in satisfaction of its first mortgage; and b) pay the balance of the purchase price in cash to the Proposal Trustee.	On closing, the Purchaser will: a) pay \$8.625 million plus interest and costs to Wu's in satisfaction of its first mortgage; and b) pay the balance of the purchase price in cash to the Proposal Trustee.

Term	58 Old Kennedy	76 Old Kennedy	82 Old Kennedy
Conditions Precedent	The Sale Agreements are consistent with standard insolvency transactions, i.e. to be completed on an “as is, where is” basis with minimal representations, warranties and/or conditions. The only material condition precedent is Court approval.		
Closing Date	Subject to Court approval, the Sale Agreements contemplate a closing date of January 31, 2019.		
Existing Leases	The Purchaser has agreed to take the Real Property subject to all existing leases.		

2. Three deposits totalling \$750,000 were paid by the Purchaser to the Proposal Trustee on January 21, 2019. The deposits are significantly less than contemplated by the sale process and are below market. The Proposal Trustee accepted the deposits on the basis that the Transactions close by January 31, 2019. The deposits are non-refundable, except if the Court does not approve the Transactions.

5.1 Recommendation

1. The Proposal Trustee recommends that the Court issue an order approving the Sale Agreements and the Transactions for the following reasons:
 - a) the Transactions maximize value in the circumstances, as they provide for a sale of the Assembly;
 - b) they will eliminate the risk of a property in the Assembly being sold by a Mortgagee under a power of sale process, which would eliminate the value of the Assembly;
 - c) the interests of the Companies and the Mortgagees are not aligned. The Mortgagees are concerned about being repaid the amounts owing under their mortgages, whereas the Companies are attempting to maximize value for all creditors, and perhaps, the shareholder. At least one of the Mortgagees has advised of its intention to sell the property subject to its mortgage in early February if it is not repaid by that time;
 - d) the value of the proposed Transactions (\$30 million) significantly exceeds the mortgage debt on the Real Property, which totals \$21.525 million plus interest and costs which continue to accrue;
 - e) the purchase price (\$30 million) is consistent with the preliminary value estimate on the Real Property provided by TD (\$31.7 million), as summarized in the Supplemental Reports;

- f) based on preliminary financial information available to the Proposal Trustee, it appears that the proceeds should be sufficient to repay all of the Companies' creditors, including the fees and expenses of the Companies' counsel, the Proposal Trustee and the Proposal Trustee's counsel. Subject to further Order of the Court, it is expected that any surplus will be paid to the Companies' shareholder, who is believed to be Mr. Wang. Mr. Wang supports the Transactions; and
- g) the Transactions have a closing date of January 31, 2019.

6.0 Security Opinions

- 1. Bennett Jones LLP ("Bennett Jones"), the Proposal Trustee's counsel, has provided an opinion to the Proposal Trustee on the mortgages held by each of All Season, Castelli and Wu's³. A security opinion was required as the Sale Agreements contemplate that the mortgages will be paid on closing, with the exception of the All Season mortgage, which is to be assumed.
- 2. Subject to the standard assumptions and qualifications contained in the opinion, Bennett Jones has concluded that the mortgages of each of All Season, Castelli and Wu's have been registered, filed or recorded as required under Ontario law.

7.0 Anticipated Next Steps in these Proceedings

- 1. Subject to Court approval, the next steps in these proceedings will be to:
 - a) work with the Purchaser to close the Transactions;
 - b) bring a motion to approve a claims process to determine the claims against the Companies (other than the Companies' obligations owing to its Mortgagees, which will either be assumed by the Purchaser (in the case of All Season) or fully repaid and discharged pursuant to the Sale Agreements (in the case of Wu's and Castelli)); and
 - c) bring a motion to extend the date by which the Companies must file a proposal, which is presently February 22, 2019 pursuant to the December 21st Order.

³ Copies of the security opinions will be made available to the Court should the Court wish to review them.

8.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,

KSV Kofman Inc

KSV KOFMAN INC.

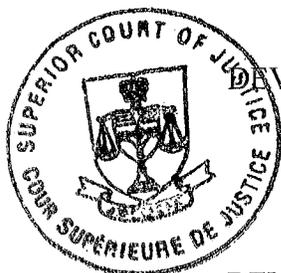
**SOLELY IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICES OF INTENTION TO MAKE A PROPOSAL OF
THE COMPANIES AND NOT IN ITS PERSONAL CAPACITY**

Appendix “A”

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.) MONDAY, THE 26TH
JUSTICE HAINEY) DAY OF NOVEMBER, 2018

Estate No. 31-2436538



IN THE MATTER OF THE PROPOSAL OF 58 OLD KENNEDY
DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER THE
LAWS OF ONTARIO
AND

Estate No. 31-2436600

IN THE MATTER OF THE PROPOSAL OF 76 OLD KENNEDY
DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER THE
LAWS OF ONTARIO
AND

Estate No. 31-2436604

IN THE MATTER OF THE PROPOSAL OF 82 OLD KENNEDY
DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER THE
LAWS OF ONTARIO
AND

Estate No. 31-2438977

IN THE MATTER OF THE PROPOSAL OF 9500 DUFFERIN
DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER
THE LAWS OF ONTARIO
AND

Estate No. 31-2439433

IN THE MATTER OF THE PROPOSAL OF 250 DANFORTH
DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER
THE LAWS OF ONTARIO
AND

Estate No. 31-2439448

IN THE MATTER OF THE PROPOSAL OF 3310 KINGSTON
DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER
THE LAWS OF ONTARIO
AND

Estate No. 31-2439440

IN THE MATTER OF THE PROPOSAL OF 1296 KENNEDY
DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER
THE LAWS OF ONTARIO
AND

Estate No. 31-2440234

IN THE MATTER OF THE PROPOSAL OF 159 CARVILLE
DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER
THE LAWS OF ONTARIO

ORDER

(Procedural Consolidation of Estates and Extension of Time to File A Proposal)

THIS MOTION made by 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., 82 Old Kennedy Development Inc., 9500 Dufferin Development Inc., 250 Danforth Development Inc., 3310 Kingston Development Inc., 1296 Kennedy Development Inc. and 159 Carville Development Inc., (collectively, the “**NOI Companies**”) for an order authorizing and directing the procedural consolidation of the NOI Companies’ proceedings (the “**NOI Proceedings**”) under Section 50.4 of the *Bankruptcy and Insolvency Act* (“**BIA**”) and extending the time to file a proposal, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the NOI Companies’ Motion Record in respect of this motion and the Second Report dated November 20, 2018 (the “**Second Report**”) of KSV Kofman Inc., in its capacity as proposal trustee (the “**Proposal Trustee**”).

AND UPON hearing the submissions of counsel for the NOI Companies, the Proposal Trustee and those other parties present, no one else appearing for any other person on the service list, although duly served as appears from the affidavit of service of Katie Parent sworn November 21, 2018, filed;

NOTICE AND SERVICE

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the Second Report is hereby abridged and validated so that the motion is properly returnable today, and that further service thereof is hereby dispensed with.

CONSOLIDATION OF ESTATES

2. **THIS COURT ORDERS** that the NOI Proceedings shall be administratively and procedurally consolidated and the Proposal Trustee shall be authorized and directed to administer the NOI Companies on a consolidated basis for all purposes in carrying out its administrative duties and other responsibilities as trustee under the Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3, as amended.

3. **THIS COURT ORDERS** that the single Court file number of 31-2436538 and the title of proceeding of shall be assigned to the NOI Proceedings as follows:

**IN THE MATTER OF THE PROPOSAL OF 58 OLD KENNEDY DEVELOPMENT INC.,
76 OLD KENNEDY DEVELOPMENT INC., 82 OLD KENNEDY DEVELOPMENT INC.,
9500 DUFFERIN DEVELOPMENT INC., 250 DANFORTH DEVELOPMENT INC., 3310
KINGSTON DEVELOPMENT INC., 1296 KENNEDY DEVELOPMENT INC., 159
CARVILLE DEVELOPMENT INC., ALL CORPORATIONS INCORPORATED UNDER
THE LAWS OF ONTARIO**

4. **THIS COURT ORDERS** that a copy of this Order shall be filed by NOI Companies in the Court file for the Estate numbers 31-2436538, 31-2436600, 31-2436604, 31-2438977, 31-2439433, 2439448, 31-2439440 and 31-2440234 but that any other document required to be filed in this proceeding shall hereafter only be required to be filed in Court file number 31-2436538.

5. **THIS COURT ORDERS** that the procedural and administrative consolidation of the NOI Proceedings shall not: (i) affect the separate legal status and corporate structures of any of the NOI Companies; (ii) cause any of the NOI Companies to be liable for any claim for which it otherwise is not liable; or (iii) affect the Proposal Trustee's right to seek to disallow any claim, including on the basis that such claim is a duplicative claim.

EXTENSION OF TIME TO FILE A PROPOSAL

6. **THIS COURT ORDERS** that, pursuant to Section 50.4(9) of the BIA, the time for filing a proposal with the Official Receiver in each of the NOI Proceedings be and is hereby extended to January 8, 2019.

7. **THIS COURT ORDERS** that the Proposal Trustee be and is hereby authorized to confirm in writing to any mortgagees holding a charge on a property of an NOI Company and who wishes to enforce its remedies as mortgagees against such property, that it is entitled to proceed to do so, notwithstanding the currency of any stay of proceedings imposed by operation of the BIA.

GENERAL

8. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada against all persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable.

9. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province to act in aid of and to be complementary to this Court 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 as may be necessary or desirable to give effect to the Order or to assist the Trustee and its agents in carrying out the terms of this Order.

A handwritten signature in black ink, appearing to read "Hainey J.", is written over a horizontal line. The signature is cursive and stylized, with a long, sweeping tail that extends to the right.

IN THE MATTER OF THE PROPOSAL OF 58 OLD KENNEDY DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER THE LAWS OF ONTARIO
IN THE MATTER OF THE PROPOSAL OF 76 OLD KENNEDY DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER THE LAWS OF ONTARIO
IN THE MATTER OF THE PROPOSAL OF 82 OLD KENNEDY DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER THE LAWS OF ONTARIO
IN THE MATTER OF THE PROPOSAL OF 9500 DUFFERIN DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER THE LAWS OF ONTARIO
IN THE MATTER OF THE PROPOSAL OF 250 DANFORTH DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER THE LAWS OF ONTARIO
IN THE MATTER OF THE PROPOSAL OF 3310 KINGSTON DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER THE LAWS OF ONTARIO
IN THE MATTER OF THE PROPOSAL OF 1296 KENNEDY DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER THE LAWS OF ONTARIO
IN THE MATTER OF THE PROPOSAL OF 159 CARVILLE DEVELOPMENT INC., A CORPORATION INCORPORATED UNDER THE LAWS OF ONTARIO

Estate File Nos: 31-2436538
31-2436600
31-2436604
31-2438977
31-2439433
31-2439448
31-2439440
31-2440234

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

Proceeding commenced TORONTO

ORDER
**(Procedural Consolidation of Estates and
Extension of Time to File a Proposal)**

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Appendix “B”



**First Report of KSV Kofman Inc.
As Proposal Trustee of
58 Old Kennedy Development Inc.,
76 Old Kennedy Development Inc.,
82 Old Kennedy Development Inc.,
9500 Dufferin Development Inc.,
250 Danforth Development Inc.,
3310 Kingston Development Inc.,
1296 Kennedy Development Inc. and
159 Carrville Development Inc.**

November 6, 2018

- and -

**Report of
KSV Kofman Inc.
as Proposed CCAA Monitor of
Forme Development Group Inc.
and the Companies Listed on
Appendix "A"**

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ESTATE FILE NOS.: 31-2436538, 31-2436600, 31-2436604, 31-2438977, 31-2439433, 31-2439440, 31-2439448 AND 31-2440234

COURT FILE NO.: _____

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

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF FORME DEVELOPMENT GROUP INC.
AND THE COMPANIES LISTED ON APPENDIX "A"**

**FIRST REPORT OF KSV KOFMAN INC. AS
PROPOSAL TRUSTEE AND
REPORT OF KSV KOFMAN INC. AS PROPOSED MONITOR**

November 6, 2018

1.0 Introduction

1. Forme Development Group Inc. ("FDG") and its affiliated entities listed on Appendix "A" (collectively, FDG and the affiliated entities listed on Appendix "A" are referred to as the "Applicants") intend to make an application to the Ontario Superior Court of Justice (Commercial List) (the "Court") under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*, as amended (the "CCAA") for an initial order (the "Initial Order") granting the Applicants protection under the CCAA and appointing KSV Kofman Inc. ("KSV") as the CCAA monitor in these proceedings ("Monitor"). KSV has consented to act as Monitor in these proceedings. A copy of its consent is provided in Appendix "B".
2. As summarized in the table below, certain of the Applicants (the "NOI Entities") recently filed Notices of Intention to Make a Proposal under the *Bankruptcy and Insolvency Act* ("BIA") (collectively, the "NOI Proceedings"). KSV is the proposal trustee in each of the NOI Proceedings (the "Proposal Trustee").

Debtor	Date of NOI filing
58 Old Kennedy Development Inc.	October 26, 2018
76 Old Kennedy Development Inc.	October 26, 2018
82 Old Kennedy Development Inc.	October 26, 2018
9500 Dufferin Development Inc.	November 1, 2018
250 Danforth Development Inc.	November 2, 2018
3310 Kingston Development Inc	November 2, 2018
1296 Kennedy Development Inc.	November 2, 2018
159 Carrville Development Inc.	November 5, 2018

3. The Affidavit of Yuan Hua Wang (“Mr. Wang”), the Applicants’ founder, sole shareholder and director, sworn November 5, 2018 and filed in support of the Applicants’ application for CCAA protection (the “Affidavit”), provides, *inter alia*, background information concerning the Applicants, including the reasons for the commencement of these proceedings and an overview of the Applicants’ intended restructuring plan.
4. KSV is filing this report (the “Report”) in its capacity as Proposal Trustee of the NOI Entities and as proposed Monitor in the Applicants’ CCAA proceedings.

2.0 Executive Summary

1. The Applicants are comprised of 30 companies which own 18 real estate projects.
2. The Applicants are indebted to mortgagees in the aggregate amount of approximately \$220 million, before certain interest, costs and fees which continue to accrue.
3. Several of the Applicants’ properties have multiple mortgages.
4. Mr. Wang has personally guaranteed a large percentage of the Applicants’ mortgage obligations.
5. The Applicants are illiquid – as at the date of this Report, they have a combined bank balance of approximately \$230,000, cannot pay their obligations as they come due and have defaulted on all of their mortgages.
6. Certain of the Applicants’ projects, particularly the Pacific Properties (as defined below) are estimated to have substantial equity – estimated to be between \$30 million and \$70 million. The Applicants believe that the equity may exceed the high end of this range.
7. The Applicants’ mortgagees are frustrated due to the defaults under their mortgages and broken promises from representatives of the Applicants.
8. The Applicants contacted KSV approximately two weeks ago. Since that time, KSV has worked with TD Cornerstone Commercial Realty Inc. (“TD”) to independently consider the estimated value of the Applicants’ real property, particularly the properties (the “Pacific Properties”) owned by nine¹ of the Applicants (the “Pacific Entities”). The Pacific Properties are located in close proximity to the Pacific Mall in Markham, Ontario. TD is of the view that, even on an “as is” basis, the Pacific Properties have considerable equity.
9. To stabilize the situation and conduct an orderly realization process for the benefit of creditors, the Applicants require protection under the CCAA.

¹ The Pacific Entities are: 186 Old Kennedy Development Inc., 31 Victory Development Inc., 58 Old Kennedy Development Inc., 82 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., 22 Old Kennedy Development Inc., 35 Thelma Development Inc., 19 Turff Development Inc. and 4550 Steeles Development Inc.

10. While preparing for CCAA protection, certain of the Applicants have filed NOIs under the BIA in response to those mortgagees which commenced enforcement proceedings by issuing 244 notices under the BIA and/or have commenced power of sale proceedings.
11. If the Initial Order is granted, the Applicants intend to conduct a sale process for the majority of its properties, under the supervision of KSV, as Monitor. It is contemplated that TD would be retained as listing agent for the sale process. KSV has negotiated a favourable fee arrangement with TD for this assignment, as detailed below. It is important that the sale process be commenced forthwith for several reasons, including the significant interest and other debt costs which are accruing on the Applicants' mortgage debt.
12. Because the Applicants are without liquidity, KSV has also arranged a DIP facility (the "DIP Facility") to fund these restructuring proceedings. The DIP Facility is contemplated to have a super-priority charge on the property of the Pacific Entities (including the Pacific Properties), subordinate only to the Administration Charge (as defined and described below). The majority (but not all) of the equity in the Applicants' real properties appears to be in the Pacific Properties.
13. The Monitor, its counsel and the Applicants' counsel have not been paid retainers. The Initial Order contemplates that they would be provided a super-priority first-ranking Administration Charge on the property of the Pacific Entities (including the Pacific Properties) and a charge ranking immediately behind the other Applicants' first mortgagees for their costs and fees incurred to-date and going forward.
14. These proceedings will also provide senior ranking mortgagees with the same result as if they moved forward with their own enforcement processes – an expedited sale process. They also gain the benefit of a Court-supervised process, which assists to insulate them from improvident realization claims from junior ranking mortgagees.
15. The materials contemplate that a comeback motion will be heard within the first two weeks of these proceedings (the "Comeback Motion"). Until that time, the Administration Charge has been limited to \$300,000 and the DIP Facility has been limited to \$750,000. Increases to both amounts are contemplated at the Comeback Motion (\$1 million in the case of the Administration Charge, and \$5 million plus accrued interest, fees and expenses in the case of the DIP Facility).
16. The proposed Court-ordered charges have been situated in each entity and on each piece of real estate having consideration for the parties which will obtain the greatest benefit from the orderly sale process contemplated in these restructuring proceedings, primarily junior ranking mortgagees.
17. KSV, as the proposed Monitor, believes that these proceedings also provide benefits to senior ranking mortgagees as it provides an orderly and expedited sale process under the supervision of the Court.

18. Through the stability created, it is believed that the equity in the Pacific Properties will be realized for the benefit of those mortgagees who may suffer shortfalls but have guarantees from Mr. Wang. If it turns out that the value of the Pacific Properties is materially less than expected, the Monitor will advise the Court forthwith.

2.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide KSV's qualifications to act as Monitor;
 - b) provide background information about the Applicants;
 - c) summarize the terms of a \$5 million DIP Facility (which is to have an interim borrowing limit of \$750,000 until the Comeback Motion) to be made available to the Pacific Entities by KingSett Mortgage Corporation ("KingSett" or the "DIP Lender") pursuant to a DIP term sheet dated November 6, 2018, which is proposed to be secured by a Court-ordered charge on the property of the Pacific Entities, including the Pacific Properties;
 - d) summarize the terms of a listing agreement dated November 5, 2018, pursuant to which the Applicants propose to engage TD to act as the listing brokerage for the Applicants' real property;
 - e) report on the Applicants' cash flow projection for the period November 5, 2018 to December 9, 2018 ("Cash Flow Forecast"); and
 - f) discuss the rationale for:
 - converting the NOI Proceedings into a consolidated CCAA proceeding that includes the NOI Entities and each of the Applicants which are not subject to the NOI Proceedings;
 - retaining TD at this time to prepare for a sale process², the details of which will be subject to approval at the Comeback Motion;
 - extending the stay of proceedings to Mr. Wang to prevent enforcement actions against him;
 - an administration charge in the interim amount of \$300,000 to secure the fees and disbursements of the Applicants' counsel, the Monitor and its counsel in these proceedings (the "Administration Charge"), which is proposed to have a super-priority charge on the property of each of the Applicants. The Administration Charge is proposed to rank first on the property of the Pacific Entities (including the Pacific Properties) and to be subordinate to the first mortgagees as against the other Applicants;

² TD's mandate includes attempting to refinance certain projects, as discussed in greater detail in Section 3 below.

- a charge in favour of the DIP Lender to secure borrowings of up to \$750,000 under the DIP Facility (the “DIP Lender’s Charge”) until the Comeback Motion, which charge is proposed to rank immediately behind the Administration Charge on the Pacific Properties. For greater certainty, the DIP Lender will only have a charge against the property of the Pacific Entities (including the Pacific Properties), and not the other Applicants;
 - a charge (the “Intercompany Charge”) in favour of any Applicant that makes an intercompany advance to another Applicant (the “Receiving Applicant”) to the extent of the intercompany advances made by those Applicants, which charge is proposed to rank subordinate to the first mortgages on each Property (as well as to the Administration Charge and DIP Lender’s Charge, where applicable); and
- g) recommend that this Court grant the relief sought by the Applicants in their CCAA application materials.

2.2 Restrictions

1. In preparing this Report, KSV has relied upon the Applicants’ unaudited financial information, third party appraisals, discussions with the Applicants’ management and discussions with TD. KSV has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the Chartered Professional Accountants of Canada Handbook.
2. In reviewing the Applicants’ financial information, KSV has determined that the Applicants’ books and records need to be brought current and adjustments will be required to certain of the financial statements. KSV intends to work with the Applicants in this regard if appointed Monitor.
3. KSV expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by KSV in preparing this Report. Any party wishing to place reliance on the Applicants’ financial information should perform its own diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.
4. An examination of the Cash Flow Forecast as outlined in the Chartered Professional Accountant Canada Handbook has not been performed. Future oriented financial information relied upon in this Report is based upon the Applicants’ assumptions regarding future events; actual results achieved may vary from this information and these variations may be material. KSV expresses no opinion or other form of assurance on whether the Cash Flow Forecast will be achieved.

2.3 Currency

1. All currency references in this Report are in Canadian dollars.

2.4 KSV's Qualifications to Act as Monitor

1. KSV is qualified to act as Monitor in these proceedings:
 - a) KSV is a trustee within the meaning of subsection 2(1) of the BIA. KSV is not subject to any of the restrictions to act as monitor set out in Section 11.7(2) of the CCAA.
 - b) KSV has been working with the Applicants' management team for the past two weeks and is presently the Proposal Trustee of the NOI Entities. KSV has familiarized itself with the Applicants' issues, financial situation and the status of their projects.
 - c) KSV has extensive experience acting as a court officer in a wide variety of industries, including several mandates in recent years acting as a Court officer in the real estate sector. Recently, as detailed below, KSV has been involved as the court officer in not less than 11 real estate related files³.

Debtor	Description	KSV's Role
Urbancorp Group	Major developer of residential properties in the GTA	CCAA Monitor
Mady Steeles (2011) Ltd.	Diversified real estate development group	Court-appointed Receiver
Textbook and Memory Care Group of Companies	Developers of student housing residences and aged care facilities.	Court-appointed Receiver in 11 separate receiverships, each with at least one piece of owned real estate
Generx (Byward Hall) Inc.	Developer of student housing residences	Court-appointed Receiver
M.Y. Residential Inc.	Owned a student housing residence	Court-appointed Receiver
Court-appointed "sales officer" of a private real estate portfolio	Shareholder dispute involving a group of private companies with a real estate portfolio in the GTA of greater than \$110 million including, development land, residential land, farm land, industrial land and industrial condominiums	Court-appointed sales officer
JD Phillip Street LP	Owner of student housing residence and development land	Court-appointed Receiver
Textbook (445 Princess Street) Inc.	Developer of student housing residences	Court-appointed Receiver
Seaway Travel Centre Ltd.	Commercial property owner	Court-appointed Receiver
3291736 Nova Scotia Limited	Owner of six condominium lots in Halifax, Nova Scotia	Court-appointed Receiver
2301132 Ontario Inc. and 2309840 Ontario Inc.	Owner of several pieces of real estate located in Georgetown, Ontario, including four of five pieces which comprise one assembly	Proposal Trustee

³ Certain of these mandates have multiple insolvency processes.

3.0 Background

1. The Applicants are a commercial and residential real estate development group specializing in low-rise, high-rise, mixed-use and hospitality developments. The Applicants' projects are primarily located in the Greater Toronto Area with a few in Southwestern Ontario and one in Western Canada. The Applicants' organization chart is provided in Appendix "C".
2. Mr. Wang is the sole director and shareholder of each of the Applicants. FDG has 12 employees, including Mr. Wang. The Applicants' workforce is not unionized and the Applicants do not maintain a registered pension plan. Other than FDG, the other Applicants are single purpose entities that own real estate for development.
3. A table summarizing the Applicants' projects is provided below. The action plan for each project is also provided.

No.	Entity Name	Purchase Price (\$)	Acquisition Year(s)	Mortgage Debt (\$)	Appraised Value ⁴ (\$)	Appraisal Date	Action plan
1	4 Don Hillock Development Inc.	2,002,500	2017	2,400,000	3,200,000	5-Jun-17	Sell
2	250 Danforth Development Inc.	7,330,000	2014	20,300,000	32,200,000	5-Jul-18	Sell
3	3310 Kingston Development Inc.	3,830,000	2014, 2015	12,700,000	14,500,000	20-Oct-16	Sell
4	12696 Kennedy Development Inc.	2,740,000	2015	7,200,000	12,100,000	1-Jun-18	Sell
5	7397 Islington Development Inc.	3,200,000	2015	8,000,000	13,800,000	27-Oct-17	Sell
6	1326 Wilson Development Inc.	1,700,000	2016	3,000,000	10,400,000	0-Jan-00	Sell
7	101 Columbia Development Inc.	3,908,887	2016	4,345,000	11,000,000	25-Jul-18	Sell
8	4208 Kingston Development Inc.	5,878,000	2016	7,908,000	1,790,000	18-Sep-18	Sell
9	376 Derry Development Inc.; and 390 Derry Development Inc.	14,850,000	2016	19,075,000	34,600,000	1-Aug-17	Sell
10	159 Carrville Development Inc.; 169 Carrville Development Inc.; and 189 Carrville Development Inc.	10,653,000	2015, 2016, 2017	15,491,500	19,600,000	7-Nov-17	Sell
11	4439 John Development Inc.; and 5507 River Development Inc.	5,209,900	2016	4,336,930	N/A	N/A	Development under consideration
12	186 Old Kennedy Development Inc.; and 31 Victory Development Inc.	34,500,000	2015, 2016	46,350,000	77,500,000	1-Jun-18	Develop
13	58 Old Kennedy Development Inc.; 82 Old Kennedy Development Inc.; and 76 Old Kennedy Development Inc.	20,800,000	2015, 2016	21,525,000	55,600,000	3-Apr-18	Sell
14	22 Old Kennedy Development Inc.; 35 Thelma Development Inc.; and 19 Turff Development Inc.	5,262,000	2015, 2016	4,890,000	10,400,000	2017-Apr-5 and 2018-Apr-03	Sell
15	4550 Steeles Development Inc.	11,700,000	2016	12,000,000	30,900,000	3-Apr-18	Sell

⁴ C&W prepared the appraisal for all but one property, which was prepared by Colliers. Appraisals for three properties were not available.

No.	Entity Name	Purchase Price (\$)	Acquisition Year(s)	Mortgage Debt (\$)	Appraised Value ⁴ (\$)	Appraisal Date	Action plan
16	9500 Dufferin Development Inc.	14,750,000	2017	13,500,000	14,750,000	25-Aug-17	Sell
17	27 Anglin Development Inc.; and 29 Anglin Development Inc.	6,170,000	2016	6,923,500	12,100,000	15-Jun-17	Sell
18	2358825 Ontario Ltd. (Birchmount)	N/A	N/A	8,550,000	N/A	N/A	Complete closing
Total		154,484,287		220,608,930	354,440,000		
Note: Mortgage balances above are before certain interest, costs and fees, which continue to accrue.							

4. As set out in the Affidavit, TD has reviewed certain of the Applicants' appraisals prepared by Cushman & Wakefield Ltd. ("C&W") and has provided its view of the estimated "as is" value of certain of those properties. KSV asked that TD focus its diligence on the Pacific Properties. TD's diligence included speaking to the planner retained by the Applicants on those properties, considering the development plans and development status of those sites, reviewing the C&W appraisals and looking at comparable transactions. Based on its review, TD estimates that the Pacific Properties have between \$30 million to \$70 million of value on an "as is" basis after repayment of the mortgages on those properties.
5. These proceedings contemplate that, subject to further Court approval, TD will carry out a sale process, under the supervision of the Monitor, for all of the Applicants' real property other than the following (the "Retained Properties"):
 - a) 186 Old Kennedy/31 Victory/51 Victory, which comprise one development project on the Pacific Properties. The Applicants envision that the equity in this project and the other Pacific Properties are to be used to fund shortfalls incurred on those mortgages that Mr. Wang has guaranteed. Mr. Wang believes that this property, if developed, will create significant additional value; and
 - b) Birchmount Gardens, being a group of urban townhouses in Scarborough, Ontario, which is fully sold with construction completed. The Applicants have advised KSV that closings are expected to take place before year-end and that the closing proceeds will be sufficient to repay all mortgagees on the project.
6. The Applicants are also considering whether to continue development activity on a project in Niagara Falls known as the River Development (the "River Road Project"). Additional time is required to determine whether this project should be sold or developed. A determination will be made by the Applicants, in consultation with KSV, TD and the mortgagees on this project.
7. TD has retained Kevin Schledewitz, a licensed mortgage broker with Onedin Acceptance Corporation ("Onedin"). Onedin's principal mandate will be refinancing the mortgages on 186 Old Kennedy/31 Victory/51 Victory. Onedin may also look for opportunities to refinance the River Road Project.
8. Following the Comeback Motion (but not before), the Applicants intend to service the interest on 186 Kennedy/31 Victory/51 Victory while development activity is pursued. This is also true on the River Road Project provided a decision is made to continue development activity on that project.

9. Further information concerning the Applicants, their current situation and the purpose of these proceedings is provided in the Affidavit. In order to avoid duplication, that discussion has not been repeated in this Report.

4.0 Creditors

4.1 Secured Creditors

1. The Applicants' mortgage debt totals approximately \$220 million.
2. As reflected in the project summary above, there is one or more mortgagees on each of the Applicants' real property, with the majority of the projects having more than one mortgagee. The Applicants have essentially no liquidity at this time. The Applicants' monthly operating and debt service costs are in excess of \$1 million. The Applicants are unable to service their mortgage debt, pay their operating costs and/or advance development activity. None of the Applicants paid their mortgage obligations due on November 1st. Each mortgage is presently in default and several mortgagees have made demand and issued notices pursuant to Section 244 of the BIA. Given the default on all mortgages on November 1, absent the commencement of restructuring proceedings, it is reasonable to assume many more demands and enforcement notices will be forthcoming.
3. KSV understands that Mr. Wang has personally guaranteed many of the mortgages granted by the Applicants.

4.2 Unsecured Creditors

1. According to representatives of the Applicants, the Applicants' consolidated unsecured obligations are estimated to total approximately \$2.2 million, excluding intercompany and employee obligations. The Applicants are in the process of updating their internal accounting records and, accordingly, the amount of these obligations may need to be updated in a future Monitor's report.
2. The Applicants' arm's length unsecured creditors are largely comprised of professional firms that provided consulting and legal services related to the development of the Applicants' projects.

5.0 DIP Facility⁵ and Intercompany Funding

5.1 DIP Facility

1. During the week ended November 2, 2018, KSV approached two parties to provide the DIP Facility. Each party is well known in the real estate community and provides loans to real estate development companies.

⁵ Terms not defined in this section have the meaning provided to them in the DIP Term Sheet.

2. The terms of the proposed DIP Facility are detailed in a DIP term sheet, a copy of which is attached as Appendix "D". The significant terms of the DIP Facility are summarized below.

- a) Borrowers: the Pacific Entities
- b) Lender: KingSett
- c) Maximum Loan Amount: \$5 million plus accrued interest and unpaid fees, to be advanced in tranches of \$250,000, limited to \$750,000 until the Comeback Motion.
- d) Repayment: the earlier of: a) demand by KingSett; b) November 15, 2019, as may be extended in writing; and c) consummation of a Sale Transaction for the Pacific Properties or implementation of a plan of compromise or arrangement or other restructuring transaction involving any of the Pacific Entities.
- e) Interest rate: Royal Bank of Canada prime rate +5% per annum.
- f) Fees and expenses: non-refundable fully earned commitment fee of \$100,000, an extension fee of \$25,000⁶ on each four-month extension of the DIP Facility and the DIP Lender's out-of-pocket expenses, including legal expenses, incurred by the DIP Lender in connection with these proceedings.
- g) DIP Lender's Charge: all obligations under the DIP Facility are to be secured by the DIP Lender's Charge.
- h) Intercompany Charge: pursuant to the Initial Order, advances from the Pacific Entities to a Receiving Applicant are to be secured by an Intercompany Charge on the assets, property and undertaking of the Receiving Applicant, ranking immediately behind the first ranking mortgagees of the Receiving Applicant, the Administration Charge and the DIP Lender's Charge, as applicable.
- i) Reporting: reporting obligations include an update conference call on no less than a monthly basis among the Monitor, representatives of the Applicants and the DIP Lender.
- j) Conditions: the conditions precedent to the DIP Facility include the entry of the Initial Order approving the DIP Facility and the granting of the DIP Lender's Charge.

⁶ This fee is to be pro-rated based on the length of each extension.

5.2 Intercompany Funding

1. The Applicants will require funds throughout the CCAA proceedings to fund the administration and sale process costs and, where applicable, to fund additional debt or development costs. It is anticipated that most of these funds will be advanced by the Pacific Entities to the other Applicants with funds from the DIP Facility. There is a possibility that funds from other Applicants may also be available for intercompany funding purposes. The Applicants are proposing an Intercompany Charge to account for any such advances.

5.3 Allocation of Costs

1. Costs incurred by the Applicants throughout the CCAA proceedings (including professional fees) will be allocated across the various Properties with no single Property bearing all of the costs. KSV intends to assist the Applicants with maintaining Property specific reconciliations. Where costs can be allocated specifically to one or more Properties, those costs will be allocated accordingly. If costs cannot be attributed specifically to one or more Properties they will be allocated on a pro rata or other basis across the Properties based on a methodology to be addressed at a future motion in these proceedings.

5.4 Recommendation

1. KSV considered the following factors when reviewing the reasonableness of the DIP Facility, as well as those set out in Section 11.2 of the CCAA:
 - a) the DIP Lender is not willing to provide the required interim financing other than on the terms and conditions set out in the DIP term sheet;
 - b) without the DIP Facility, the Applicants will be unable to fund these proceedings and conduct an orderly sale process. In that scenario, there could be a disorganized realization process whereby the Applicants' mortgagees conduct multiple and separate power of sale or other enforcement proceedings;
 - c) the DIP Facility will provide the Applicants, and this process, with the liquidity required to orderly and expediently conduct a sale process for substantially all of the Properties, and to continue development activity for the Retained Properties and potentially the River Road Project. KSV believes that the contemplated process provides the opportunity to generate better recoveries than if the projects were sold under power of sale proceedings, while still providing mortgagees with a sale process that will be carried out in the near term under the supervision of the Court;
 - d) KSV compared the terms of the DIP Facility to other DIP facilities approved by Canadian courts in CCAA proceedings commenced in 2017 and 2018. The comparison is attached as Appendix "E". Based on the comparison, the costs of the proposed DIP Facility are superior to other DIP financings approved by this and other Canadian courts;
 - e) it is intended that DIP funds will be advanced through KSV (as Monitor) and that KSV will provide oversight as to the business and financial affairs of the Applicants during the CCAA proceedings; and

- f) KSV believes that approval of the DIP Facility is in the best interests of the Applicants' stakeholders and will enhance the prospects of maximizing value in the circumstances. The DIP Facility is projected to be sufficient to fund the costs of these proceedings, including the sale process. KSV does not believe that creditors will be prejudiced from approval of the DIP Facility particularly given the estimated value of the Pacific Properties – to the contrary, they should benefit from it as it will allow the Applicants to work with the Monitor to maximize value for as many mortgagees and other creditors as possible and will be more efficient than allowing for individual enforcement processes to be carried out on each of the Applicants' properties.
2. KSV has also considered the proposed Intercompany Charge. The Intercompany Charge is not proposed to rank in priority to any first mortgagee. Amounts funded under the Intercompany Charge are contemplated to be used for conservatory measures and professional costs to conduct the sale process. The Intercompany Charge primarily affects those creditors that will derive the greatest benefit from an orderly sale process, i.e. junior ranking mortgagees that are at greatest risk of loss.
3. Based on the foregoing, KSV believes that the terms of the DIP Facility and the Intercompany Charge are reasonable in the circumstances.

6.0 Cash Flow Forecast

1. The Applicants prepared the Cash Flow Forecast, which covers the period November 5, 2018 to December 9, 2018. The Cash Flow Forecast and the Applicants' statutory report on the cash flow prepared pursuant to Section 10(2)(b) of the CCAA is attached as Appendix "F".
2. The Cash Flow Forecast reflects that the DIP Facility will be required to service the mortgage debt on the Retained Projects and to pay head office costs, such as payroll and rent, some development activity and professional costs.
3. The Cash Flow Forecast also reflects that \$750,000 is sufficient to fund any costs incurred, or to be incurred, in connection with these proceedings until the Comeback Motion, at which time it is intended that approval of the full amount of the DIP Facility will be sought on notice to the Service List, including the Applicants' mortgagees.
4. Based on KSV's review of the Cash Flow Forecast, the assumptions appear reasonable. KSV's statutory report on the Cash Flow Forecast is attached as Appendix "G".

7.0 Proposed Engagement of TD

1. Immediately following KSV's initial meeting with the Applicants in late October, KSV contacted TD to consult with it on the Applicants' properties. KSV asked TD to perform diligence on the Applicants' properties, particularly the Pacific Properties. TD reviewed the C&W appraisals, spoke with, and received information from, the Applicants' third-party planning and development consultants and considered the value of the Pacific Projects on an "as is" basis based on comparative transactions. TD concluded that there appears to be significant value in the Pacific Properties on an "as is" basis.

2. On November 5, 2018, the Applicants, TD and KSV finalized a listing agreement, a copy of which is attached as Appendix “H”. The listing agreement is subject to Court approval. The material terms of the proposed listing agreement are as follows:
 - Fee: 1.1% of the sale price of the properties (attached as Appendix “I”, for comparative purposes, is a summary of the fees paid to realtors on certain of KSV’s other real estate mandates).
 - Term: 180-day exclusive listing term.
 - Sub-Consultant: TD is authorized to retain Onedin to provide mortgage refinancing services.
 - Other: TD may elect to retain other real estate brokerage firms to assist in the sale of certain properties.
 - Sale Process Overview: Schedule “B” of TD’s engagement letter provides an overview of the contemplated sale process. The sale process will be subject to Court approval at a subsequent motion. Neither the sale process nor its timeline have been finalized. Both will be dealt with at the Comeback Motion; however, KSV is of the view that TD should be retained immediately so that it can underwrite and prepare marketing materials that will be required for the Applicants’ real estate, which is in the interest of facilitating a timely sale of the Applicants’ real estate.
3. It is the intention of KSV and TD, if possible, to be in the market for as many properties as possible before the new year. However, with the holiday season fast approaching, it is possible that the sale process for the majority of the properties will not commence until early January.
4. A CV for the two individuals at TD who would lead this assignment, Jamie Ziegel and Ashley Martis, is provided in Appendix “J”. Messrs. Ziegel and Martis have been retained by KSV previously and have achieved successful outcomes. Messrs. Ziegel and Martis are experienced real estate professionals.

7.1 Recommendation

1. KSV recommends that the Court issue an order approving the retention of TD as the listing brokerage for the following reasons:
 - a) KSV is of the view that it is critical to the overall success of these proceedings for a credible realtor such as TD to be engaged at the outset;
 - b) the retention of TD is the first step in developing an efficient and orderly process to be coordinated by KSV, with the assistance of TD, to generate greater recoveries for all creditors than power of sale or other enforcement processes – any delay (even a week or two) of the approval of TD’s retention will cause delay in the work that needs to be done to commence a sale process. TD requires the certainty of Court approval of its retention to move forward with its preparatory work. Additionally, interest and other costs in these proceedings are material and accruing and accordingly, time is of the essence;

- c) TD has spent time familiarizing itself with the Applicants' properties. It is well qualified to perform this mandate. In recommending TD, KSV considered, among other things, the results it achieved working with TD on other Court-supervised matters, as well as TD's relationship with the buyer community, experience selling similar properties, time spent to-date on this assignment, ability to enhance value and its fee for this assignment;
- d) TD's team will be led by Messrs. Ziegel and Martis, each of whom has vast real estate experience in the Greater Toronto Area; and
- e) TD's fee structure is reasonable and appropriate in these circumstances, as reflected by the schedule attached as Appendix "I".

8.0 Stay of Proceedings against Mr. Wang

1. Mr. Wang has guaranteed a large number of the Applicants' mortgages. His personal net worth is directly tied to the outcome of these proceedings. All of the mortgages are in default. Allowing mortgagees to enforce on Mr. Wang's guarantees during the CCAA proceedings could cause him to lose focus on the contemplated restructuring process, which is designed to maximize value for stakeholders. Mr. Wang's intention is to monetize the equity in the Applicants' projects, particularly the Pacific Properties, to repay his creditors, including his exposure under his guarantees. Absent extending the stay of proceedings to Mr. Wang, he may not accomplish the principal objective of these proceedings and may have to personally commence insolvency proceedings. KSV understands that Mr. Wang does not have the financial means to satisfy his guarantees on the mortgages without the benefit of realizing on his equity in the Properties, and accordingly, mortgagees should suffer no prejudice by having their guarantees against Mr. Wang stayed.
2. As a result of the risks identified above, KSV believes that extending the stay of proceedings to Mr. Wang is in the best interests of the Applicants and is not prejudicial to their stakeholders and these proceedings.

9.0 Court Ordered Charges

9.1 Administration Charge

1. The Applicants are seeking an Administration Charge in the interim amount of \$300,000 to secure the fees and expenses of the Monitor, its counsel and the Applicants' counsel to-date and going forward. The Administration Charge is to have a super-priority status over all other creditors of the Pacific Entities and is to rank immediately subordinate to the first mortgagees on the balance of the Applicants.
2. None of the professionals involved in these proceedings has received a retainer and considerable time and effort has been spent preparing for these proceedings.
3. The Administration Charge is a customary provision in an Initial Order in a CCAA proceeding - it is required to protect certain professionals in the event the debtor is unable to pay their fees and costs during the CCAA process.

4. The Applicants worked with KSV to estimate the proposed amount of the Administration Charge until the Comeback Motion. It is anticipated that an increase in the amount of the Administration Charge will be sought at the comeback motion.
5. KSV believes that the Administration Charge is reasonable and appropriate in the circumstances given the complexities of the Applicants' CCAA proceedings, the services provided by the professionals to-date and those to be provided by the professionals going forward.

9.2 DIP Lender's Charge

1. The Applicants are seeking a charge over the property of the Pacific Entities (including the Pacific Properties) to secure advances under the DIP Facility ranking immediately subordinate to the Administration Charge on the property of the Pacific Entities. Until the comeback motion, it is proposed that borrowings under the DIP Facility be limited to \$750,000.
2. KSV is of the view that the DIP Lender's Charge is required and appropriate at this time for the reasons set out above as well as (i) the Applicants are in immediate need of liquidity; (ii) the financial and other terms of the DIP Facility are reasonable; (iii) no lender would be prepared to provide financing without the benefit of the DIP Lender's Charge; and (iv) it is contemplated that the DIP Lender's Charge shall only attach to the property of the Pacific Entities, most notably the Pacific Properties, which appear to have substantial equity.

9.3 Intercompany Charge

1. The Applicants' cash management system is described in the Affidavit. Given the structure of the DIP Facility, in most cases, funding of the Applicants will be made by the Pacific Entities as borrowers under the DIP Facility. There is a possibility, however, that one or more of the non-Pacific Entities may fund intercompany advances if they have the available resources.
2. The proposed Initial Order contemplates that the Intercompany Advances will be secured by the Intercompany Charge over the assets of each Receiving Applicant to the extent of any advances a Receiving Applicant receives from another Applicant.
3. KSV is of the view that the Intercompany Charge is reasonable as it is required for the protection of the creditors of any lending entities and that it is proposed to be subordinate to the first mortgagees of the Receiving Applicant (it will also be subordinate to the Administration Charge and the DIP Facility, where applicable).
4. As noted above, the Intercompany Charge provides a benefit to junior ranking mortgagees because it facilitates an orderly sale process, which is in the interest of those mortgagees.

9.4 Priority of Charges

1. The Initial Order provides that the Court-ordered charges shall have the following priority:
 - a) Administration Charge: first ranking charge over the property of the Pacific Entities (including the Pacific Properties) and subordinate to the first mortgagees of the other Applicants;

- b) DIP Lender's Charge: first ranking charge over the property of the Pacific Entities (including the Pacific Properties), subject only to the Administration Charge; and
 - c) Intercompany Charge: subordinate to the first mortgage on any Properties of the Receiving Entity (and immediately subordinate to the Administration Charge and the DIP Lender's Charge, where applicable).
2. The Comeback Motion will provide stakeholders with an opportunity to address their concerns regarding the Court-ordered charges and the contemplated increases thereto.

10.0 Conversion of NOI Proceedings

1. KSV is of the view that converting the NOI Proceedings into a single CCAA proceeding with the other Applicants will facilitate the efficiency of these proceedings by, *inter alia*, reducing professional costs. To date, no proposals in any of the NOI Proceedings have been filed and there have been no Court attendances in the NOI Proceedings. There is no benefit to continuing the NOI Proceedings and running a concurrent CCAA proceeding for related companies. Accordingly, the proposed conversion of the NOI Proceedings and the conduct of one consolidated CCAA proceeding appears reasonable and appropriate in the circumstances.

11.0 Relief to be Sought in the Near Term

1. Subject to the Court granting the Initial Order, KSV intends to work with the Applicants, the Applicants' legal counsel and its legal counsel to, *inter alia*:
- a) finalize a sale process, for which Court approval is expected to be sought at the Comeback Motion on notice to the Service List;
 - b) determine whether any of the Retained Properties should be listed for sale in the near term, particularly the River Road Project; and
 - c) bring a motion for an increase in the quantum of available borrowings under the DIP Facility from \$750,000 to \$5 million and to increase the Administration Charge.

12.0 Creditor Notification

1. The proposed Initial Order requires the Monitor to:
- a) publish without delay a notice in the national edition of *The Globe and Mail* newspaper containing the information prescribed under the CCAA; and
 - b) within five days of the issuance of the Initial Order to:
 - i. make the Initial Order publicly available in the manner prescribed under the CCAA;
 - ii. send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000 advising that the order is publicly available; and

- iii. prepare a list, showing the names and addresses of those creditors (other than employees), and the estimated amounts of those claims, and make it publicly available in the prescribed manner.
2. KSV intends to post the Initial Order and all motion materials on its website in accordance with the *E-Service Protocol*.

13.0 Conclusion and Recommendation

1. Based on the foregoing, KSV respectfully recommends that this Honourable Court make an order granting the relief detailed in Section 2.1(1)(g) of this Report.

* * *

All of which is respectfully submitted,

KSV Kofman Inc.

**KSV KOFMAN INC.
IN ITS CAPACITY AS PROPOSED MONITOR OF
FORME DEVELOPMENT GROUP INC. AND
THE AFFILIATED ENTITIES LISTED ON APPENDIX "A"
AND AS PROPOSAL TRUSTEE OF THE NOI ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “C”



**Supplement to the First Report of
KSV Kofman Inc.
as Proposal Trustee of
58 Old Kennedy Development Inc.,
76 Old Kennedy Development Inc.,
82 Old Kennedy Development Inc.,
9500 Dufferin Development Inc.,
250 Danforth Development Inc.,
3310 Kingston Development Inc.,
1296 Kennedy Development Inc., and
159 Carrville Development Inc.**

November 7, 2018

- and -

**Report of
KSV Kofman Inc.
as Proposed CCAA Monitor of
Forme Development Group Inc.
and the Companies Listed on
Appendix "A"**

COURT FILE NO.:CV-18-608313-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF FORME DEVELOPMENT GROUP INC.
AND THE COMPANIES LISTED ON APPENDIX "A"**

**SUPPLEMENT TO THE FIRST REPORT OF KSV KOFMAN
INC. AS
PROPOSAL TRUSTEE AND
REPORT OF KSV KOFMAN INC. AS PROPOSED MONITOR**

November 7, 2018

1.0 Introduction

1. This report ("Supplemental Report") supplements KSV's report dated November 6, 2018 (the "First Report"). Capitalized terms not otherwise defined herein have the meanings given to such terms in the First Report.
2. This Supplemental Report provides:
 - a. a letter from TD concerning its preliminary view of the value of the Pacific Properties (the "TD Letter"); and
 - b. further details concerning the Administration Charge and the DIP Lender's Charge.

2.0 Background

1. The Applicants sought protection under the CCAA on November 6, 2018 (the "Initial Application"). At the return of the Application, due to concerns raised by legal counsel representing certain mortgagees regarding short service, Mr. Justice Hainey issued an endorsement adjourning the application until November 8, 2018 (the "Return Date") and providing the Applicants an interim stay of proceedings until the Return Date. A copy of the Endorsement is provided in Appendix "B".

2. A copy of the TD Letter is provided in Appendix “C”. The letter provides further details concerning TD’s preliminary views of the values of the Pacific Properties.
3. The primary issue that arises is that the Pacific Properties are assembled into four developments. The table provided in Appendix “D” details the entities which comprise each development. Each entity owns its own real estate and each piece of real estate has its own mortgagees. To maximize value, it is likely, but not certain, that the Pacific Properties will be sold as their intended development versus as separate parcels of real estate.
4. The table in Appendix “D” illustrates KSV’s view that an orderly sale process is required given the multiple mortgages on the Pacific Properties. It is possible that each mortgagee will have its own view as to the best way to realize on the real property. It is KSV’s view at this time, based on, among other things, discussions with TD, that value is more likely to be maximized for the benefit of all stakeholders if the Pacific Properties are sold on the basis of their intended developments. That said, KSV and TD are prepared to sell the properties on the basis of any value maximizing opportunity that arises and the contemplated sale process would allow for that.
5. Chief among the concerns raised by mortgagees on the Pacific Properties has been the attachment of the DIP Lender’s Charge to each Pacific Property in the full amount. KSV is of the view that is a cost allocation issue – and is further of the view that none of the Pacific Properties’ mortgagees (the “Mortgagees”) should be prejudiced by an unfavourable allocation. KSV recommends that any equity realized from the sale of any of the Applicants’ properties, including, but not limited to the Pacific Properties, first be used to pay the amounts owing under the Administration Charge and the DIP Lender’s Charge so that no Pacific Properties’ mortgagee suffers a shortfall. In the event that the equity in all of the Applicants’ properties is insufficient to repay in full the Administration Charge and the DIP Lender’s Charge (which is not expected at this time), then any amounts required to satisfy that shortfall would be allocated pro-rata based on the value received for each of the Pacific Properties.
6. Since the Initial Application, the Company’s counsel, Goldman Sloan Nash & Haber LLP, KSV, as proposed Monitor, and its counsel, Bennett Jones LLP, have had discussions with, and corresponded with, representatives of certain lenders concerning the matters discussed herein. As detailed below, the contemplated Initial Order has been amended to reflect feedback received from these parties – a summary of the proposed changes is listed below:
 - a. The proposed Initial Order already provided the proposed Monitor with oversight and required consents for any disbursements made by the Applicants, as well as control over the DIP funds and that any further development work by the Applicants must be consented to by the Monitor – further changes have been made to clarify those provisions;
 - b. The priority of the proposed Administration Charge has been amended such that it will rank immediately below the first mortgagee on all Properties (not just the non-Pacific Properties) and further, the priority of the Administration Charge on the non-Pacific Properties will be deferred until the comeback

hearing as certain affected mortgagees on those properties may not have received notice; and

- c. the provisions and protections regarding allocation of costs as described above have been added – namely that costs that are not attributable to a specific Property or Properties will first be allocated to unencumbered funds or equity in Properties or, where there are no unencumbered funds on a pro rata basis, based on the sale price for the Properties (or if not sold, an appraised value approved by KSV).
7. KSV understands that as discussions continue before the Return Date, there may be further proposed changes to the proposed Initial Order and that further revisions may be circulated prior to the Court hearing tomorrow morning.

* * *

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc". The signature is written in a cursive, flowing style.

**KSV KOFMAN INC.
IN ITS CAPACITY AS PROPOSED MONITOR OF
FORME DEVELOPMENT GROUP INC. AND
THE AFFILIATED ENTITIES LISTED ON APPENDIX "A"
AND AS PROPOSAL TRUSTEE OF THE NOI ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**



**Second Supplement to the First
Report of KSV Kofman Inc.
as Proposal Trustee of
58 Old Kennedy Development Inc.,
76 Old Kennedy Development Inc.,
82 Old Kennedy Development Inc.,
9500 Dufferin Development Inc.,
250 Danforth Development Inc.,
3310 Kingston Development Inc.,
1296 Kennedy Development Inc. and
159 Carrville Development Inc.**

November 7, 2018

- and -

**Report of
KSV Kofman Inc.
as Proposed CCAA Monitor of
Forme Development Group Inc.
and the Companies Listed on
Appendix "A" to the First Report**

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF FORME DEVELOPMENT GROUP INC.
AND THE COMPANIES LISTED ON APPENDIX "A"
TO THE FIRST REPORT**

**SECOND SUPPLEMENT TO THE FIRST REPORT OF KSV
KOFMAN INC. AS
PROPOSAL TRUSTEE AND
REPORT OF KSV KOFMAN INC. AS PROPOSED MONITOR**

November 7, 2018

1.0 Introduction

1. This report (the "Second Supplemental Report") further supplements KSV's report dated November 6, 2018 (the "First Report"). Capitalized terms not otherwise defined herein have the meanings given to such terms in the First Report.
2. This Second Supplemental Report provides:
 - a. the schedule (attached) reflecting the value in the Pacific Properties after the first mortgagees (the "First Mortgage Schedule"); and
 - b. a summary of reductions in the cost of the DIP Facility.

2.0 First Mortgage Schedule

1. The First Mortgage Schedule (attached as Appendix "A") reflects that there is an estimated value of approximately \$63.1 million after the first mortgages on the Pacific Properties.

3.0 DIP Facility

1. The DIP Lender has agreed to:
 - a. reduce the interest rate on the DIP Facility from the Royal Bank of Canada (“RBC”)¹ prime rate plus 5% to the RBC rate plus 4.55%, with a minimum interest rate of 8.5%; and
 - b. reduce the commitment fee from \$100,000 to \$75,000.

* * *

All of which is respectfully submitted,



**KSV KOFMAN INC.
IN ITS CAPACITY AS PROPOSED MONITOR OF
FORME DEVELOPMENT GROUP INC. AND
THE AFFILIATED ENTITIES LISTED ON APPENDIX “A”
TO THE FIRST REPORT
AND AS PROPOSAL TRUSTEE OF THE NOI ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**

¹ As at October 25, 2018.



**Third Supplement to the First Report
of KSV Kofman Inc.
as Proposal Trustee of
58 Old Kennedy Development Inc.,
76 Old Kennedy Development Inc.,
82 Old Kennedy Development Inc.,
9500 Dufferin Development Inc.,
250 Danforth Development Inc.,
3310 Kingston Development Inc.,
1296 Kennedy Development Inc. and
159 Carrville Development Inc.**

November 29, 2018

- and -

**Report of
KSV Kofman Inc.
as Proposed CCAA Monitor of
Forme Development Group Inc.
and the Companies Listed on
Appendix "A" to the First Report**

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COURT FILE NO.:CV-18-608313-00CL

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

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF FORME DEVELOPMENT GROUP INC.
AND THE COMPANIES LISTED ON APPENDIX "A"
TO THE FIRST REPORT**

**THIRD SUPPLEMENT TO THE FIRST REPORT OF
KSV KOFMAN INC. AS
PROPOSAL TRUSTEE AND
REPORT OF KSV KOFMAN INC. AS PROPOSED MONITOR**

November 29, 2018

1.0 Introduction

1. This report (the "Third Supplemental Report") further supplements KSV's report dated November 6, 2018 (the "First Report"). Capitalized terms not otherwise defined herein have the meanings given to such terms in the First Report.
2. This Third Supplemental Report provides:
 - a. a summary of the activities of KSV, as Proposed Monitor, Bennett Jones, as counsel to the Proposed Monitor, and GSNH, counsel to the Applicants, since the CCAA application on November 6, 2018 (the "Initial Application");
 - b. the framework for these proceedings ("Framework"), including a sale process ("Sale Process") for each of the properties other than the Birchmount Gardens project ("Birchmount");
 - c. a summary on the Applicants' cash flow projection for the period November 30, 2018 to February 10, 2019 (the "Cash Flow Forecast"); and
 - d. KSV's recommendation that the entities listed in Appendix "A" be subject to the CCAA proceedings, including the rationale for that recommendation.

2.0 Activities Since the Initial Application

1. Since the Initial Application, KSV, Bennett Jones and GSNH have worked diligently to develop the Framework. This has required countless communications and meetings with substantially all of the Applicants' mortgagees and/or their legal counsel.
2. The first mortgagees of the properties owned by the companies listed on Appendix "A" now appear supportive of the CCAA proceedings, provided it is conducted in a manner consistent with the Framework.
3. There are three projects and/or properties where the first mortgagees are supportive of the process but subsequent ranking mortgagees have contacted the proposed Monitor, its counsel or counsel to the Applicants, and advised that they are opposed to it, or as at the date of this Report, had not conclusively confirmed that they were supportive. These are: 58 Old Kennedy Development Inc. (opposed), the Carrville Development¹ (undetermined) and the Anglin Development (undetermined)². A motion is scheduled to be heard on December 6, 2018 (the "December 6th Motion") in order to determine whether any disputed properties should be part of the CCAA proceedings.
4. There is one project, 4 Don Hillock Development Inc., where a decision is pending from the first mortgagee. That project is not contemplated to be included in these proceedings at this time.
5. There is one project, 376 Derry, where the first mortgagee has not contacted any of the proposed Monitor, Bennett Jones or GSNH. The first mortgagee was served on November 19, 2018. It is contemplated that 376 Derry will be part of these proceedings.
6. The key provisions of the Framework include, *inter alia*, the following:

Super Monitor

- a. KSV would be appointed "super monitor" under the Initial Order and would, to the exclusion of any other person, have all of the rights and powers of the Applicants, including collecting all receipts and making all disbursements;
- b. KSV would have exclusive authority over the Sale Process;

Sale Process Overview

- c. All of the properties subject to the Initial Order (with the exception of Birchmount) would be made available for sale. Birchmount is a completed condominium project. The Applicants' real estate counsel (not GSNH) is working to close the sale of each condominium. The transactions are expected to close in December 2018 or early in 2019;

¹ 159, 169 and 189 Carrville Road, Richmond Hill

² 29 and 31 Anglin Drive, Richmond Hill

- d. TD will be retained as the exclusive listing agent in the Sale Process. Its fee will be based on the aggregate purchase paid by the Applicants for each of the properties subject to these proceedings. TD's fee is contemplated to range from 1.25% to 1.75% of the gross selling price of the properties;
- e. Offers will be solicited in the Sale Process for each property separately, and where applicable, as an assembly;
- f. The timelines for the Sale Process are provided in Section 3(1) below;
- g. TD will provide bi-weekly written updates to the Monitor, which will be shared with the relevant mortgagees, subject to each mortgagee entering into confidentiality arrangements satisfactory to the Monitor. Each mortgagee shall be entitled to make reasonable inquiries on the subject matter of these reports and additional details with respect to its particular Property;
- h. Any mortgagee can credit bid its debt at the conclusion of the sale process if the Sale Process does not generate proceeds sufficient to repay it in full. Subsequent mortgagees opting to credit bid will be required to pay out or reach terms acceptable to prior ranking creditors (in their sole discretion) to assume their obligations;
- i. Any and all principal, interest and costs will continue to accrue on each mortgage in accordance with its terms;

“Equity Kicker”

- j. To the extent there is equity available in any project of the Applicants after payment of all debt, fees and costs owing or incurred in respect of that project (in each case, the "Project Equity"), each mortgagee of that project will be entitled to receive in cash an amount equal to 10% of the principal amount of its mortgage prior to any payment to the project's shareholder (the "Equity Kicker"); provided that to the extent there is insufficient Project Equity to pay the Equity Kicker in full, each such mortgagee shall be entitled to its *pro-rata* share of the Equity Kicker based on the principal amount of its mortgage. Any mortgagee entitled to the Equity Kicker with a collateral mortgage on a separate Property will be entitled to collect its Equity Kicker in respect of any Property where it has a mortgage; provided: i) that in no event shall such mortgagee receive in the aggregate an Equity Kicker that is greater than 10% of the principal amount of its mortgage owed by the primary mortgagor; and ii) the advances it provided were used either for the property subject to the mortgage or for another property in the same assembly;
- k. The Equity Kicker is a gratuitous incentive created to encourage mortgagees to participate in the CCAA process. It allows the mortgagees the opportunity to recover more than what they are owed at the expense of the Applicants' shareholder;

Funding

- I. The Administration Charge will be for the benefit of the Monitor, Bennett Jones and GSNH. The Administration Charge shall rank immediately subordinate to the first mortgagee on each property, except in the case of Birchmount, where the Administration Charge will rank subordinate to all mortgagees;
- m. The Monitor, Bennett Jones and GSNH will only be paid from proceeds of sale after the first mortgagees on each property are paid in full (but before the Equity Kicker);
- n. The Administration Charge on each Property will only secure the fees directly allocable to the particular Property and such Property's share of the costs not-directly allocable to a particular Property;
- o. To the extent that the proceeds of realization are not sufficient to repay in full the amounts due under the Administration Charge on a particular Property, such deficiency can be satisfied from the proceeds of any transaction which remain after all mortgagees have been paid in full on any other Property;
- p. Any costs directly allocable to a particular Property will be so allocated. Those costs will be funded as follows:
 - i. The first mortgagee on the Property will have the right (but not the obligation) to fund such amount as an advance under its mortgage at an interest rate accruing at a rate that is the higher of (i) the applicable rate under its mortgage and (ii) 9.5% per annum, calculated monthly in arrears;
 - ii. If the first mortgagee does not fund such amount, the second mortgagee on the Property will have the right (but not the obligation) to fund such amount as an advance under its mortgage at an interest rate accruing at a rate that is the higher of (i) the applicable rate under its mortgage and (ii) 9.5% per annum, calculated monthly in arrears. The amount advanced will have a first-ranking super-priority charge over the applicable Property only. If necessary, this process will continue until all mortgagees on a Property have been given the opportunity to fund;
 - iii. If no mortgagee on the Property funds such amount, the Monitor will be entitled to draw on a standby DIP facility to be arranged by the Monitor³. The amount advanced will have a first-ranking super-priority charge over the applicable Property only.

³ The Monitor has arranged this facility and approval will be sought at a subsequent motion.

- q. Any costs not directly allocable to a particular property (such as the head office lease and skeletal employee staff⁴)⁵ will be allocated *pro-rata* based on the principal amount of the first mortgage and funded by:
- i. First, using existing available cash of the Applicants;
 - ii. Second, to the extent required and available, using any equity generated by the sale of any of the Applicants' Properties, including, but not limited to, Birchmount⁶;
 - iii. Third, to the extent required, the first mortgagee on each Property will have right (but not the obligation) to fund its share as an advance under its mortgage at an interest rate accruing at a rate that is the higher of (i) the applicable rate under its mortgage and (ii) 9.5% per annum, calculated monthly in arrears;
 - iv. If the first mortgagee does not fund such amount, the second mortgagee on the Property will have the right (but not the obligation) to fund such amount as an advance under its mortgage at an interest rate accruing at a rate that is the higher of (i) the applicable rate under its mortgage and (ii) 9.5% per annum, calculated monthly in arrears. The amount advanced will have a first-ranking super-priority charge over the applicable Property only. If necessary, this process will continue until all mortgagees on a Property have been given the opportunity to fund; and
 - v. If no mortgagee on the Property funds such amount, the Monitor shall be entitled to draw such amount under a standby DIP facility to be arranged by the Monitor. The amount advanced will have a first-ranking super-priority charge over the applicable Property only.
7. The Monitor will prepare rolling monthly cash flows in respect of costs that cannot be directly allocated to a particular property. Such cash flows will be provided to each mortgagee. The total indirect costs for the duration of the Sale Process is estimated to be less than \$400,000⁷, which amount is to be controlled by the Monitor, as funded, and is to be allocated across all first mortgagees on a pro-rata basis based on the principal amount of their mortgage. These costs include payroll for a small number of the Applicants' employees who have knowledge of the projects and who will facilitate the sale process.

⁴ No wages or other amounts will be paid to Mr. Wang or any known relative of his.

⁵ These amounts are currently estimated not to exceed \$50,000 per month in the aggregate.

⁶ The Applicants have advised that there may be at least \$1 million of net proceeds from this transaction available to fund costs of these proceedings. KSV has been trying to confirm this with the Applicant's real estate counsel (not GSNH) who is handling this matter.

⁷ Subject to adjustment, which is not anticipated to be material.

3.0 Sale Process

- The intended Sale Process and related timelines are summarized in the table below. The timelines in this process assume a CCAA commencement date of November 30, 2018. Delays commencing the CCAA will result in corresponding delays in the Sale Process timeline. Properties added to the CCAA after November 30, 2018 may have corresponding delays in the timeline. If the commencement of these proceedings is delayed until the holiday season, a short additional delay is likely.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Finalize marketing materials	<ul style="list-style-type: none"> ➤ Advisor and the Monitor to: <ul style="list-style-type: none"> ○ prepare an offering summary; ○ populate an online data room; and ○ prepare a confidentiality agreement (“CA”). 	November 30, 2018 to February 5, 2019
Prospect Identification	<ul style="list-style-type: none"> ➤ Advisor to develop a master prospect list. ➤ Advisor will qualify and prioritize prospects. ➤ Advisor will have pre-marketing discussions with targeted prospects. 	
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ Offering summary and marketing materials printed; ○ publication of the acquisition opportunity in The Globe and Mail (National Edition) and other community or industry targeted publications, as applicable; ○ telephone and email canvass of leading prospects, both from a sale and refinancing perspective; and ○ meet with and interview prospective bidders. ➤ Assist the Monitor and its legal counsel in the preparation of a Vendor’s form of Purchase and Sale Agreement (the “PSA”). ➤ Advisor to provide detailed information to qualified prospects which execute the CA including an offering summary and access to the data room. ➤ Advisor to facilitate all diligence by interested parties. 	February 6, 2019 to March 26, 2019

Summary of Sale Process		
Milestone	Description of Activities	Timeline
Stage 3	➤ Prospective purchasers to submit PSAs.	March 27, 2019
<i>Phase 3 – Offer Review and Negotiations</i>		
Short-listing of Offers	<ul style="list-style-type: none"> ➤ Short listing bidders. ➤ Further bidding - Interested bidders may be asked to improve their offers in as many rounds of bidding as is required to maximize the consideration. 	April 3, 2019
Selection of Successful Bid	➤ Select successful bidder and finalize definitive documents.	April 10, 2019
Sale Approval Motion and Closing	➤ Motion for transaction approval and close transaction.	April 17, 2019 to April 24, 2019

4.0 Cash Flow Forecast

1. The Applicants have prepared a Cash Flow Forecast for the period November 30, 2018 to February 10, 2019. The Cash Flow Forecast and the Applicants' statutory report on the cash flow prepared pursuant to Section 10(2)(b) of the CCAA is attached as Appendix "C".
2. Based on KSV's review of the Cash Flow Forecast, the assumptions appear reasonable. KSV's statutory report on the Cash Flow Forecast is attached as Appendix "D".

5.0 Conclusion and Recommendation

1. At the commencement of this process, the Applicants were comprised of 30 companies which own 18 real estate projects and owe more than \$220 million in mortgage debt. At the last two Court attendances in this matter, the senior mortgagees on several projects were permitted to move forward with their own enforcement processes and accordingly the entities that own that real estate are not part of the contemplated CCAA proceedings.
2. TD is to be the listing brokerage in the Sale Process. TD's commission is significantly less than the commission that would be payable if the properties were sold separately. A copy of TD's Listing Agreement is attached as Appendix "B". At the time this Third Supplemental Report was finalized, the Listing Agreement had been signed by TD and KSV, as Proposed Monitor, and it was with the Applicants' representative to be executed.

3. This CCAA is focused on the overriding goal of maximizing value on a timely basis. In this regard,
 - a. senior mortgagees will have the benefit of an expedited sale process completed under the supervision of the Court. The Sale Process timelines are intended to be consistent with or superior to their enforcement rights under their mortgages, such as a power of sale. Senior mortgagees also gain the benefit of a Court-supervised process, which assists to insulate them from improvident realization claims from junior ranking mortgagees; and
 - b. subordinate ranking mortgagees gain the benefit of an orderly sale process, which is more likely to maximize value than a mortgagee enforcement process, especially in the case of properties that are part of an assembly.
4. Since the date of the Initial Application:
 - a. KSV, Bennett Jones and GSNH have discussed with each of the mortgagees their concerns with the proposed CCAA. The intended CCAA process responds to those concerns, including:
 - i. KSV will be appointed "Super Monitor" given concerns about the Applicants' management raised by several mortgagees;
 - ii. the Monitor, its counsel and the Company's counsel will defer payment of their fees until each property is sold – fees are to be paid from sale proceeds;
 - iii. neither the proposed stay of proceedings in the Initial Order nor the extensions under the NOIs restrict mortgagees on the excluded properties from enforcing their mortgages, including guarantee claims they have against Forme Development Group Inc. or Mike Wang personally;
 - iv. the mortgagees will have the option to fund all disbursements on the basis set out in the proposed Initial Order, which is intended to minimize drawings under the Standby DIP facility;
 - v. mortgagees will be entitled to a fee of up to 10% of the principal amount of their mortgages; and
 - vi. any mortgagee will have the right to credit bid its debt if the mortgagee is not paid in full from the transaction proceeds. Any subsequent ranking mortgagee would also have the right to pay out prior ranking creditors or assume the prior ranking creditors on terms acceptable to those creditors in their sole discretion.
5. Given the significant debt carrying costs and the Applicants' negligible liquidity, it is important that these proceedings, and the Sale Process, commence forthwith.

6. In respect of the December 6th Motion, KSV is of the view that the rights of a subsequent mortgagee should not trump those of prior ranking mortgagees. To the extent that a subsequent ranking mortgagee does not wish to participate in this process, they should be obligated to repay in full prior ranking mortgagees or to participate in the CCAA proceedings. This is not an issue for the present motion.

7. The Proposed Monitor continues to be of the view that this process is in the interest of the mortgagees. It is to be conducted on a timely basis and is cost effective. It also preserves the rights of mortgagees. It will not unnecessarily tie up any property for an extended period of time. Offers for the properties will be received early in 2019, and if those offers are not acceptable, the mortgagees have a right to credit bid or otherwise enforce their mortgages. The process will be transparent and the Proposed Monitor intends to communicate frequently with the mortgagees concerning the Sale Process.

* * *

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc". The signature is written in a cursive, flowing style.

**KSV KOFMAN INC.
IN ITS CAPACITY AS PROPOSED MONITOR OF
FORME DEVELOPMENT GROUP INC. AND
THE AFFILIATED ENTITIES LISTED ON APPENDIX "A"
TO THE FIRST REPORT
AND AS PROPOSAL TRUSTEE OF THE NOI ENTITIES
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “D”



**Third Report to Court of
KSV Kofman Inc. as
Proposal Trustee of
58 Old Kennedy Development Inc.,
76 Old Kennedy Development Inc. and
82 Old Kennedy Development Inc.**

December 14, 2018

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ESTATE FILE NO.: 31-2436538

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)
(IN BANKRUPTCY AND INSOLVENCY)

IN THE MATTER OF THE PROPOSAL OF
58 OLD KENNEDY DEVELOPMENT INC., 76 OLD KENNEDY DEVELOPMENT INC.,
82 OLD KENNEDY DEVELOPMENT INC., 9500 DUFFERIN DEVELOPMENT INC., 250
DANFORTH DEVELOPMENT INC., 3310 KINGSTON DEVELOPMENT INC., 1296
KENNEDY DEVELOPMENT INC., 159 CARRVILLE DEVELOPMENT INC., ALL
CORPORATIONS INCORPORATED UNDER THE LAWS OF ONTARIO

THIRD REPORT OF KSV KOFMAN INC.
AS PROPOSAL TRUSTEE
DECEMBER 14, 2018

1.0 Introduction

1. This report ("Report") is filed by KSV Kofman Inc. ("KSV") in its capacity as proposal trustee ("Proposal Trustee") in connection with Notices of Intention to Make a Proposal ("NOI") filed on October 26, 2018 by 58 Old Kennedy Development Inc. ("58 Old Kennedy"), 76 Old Kennedy Development Inc. ("76 Old Kennedy") and 82 Old Kennedy Development Inc. ("82 Old Kennedy", and together with 58 Old Kennedy and 76 Old Kennedy, the "Companies") pursuant to Section 50.4(1) of the *Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3*, as amended ("BIA").
2. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) ("Court") made on November 26, 2018 (the "November 26th Order"), the Companies' NOI proceedings were administratively consolidated and the deadline to file a proposal with the Official Receiver was extended to January 8, 2019. A copy of the November 26th Order is attached as Appendix "A".
3. KSV is filing this Report in its capacity as Proposal Trustee of the Companies.

1.1 Purposes of this Report

1. The purposes of this Report are to:
 - a) provide background information about the Companies and these proceedings;
 - b) summarize the terms of a proposed sale process ("Sale Process") to be carried out for the Companies' real property, including the retention of TD Cornerstone Commercial Realty Inc. ("TD") pursuant to a listing agreement dated December 12, 2018 (the "TD Listing Agreement");

- c) discuss the rationale for retaining TD and commencing the Sale Process;
- d) report on the Companies' unconsolidated cash flow projections for the period December 17, 2018 to February 22, 2019 (the "Cash Flow Forecasts");
- e) discuss the Companies' request to extend the NOI proceedings to February 22, 2019; and
- f) recommend that the Court make an order, *inter alia*:
 - i. approving the Companies' request for an extension of the time to file a proposal with the Official Receiver to February 22, 2019; and
 - ii. approving the TD Listing Agreement and the Sale Process contemplated thereby.

1.2 Currency

1. All currency references in this Report are to Canadian dollars.

1.3 Restrictions

1. In preparing this Report, the Proposal Trustee has relied upon unaudited financial information prepared by the Companies' management, their books and records and discussions with management. The Proposal Trustee has not audited, reviewed or otherwise verified the accuracy or completeness of the information in a manner that would comply with Generally Accepted Assurance Standards pursuant to the *Chartered Professional Accountants of Canada Handbook*.
2. The Proposal Trustee expresses no opinion or other form of assurance with respect to the financial information presented in this Report or relied upon by the Proposal Trustee in preparing this Report. Any party wishing to place reliance on the Companies' financial information should perform its own diligence and any reliance placed by any party on the information presented herein shall not be considered sufficient for any purpose whatsoever.
3. An examination of the Cash Flow Forecasts as outlined in the *Chartered Professional Accountants Canada Handbook* has not been performed. Future oriented financial information relied upon in this Report is based upon the Companies' assumptions regarding future events; actual results achieved may vary from this information and these variations may be material.

2.0 Background

1. The Companies are affiliates of Forme Development Group Inc. and approximately 30 affiliated real estate holding companies (collectively, the "Forme Group"). Yuan Hua Wang is the sole shareholder and director of each entity in the Forme Group, including the Companies.

2. Forme Group is a commercial and residential real estate development group specializing in low-rise, high-rise, mixed-use and hospitality developments. Forme Group's projects are primarily located in the Greater Toronto Area, with a few located in Southwestern Ontario.
3. Pursuant to a Court order made on November 30, 2018 (as amended and restated, the "Initial Order"), Forme Development Group Inc. and certain affiliated entities were granted protection under the *Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36*, as amended (the "CCAA"), and KSV was appointed monitor (the "Monitor"). The Companies are not subject to the CCAA proceedings.
4. The Companies own three properties¹ in Markham, Ontario, which together form an assembly that is to be a single development project. The mortgages on each of the properties owned by the Companies are detailed in the table below.

Property	Mortgagee	Principal Amount (\$000s)	Priority ²
58 Old Kennedy Rd. & 20 Thelma Ave. (collectively "58 Old Kennedy Road")	All Season Recycle Inc.	5,100	First
58/76/82 Old Kennedy Rd.	Danan Investments Inc. / Matthew Castelli ("Danan")	5,000	Second on all three parcels
76 Old Kennedy Rd.	Danan	2,800	First
82 Old Kennedy Rd.	Wu's International Group Inc.	8,625	First

5. KSV filed a report to Court dated November 6, 2018 in its capacity as Proposal Trustee and as proposed CCAA monitor (the "Pre-Filing Report"). KSV subsequently filed three supplements to the First Report (the "Supplemental Reports"). Detailed information about the Companies, real property value estimates, the reasons for filing the NOIs and the intended restructuring plan is set out in the First Report and the Supplemental Reports and, accordingly, that information is not repeated in this Report. On December 14, 2018, KSV filed its first report as Monitor in the CCAA proceedings (the "First Report"). Copies of the Pre-Filing Report and the Supplemental Reports, each without appendices, are attached as Appendices "B" and "C", respectively.
6. The Pre-Filing Report, Supplemental Reports, First Report and all other materials filed in these proceedings are available on KSV's website at <http://www.ksvadvisory.com/insolvency-cases/forme-development-group-inc/>.

¹ 58 Old Kennedy Road and 20 Thelma Avenue merged on title.

² The Proposal Trustee's counsel has not completed security reviews for any of the mortgages. This information is based on what is registered on title only.

3.0 Retention of TD

1. The Initial Order approved a sale process for the properties subject to the CCAA proceedings, including the retention of TD as the listing agent for that process. It has been KSV's view from the outset of its involvement with the Forme Group that there should be one coordinated sale process that would be intended to maximize value for all of its properties, particularly where there are multiple properties comprising one development (which is commonly referred to as an "assembly") (as is the case with the Companies).
2. KSV is of the view that the value of the properties if sold as an assembly is greater than the sale of the properties individually if the purchaser (or purchasers) do not intend to advance the intended development. This view is substantiated by the preliminary valuation work that has been performed by TD. As there are three first mortgagees on the Companies' four properties comprising the assembly (as well as subordinate ranking mortgagees), none of the mortgagees is able to convey the assembly on its own. The Sale Process to be conducted by TD is intended to achieve that result.
3. The Sale Process would not affect the rights of the Companies' mortgagees, who are (or will be) carved out of the NOI process – no mortgagee will be stayed from taking any enforcement action as a result of the NOIs generally or the Sale Process specifically. That said, the Proposal Trustee believes that the Sale Process benefits all creditors as it is intended to sell the Companies' properties as an assembly, which should maximize value. In advance of these proceedings, TD provided KSV with an estimate of the equity in the Companies' real estate, after repayment of the mortgages on the properties. TD advised that it is its view that there is several million dollars of equity in the Companies' real property. Additionally, KSV has received, in advance of the launch of the Sale Process, at least two unsolicited offers for the Companies' real property for amounts in excess of the value of the mortgages on those properties³.
4. Since the making of the Initial Order, the Monitor, the CCAA applicants and their respective legal counsel have engaged in a dialogue and exchanged further information with the Companies' mortgagees, particularly with Danan, which sought to have the Companies' NOI proceedings continued and taken up under the CCAA so that their properties could be marketed by TD as part of its sale process in the CCAA proceedings. While progress was made in this respect in advance of the last motion in these proceedings, ultimately the Companies were not prepared to agree to the arrangements that had been negotiated with Danan, and it appeared as though at least one of the Companies' other mortgagees would have strongly opposed such an arrangement. Accordingly, the present intention is to have TD run the Sale Process for the Companies' real property in these NOI proceedings. A copy of TD's listing agreement for this mandate is provided in Appendix "D".

³ One of those offers, which as of the date of this Report is being negotiated, is for three of the Pacific Garden assemblies owned by Forme Group. The value of the offer exceeds by far the sum of the value of mortgages on those properties. The offer has standard diligence conditions.

5. The TD Listing Agreement is subject to Court approval. The material terms are as follows:
- Fee: commission payable to TD of 1.5% of the sale price of the properties and a commission payable to a co-operating brokerage of 1% of the sale price. Attached as Appendix “E”, for comparative purposes, is a summary of the fees paid to realtors on certain of KSV’s other real estate mandates;
 - Carveout: TD’s fee is reduced to 1% should a transaction be completed with a party specified in the listing agreement;
 - Listing period: six months; and
 - Sale Process Overview: Schedule “B” of the TD Listing Agreement provides an overview of the contemplated Sale Process, which is also provided in Section 4 of this Report.

3.1 Recommendation

1. The Proposal Trustee recommends that the Court issue an order approving the TD Listing Agreement for the following reasons:
- a) TD is well qualified to perform this assignment. The individuals leading the team have vast real estate experience and KSV has worked with the team to achieve successful outcomes on other insolvency mandates;
 - b) having one listing brokerage market all of the Forme Group’s real property will provide efficiencies and will facilitate an orderly and timely Sale Process;
 - c) TD has spent time familiarizing itself with the Companies’ properties and its representatives. In recommending TD, the Proposal Trustee considered, among other things, the results it achieved working with TD on other Court-supervised matters, as well as TD’s relationship with the buyer community, experience selling similar properties, time spent to-date on this assignment, ability to enhance value and its fee for this assignment;
 - d) TD’s fee structure is reasonable and appropriate in these circumstances, as reflected by the schedule attached as Appendix “E”; and
 - e) KSV and TD both believe that selling the Companies’ assembly will maximize value, whereas selling each individually is likely to be value destructive.

4.0 Sale Process

- The proposed Sale Process and related timelines are summarized in the table below. The timelines in this process assume a commencement date of December 21, 2018.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Finalize marketing materials	<ul style="list-style-type: none"> ➤ Listing Brokerage, with the assistance of the Companies and the Proposal Trustee to: <ul style="list-style-type: none"> ○ prepare an offering summary ○ populate an online data room; and ○ prepare a confidentiality agreement (“CA”). 	By January 8, 2019
Prospect Identification	<ul style="list-style-type: none"> ➤ Listing Brokerage to develop a master prospect list. Listing Brokerage will qualify and prioritize prospects. ➤ Listing Brokerage will also have pre-marketing discussions with targeted prospects. 	
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> ➤ Mass market introduction, including: <ul style="list-style-type: none"> ○ Offering summary and marketing materials printed; ○ publication of the acquisition opportunity in The Globe and Mail (National Edition) and other community or industry targeted publications, as applicable; ○ telephone and email canvass of leading prospects, both from a sale and refinancing perspective; and ○ meet with and interview prospective bidders. ➤ Assist the Proposal Trustee and its legal counsel in the preparation of a Vendors' form of Purchase and Sale Agreement (the “PSA”); ➤ Listing Brokerage to provide detailed information to qualified prospects which execute the CA including an offering summary and access to the data room. ➤ Listing Brokerage to facilitate all diligence by interested parties. 	January 9, 2019 to February 6, 2019
Stage 2	<ul style="list-style-type: none"> ➤ Prospective purchasers to submit PSAs 	February 7, 2019

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 3 – Offer Review and Negotiations</i>		
Short-listing of Offers	<ul style="list-style-type: none"> ➤ Short listing bidders ➤ Further bidding - Interested bidders may be asked to improve their offers in as many rounds of bidding as is required to maximize the consideration. 	One week
Selection of Successful Bid	<ul style="list-style-type: none"> ➤ Select successful bidder and finalize definitive documents. 	One week
Sale Approval Motion and Closing	<ul style="list-style-type: none"> ➤ Motion for transaction approval and close transaction 	Three weeks

4.1 Sale Process Recommendation

1. The Proposal Trustee recommends that this Honourable Court approve the Sale Process for essentially the same reasons set out in the Supplemental Reports filed in the Forme Group’s CCAA proceedings, including:
 - a) it is consistent with sale processes approved by this Court with respect to other real estate insolvencies, including in the related CCAA proceeding;
 - b) it is consistent with the overall objective of these proceedings, which is to maximize value on a timely basis;
 - c) senior mortgagees will have the benefit of an expedited sale process completed under the supervision of the Court. The Sale Process timelines are intended to be consistent with or superior to their enforcement rights under their mortgages, such as a power of sale. Senior mortgagees also gain the benefit of a Court-supervised process, which assists to insulate them from improvident realization claims from junior ranking mortgagees;
 - d) subordinate ranking mortgagees gain the benefit of an orderly sale process, which is more likely to maximize value than separate mortgagee enforcement processes, especially since the Companies’ properties are part of an assembly; and
 - e) the timeline is expedited but realistic based on, *inter alia*, TD’s input and the unsolicited offers received to date by the Proposal Trustee. Additionally, interest and other costs in these proceedings are material and accruing and, accordingly, time is of the essence.

5.0 Cash Flow Forecasts

1. Pursuant to the provisions of the BIA, the Companies are required to prepare a cash flow forecast. The Companies do not have an operating business. Each of the Companies holds a real property development project. The Cash Flow Forecasts of each of the Companies, which reflect no forecasted receipts or disbursements⁴, together with Management's Reports on the Cash Flow Statements as required by Section 50.4(2)(c) of the BIA, are provided in Appendix "F". If sundry expenses arise that need to be funded in respect of the Companies' properties during the Sale Process, the Proposal Trustee will discuss their funding with the relevant mortgagees.
2. Based on the Proposal Trustee's review of the Cash Flow Forecasts, there are no material assumptions which seem unreasonable in the circumstances. The Proposal Trustee's Reports on the Cash Flow Statements for each of the Companies as required by Section 50.4(2)(b) of the BIA are attached as Appendix "G".

6.0 Request for an Extension

1. The Companies are seeking an extension of the time to file a proposal with the Official Receiver to February 22, 2019.
2. The Proposal Trustee supports this request for the following reasons:
 - a) the Proposal Trustee is working with the Companies to the extent possible to ensure that the Companies are acting in good faith and with due diligence in these proceedings;
 - b) the mortgagees are carved out of these proceedings and can advance their enforcement remedies if they so choose; and
 - c) an extension will allow TD to initiate and carry out the Sale Process, subject to Court approval.

⁴ The Forme Group has guaranteed the fees and disbursements of the Proposal Trustee, its counsel and the Companies' Counsel (the "NOI Professionals"). The NOI Professionals have registered a mortgage against certain of the Forme Group properties (including those of the Companies) to secure their fees and disbursements. The Forme Group has also provided a Direction of a portion of its equity, if any, on its Birchmount project that is scheduled to close in the near term in favour of the NOI Professionals.

7.0 Conclusion and Recommendation

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

* * *

All of which is respectfully submitted,

A handwritten signature in blue ink that reads "KSV Kofman Inc". The signature is written in a cursive, flowing style.

**KSV KOFMAN INC.
SOLELY IN ITS CAPACITY AS TRUSTEE UNDER THE
NOTICES OF INTENTION TO MAKE A PROPOSAL OF
THE COMPANIES
AND NOT IN ITS PERSONAL CAPACITY**

Appendix “E”

Agreement of Purchase and Sale Commercial

Form 500

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 8th day of December, 2018

BUYER, Cheng Yi Wei in trust for a company to be incorporated
(Full legal names of all Buyers) agrees to purchase from

SELLER, 58 Old Kennedy Development Inc.
(Full legal names of all Sellers), the following

REAL PROPERTY:

Address 58 Old Kennedy Road and 20 Thelma Avenue

fronting on the west side and north side of each respectively

in the City of Markham

and having a frontage of as per deed more or less by a depth of more or less

and legally described as as per deed

as per schedule A (the "property")
(Legal description of land including easements not described elsewhere)

PURCHASE PRICE: Dollars (CDN\$) 11,000,000.00
Eleven Million Dollars

DEPOSIT: Buyer submits Upon Acceptance
(Herewith/Upon Acceptance/as otherwise described in this Agreement)
Three Hundred Thousand Dollars (CDN\$) 300,000.00

by negotiable cheque payable to Seller's solicitors "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A **attached hereto form(s) part of this Agreement.**

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 11:59 ~~am~~ p.m. on the 10th day of December, 2018, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 31st day of January, 2019. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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3. NOTICES: The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.:
(For delivery of Documents to Seller)

FAX No.:
(For delivery of Documents to Buyer)

Email Address:
(For delivery of Documents to Seller)

Email Address:
(For delivery of Documents to Buyer)

4. CHATELS INCLUDED:

.....

.....

.....

.....

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. FIXTURES EXCLUDED:

.....

.....

.....

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6. RENTAL ITEMS (Including Lease, Lease to Own): The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

.....

.....

.....

.....

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, if applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S): 

INITIALS OF SELLERS(S): 

8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 14 day of January, 2019, (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there

are no outstanding work orders or deficiency notices affecting the property, that its present use (Commercial) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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28. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

.....
 (Witness) 
 (Witness)
 (Buyer/Authorized Signing Officer)
 (Buyer/Authorized Signing Officer)
 (Seal) DATE Dec 8th, 2018
 (Seal) DATE

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

.....
 (Witness)
 (Witness)
 (Seller/Authorized Signing Officer)
 (Seller/Authorized Signing Officer)
 (Seal) DATE DEC. 09. 2018
 (Seal) DATE

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

.....
 (Witness)
 (Spouse)
 (Seal) DATE

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 10 a.m./p.m. this 09 day of Dec, 2018.

.....
 (Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)	
Listing Brokerage TD Cornerstone Commercial Realty Inc	Tel.No. (<u>416</u>) <u>509-2668</u>
Ashley Martis	(Salesperson / Broker Name)
Co-op/Buyer Brokerage	Tel.No. (.....)
.....	(Salesperson / Broker Name)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.	I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.
..... DATE DATE
(Seller)	(Buyer)
..... DATE DATE
(Seller)	(Buyer)
Address for Service	Address for Service
..... Tel.No. (.....) Tel.No. (.....)
Seller's Lawyer	Buyer's Lawyer
Address	Address
Email	Email
(.....) Tel.No. (.....) FAX No.	(.....) Tel.No. (.....) FAX No.

FOR OFFICE USE ONLY	COMMISSION TRUST AGREEMENT
To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:	In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.
DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.	Acknowledged by:
..... (Authorized to bind the Listing Brokerage) (Authorized to bind the Co-operating Brokerage)

Schedule A Agreement of Purchase and Sale - Commercial

Form 500

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, Cheng Yi Wei in trust for a company to be incorporated, and

SELLER, 58 Old Kennedy Development Inc.

for the purchase and sale of 58 Old Kennedy Road and 20 Thelma Avenue

Markham dated the 8th day of December, 2018

Buyer agrees to pay the balance as follows:

Legal Description of Land

58 Old Kennedy RD: PT LT 1 CON 5 MARKHAM AS IN R609686 CITY OF MARKHAM.
20 Thelma Ave: LT 8 PL 2687 MARKHAM; LT 9 PL 2687 MARKHAM; LT 10 PL 2687 MARKHAM; LT 11 PL 2087 MARKHAM; LT 12 PL 2687 MARKHAM; MARKHAM.

The Buyer agrees to pay the balance of the purchase price, subject to adjustment, to the Seller on completion of this transaction, with funds drawn on a Lawyer's account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.

The Seller warrants and represents to the Buyer that all environmental laws and regulations have been complied with, no hazardous conditions or substances exist on the land, no limitations or restrictions affecting the continue use of the property exist, other than those specifically provided for herein, no pending litigation respecting Environmental matters, no outstanding Ministry of Environment Orders, investigation, charges or prosecutions respecting Environmental matter exist, there has been no prior use as a waste disposal site, and all applicable licenses are in force. The Seller agrees to provide to the Buyer upon request, all documents, records, and reports relating to environmental matters in possession of the Seller. The Seller further authorizes Ministry of Environment, to release to the Buyer, the Buyer's Agent or Solicitor, any and all information that may be on record in the Ministry office with respect to the said property.

The Seller agrees to authorize his planner (Western Consulting, Planning + Urban Design) to release all information within Three (3) days after the acceptance of this offer and allow access for any and all inspections at Buyer's own expenses.

Initial Deposit. The Buyer submits, within 24 Hours of final acceptance of this Offer \$300,000.00 payable by Certified Cheque or Bank Draft to the Seller's solicitor, in trust, (the "Deposit Holder") as a deposit to be held by the Deposit Holder in trust pending completion or other termination of this Agreement and to be credited on account of the purchase price on completion. The deposit is non refundable.

Buyer authorize to release the deposit from the solicitor's account to The Seller subject to Monitor or Court Approval.

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

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The Buyer agrees to assume the following existing first Charges/Mortgages held by for approximately:
Five Million One Hundred Thousand Dollars \$5,100,000.00 (registered on 58 old Kennedy Rd & 20 Thelma Ave,).

The Buyer, on the closing, agrees to pay off the following existing the Charges/Mortgages held by for approximately: the 2nd Mortgage of Five Million Dollars \$5,000,000.00 respectively (registered on 64-76 Old Kennedy & 82 & 58 Old Kennedy Rd, Markham & 20 Thelma Ave, Markham).

The Buyer represents that it is now or will by no later than the closing date be registered for the purpose of the HST tac ("HST") in accordance with the applicable provisions in that regard pursuant to the relevant Tax Act of Canada/Ontario, as amended. The Buyer covenants to deliver a Statutory Declaration on closing confirming its HST registration number, which shall be conclusive of such HST registration, and shall preclude the Seller from collection of HST from the Buyer on closing. The Buyer further covenants to deliver an indemnity if favor of the Seller on closing as to any obligation or liability for payment of HST arising from completion of this Agreement.

Buyer agrees to assume the existing tenancies which the Seller warrants are the only tenancies affecting the property currently.

The Seller covenant to deliver to the Buyer, within three (3) days following the date of acceptance of this Agreement, each of the following:

1. Full copy of all written lease or other rental/tenancy arrangement, including any amendment thereto binding upon the whole or any portion of the property.
2. If any such rental/tenancy arrangements are pursuant to verbal agreements. Seller shall deliver written confirmation of detail of all such arrangements.
3. Statutory Declaration of the Seller attesting to the fact that all written and verbal rental/tenancy arrangements, including any amendments to any such arrangements, have been disclosed in full to the Buyer.
4. The Buyer shall receive an abatement for all rents or his property manager will provide a notice to all tenants advising them of the new owner or new property manager and requiring all future rents to be paid as the Buyer directs. All first or/and last month rent deposits plus all accrued interest shall be abated to the Buyer on closing.
5. By 5 Days prior to closing date, the Seller or his property manager will provide a notice to all tenants advising them of the new owner or new property manager and requiring all future rents to be paid as the Buyer directs. All first or/and last month rent deposits plus all accrued interest shall be abated to the Buyer on closing.

INITIALS OF BUYER(S):

INITIALS OF SELLERS(S):



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Schedule A

Agreement of Purchase and Sale - Commercial

Form 500

for use in the Province of Ontario

The Seller agrees to provide the Buyer or Buyer's representative with all keys or codes in his or his property manager's possession for all buildings, rooms, doors and mailboxes on closing. The Seller promises not to keep any key on closing.

The Buyer shall have the right to re-visit the property Two (2) further times prior to completion, provided that notice is given to the Seller. The visit shall be at a mutually agreed upon time within a 24 hour period following the giving of such notice. During these visits, the Buyer shall be permitted to make measurements and to bring the consultants.

This Offer is subject to the approval pursuant to the proceedings under the Section 50.4 of the Bankruptcy and Insolvency Act ("BIA") in respect of the subject "NOI" Companies (58 Old Kennedy Development Inc. with Estate No. 31-2436600)

INITIALS OF BUYER(S):

INITIALS OF SELLERS(S):



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AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made with effect as of the 15 day of January, 2019 (this "Amending Agreement").

BETWEEN:

58 OLD KENNEDY DEVELOPMENT INC.
(hereinafter called the "Seller")

OF THE FIRST PART;

- and -

CHENG YI WEI in trust for a company to be incorporated
(hereinafter called the "Buyer")

OF THE SECOND PART.

WHEREAS:

- A. By an agreement of purchase and sale between the Seller, as vendor, and Buyer, as purchaser, dated for reference December 8, 2018, as amended, supplemented, or restated from time to time (collectively, the "**Purchase Agreement**"), the Seller agreed to sell and the Buyer agreed to purchase, *inter alia*, the property legally described as 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 ; MARKHAM, being all of PIN 02953-0017 (LT), municipally known as 58 Old Kennedy Road and 20 Thelma Avenue, respectively (collectively, the "**Property**") on the terms and conditions set forth in the said Purchase Agreement;
- B. The Buyer and Seller wish to amend the Purchase Agreement in accordance with the terms and conditions contained here; and
- C. Words and phrases which are capitalized herein and which are defined in the Purchase Agreement shall have the same meaning in this Amending Agreement as in the Purchase Agreement, except to the extent otherwise specifically provided herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the completion of the transaction contemplated by the Purchase Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

1. Amendment to Purchase Agreement

- a) The **DEPOSIT** section of the Purchase Agreement shall be amended so as to read:

"Buyer Submits Upon Acceptance Three Hundred Thousand Dollars (CDN\$) \$300,000 by negotiable cheque payable to ~~Seller's solicitors~~ KSV Kofman Inc., proposal trustee "Deposit Holder" [...]"

- b) The **TITLE SEARCH** section of the Purchase Agreement shall be amended so as to read:

“Buyer shall be allowed until 6:00 p.m. on the 14 25th day of January, 2019,
(Requisition Date) to examine the title to the property [...]”

- c) Schedule A of the Purchase Agreement shall be removed in its entirety, and replaced with the Schedule Attached hereto as Schedule A.

2. Other Terms in Purchase Agreement

The undersigned agree that by signing this Amending Agreement they shall treat the Purchase Agreement as valid and subsisting, subject to the terms and amendments contained herein. All of the other terms and conditions in the Purchase Agreement remain unchanged, and time shall be of the essence.

3. Governing Law

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

4. Enurement

This Amending Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

5. Counterparts

This Amending Agreement may be executed in counterparts and delivered by facsimile and when each party has so executed a counterpart each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.

[Remainder of page intentionally left blank; signature page to follow]



IT WITNESS WHEREOF this Amending Agreement has been executed as of the day and year first above written.

SELLER:

58 OLD KENNEDY DEVELOPMENT INC.

Per:  _____

Name: *MIKE WANG*

Title: *president*

I have the authority to bind the corporation.

BUYER:


_____ **CHENG YI WEI in trust for a company to be incorporated**



Witness *RYAN LI*

Schedule A
Agreement of Purchase and Sale – Commercial

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, Cheng Yi Wei in trust for a company to be incorporated, and

SELLER, 58 Old Kennedy Development Inc.

for the purchase and sale of 58 Old Kennedy Road and 20 Thelma Avenue

Markham dated the 8th day of December, 2018

Buyer agrees to pay the balance as follows:

- 1) Legal Description of Land:
58 Old Kennedy Road: PT LT 1 CON 5 MARKHAM AS IN R609686; CITY OF MARKHAM, being all of PIN 02953-0015 (LT).
20 Thelma Avenue : 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 ; MARKHAM, being all of PIN 02953-0017 (LT).
- 2) The Buyer Agrees to pay the balance of the purchase price, subject to adjustment, to the Seller on completion of this transaction, with funds drawn on a Lawyer's account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 3) The Buyer acknowledges it is purchasing the property on an "as is/where is" basis, with no representations or warranties.
- 4) The Seller agrees to authorize his planner (Western Consulting, Planning + Urban Design) to release all information within Three (3) days after acceptance of this offer and allow access for any and all inspections at the Buyer's own expenses.
- 5) Initial Deposit. The Buyer submits, within 24 Hours of final acceptance of this Offer \$300,000.00 payable by Certified Cheque or Bank Draft to KSV Kofman Inc., proposal trustee, in trust, (the "Deposit Holder") as a deposit, and to be credited on account of the purchase price on completion. The deposit is non refundable.
- 6) On Closing the Purchase Price will be satisfied by:
 - a. the Buyer agrees to assume the existing first Charge/Mortgage for approximately Five Million One Hundred Thousand Dollars \$5,100,000.00 (registered on 58 old Kennedy Rd & 20 Thelma Ave, and to assume said Charges/Mortgages on the same terms and conditions currently agreed to between the Seller and the lender thereunder. The Buyer further agrees to provide the lender, in a timely and businesslike manner, any information, documentation, or other deliveries that the lender may reasonably request in consenting and giving effect to this assignment (including the addition of any additional terms or conditions to said Charge/Mortgage reasonably required by the lender). The Buyer further agrees to indemnify and save harmless the Seller and its officers, shareholders, directors,

successors and assigns, from and against any and all claims, actions, and/or demands in connection with the said assigned Charge/Mortgage which arise after the closing of the transaction contemplated herein;

- b. the Buyer, on the closing, agrees to pay off the existing 2nd Charge/Mortgage for approximately Five Million Dollars \$5,000,000.00 (registered on 58 Old Kennedy; 64-76 Old Kennedy; 82 Old Kennedy; and 20 Thelma Avenue, Markham);
 - c. the Buyer, on closing, will pay the balance of the Purchase Price, in cash, to KSV Kofman Inc, proposal trustee.
- 7) In addition to the representations, warranties, covenants, and obligations contained with paragraph 7 of this agreement (HST), the Buyer represents that it is now or will by no later than the closing date be registered for the purpose of the HST tax ("HST") in accordance with the applicable provisions in that regard pursuant to the relevant Tax Act of Canada/Ontario, as amended. The Buyer covenants to deliver a Statutory Declaration on closing confirming its HST registration number, and shall preclude the Seller from collection of HST from the Buyer on closing. The Buyer further covenants to deliver an indemnity in favour of the Seller on closing as to any obligation or liability for payment of HST arising from completion of this Agreement.
- 8) Buyer agrees to assume the existing tenancies which the Seller warrants are the only tenancies affecting the property currently.
- 9) The Seller covenants to deliver to the Buyer, within three (3) days following the date of the acceptance of this Agreement, each of the following:
- a. full copy of all written lease or other rental/tenancy arrangement, including any amendment thereto binding upon the whole or any portion of the property.
 - b. if any such rental/tenancy arrangements are pursuant to verbal agreements, Seller shall deliver written confirmation setting out the details of all such arrangements.
 - c. statutory Declaration of the Seller attesting to the fact that all written and verbal rental/tenancy arrangements, including any amendments to any such arrangements, have been disclosed in full to the Buyer.
 - d. all first or/and last month rent deposits plus all accrued interest shall be abated to the Buyer on closing.
- 10) On closing, the Seller or his property manager will provide a notice to all tenants advising them of the new owner and requiring all future rents to be paid as the Buyer directs.
- 11) The Seller agrees to provide the Buyer or Buyer's representative with all keys or codes in his or his property manager's possession for all buildings, rooms, doors and mailboxes on closing. The Seller promises not to keep any keys on closing.
- 12) The Buyer shall have the right to re-visit the property two (2) further times prior to completion, provided that notice is given to the Seller and KSV Kofman Inc., proposal trustee. The visit shall be at a mutually agreed upon time within one (1) business day period following the giving of such notice. During these visits, the Buyer shall be permitted to make measurements and to bring consultants.



- 13) This Offer is subject to approval pursuant to the proceedings under the Section 50.4 of the Bankruptcy and Insolvency Act ("BIA") in respect of the subject "NOI" Companies (58 Old Kennedy Development Inc. with Estate No. 31-2436600).
- 14) The obligation of the Seller to complete the transaction contemplated herein is conditional on there being no order issued by a court or governmental authority preventing, enjoining, or restraining the completion of said transaction.
- 15) On closing, the Buyer will deliver to the Vendor:
 - a. a certificate noting that the Buyer is a duly formed and validly subsisting corporation under the laws of the Province in which it has been registered; and
 - b. a certificate noting that the Buyer has all the necessary corporate power and authority to enter into this Agreement of Purchase and Sale, and carry out the transaction contemplated herein, and that doing so does not violate any constating documents, agreements, judgments, orders, or applicable laws.
- 16) The parties hereto agree that each shall take all commercially reasonable actions necessary to have the transaction contemplated herein approved pursuant to proceedings under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, on substantially the same terms and conditions contained herein.
- 17) The Buyer cannot assign this agreement without the prior written consent of the Seller and the Proposal Trustee, in their sole discretion.
- 18) Further to the other permitted tenancies, reservations, qualifications, and registrations provided for herein, the Buyer agrees to accept title subject to:
 - a. those encumbrances currently registered on title, including the instruments registered as Instrument Nos. R609095 and YR2788189.
 - b. any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this agreement;
 - c. any municipal by-laws or regulations affecting the land or its use and any other municipal land use instruments including without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes;
 - d. 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, engineering, grading or landscaping agreements and similar agreements;
 - e. any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Buyer's intended use of the property;
 - f. any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the property;

9

20

- g. such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the property or any part thereof, or materially impair the value thereof;
- h. any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute; and
- i. the following exceptions and qualifications contained in Section 44(1) of the Land Titles Act: paragraphs 7, 8, 9, 10, 12 and 14.

Appendix “F”

Agreement of Purchase and Sale Commercial

Form 500

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 8th day of December, 2018

BUYER, Cheng Yi Wei in trust for a company to be incorporated, agrees to purchase from
(Full legal names of all Buyers)

SELLER, 76 Old Kennedy Development Inc., the following
(Full legal names of all Sellers)

REAL PROPERTY:

Address 64-76 Old Kennedy Road

fronting on the west side of Old Kennedy Road

in the City of Markham

and having a frontage of as per deed more or less by a depth of more or less

and legally described as as per deed

as per schedule A (the "property")
(Legal description of land including easements not described elsewhere)

PURCHASE PRICE: Dollars (CDN\$) 4,000,000.00

Four Million Dollars

DEPOSIT: Buyer submits Upon Acceptance
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

One Hundred Fifty Thousand Dollars (CDN\$) 150,000.00

by negotiable cheque payable to Seller's solicitors "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 11:59 ~~00~~ p.m. on
(Seller/Buyer)

the 10th day of December, 2018, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 31st day of

January, 2019. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):

3. NOTICES: The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.:
(For delivery of Documents to Seller)

FAX No.:
(For delivery of Documents to Buyer)

Email Address:
(For delivery of Documents to Seller)

Email Address:
(For delivery of Documents to Buyer)

4. CHATELS INCLUDED:

.....

.....

.....

.....

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. FIXTURES EXCLUDED:

.....

.....

.....

.....

6. RENTAL ITEMS (Including Lease, Lease to Own): The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

.....

.....

.....

.....

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, If applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 14 day of January, 2019, (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there

are no outstanding work orders or deficiency notices affecting the property, that its present use (Commercial) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** **The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.**
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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28. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

[Signature]

 (Witness)

 (Witness)

[Signature]

 (Buyer/Authorized Signing Officer)

 (Buyer/Authorized Signing Officer)

● DATE Dec. 8th, 2018
 (Seal)
 ● DATE
 (Seal)

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

[Signature]

 (Witness)

 (Witness)

[Signature]

 (Seller/Authorized Signing Officer)

 (Seller/Authorized Signing Officer)

● DATE Dec. 09, 2018
 (Seal)
 ● DATE
 (Seal)

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O.1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

.....
 (Witness)

.....
 (Spouse)

● DATE
 (Seal)

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 10 a.m./p.m. this 09 day of Dec, 2018.

[Signature]

 (Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)	
Listing Brokerage TD Cornerstone Commercial Realty Inc	Tel.No. (<u>416</u>) <u>509-2668</u>
Ashley Martis
(Salesperson / Broker Name)	
Co-op/Buyer Brokerage	Tel.No. (.....)
(Salesperson / Broker Name)	

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

..... DATE
 (Seller)
 DATE
 (Seller)
 Address for Service
 Tel.No.(.....)
 Seller's Lawyer
 Address
 Email
 (.....) Tel.No. (.....) FAX No.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

..... DATE
 (Buyer)
 DATE
 (Buyer)
 Address for Service
 Tel.No.(.....)
 Buyer's Lawyer
 Address
 Email
 (.....) Tel.No. (.....) FAX No.

FOR OFFICE USE ONLY	
COMMISSION TRUST AGREEMENT	
To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:	
In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.	
DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.	Acknowledged by:
.....
(Authorized to bind the Listing Brokerage)	(Authorized to bind the Co-operating Brokerage)

Schedule A Agreement of Purchase and Sale - Commercial

Form 500

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, Cheng Yi Wei in trust for a company to be incorporated, and

SELLER, 76 Old Kennedy Development Inc.

for the purchase and sale of **64-76 Old Kennedy Road**

Markham dated the **8th** day of **December**, 20**18**

Buyer agrees to pay the balance as follows:

Legal Description of Land

64-76 Old Kennedy RD: PT LT 1 CON 5 MARKHAM AS IN R649696; CITY OF MARKHAM.

The Buyer agrees to pay the balance of the purchase price, subject to adjustment, to the Seller on completion of this transaction, with funds drawn on a Lawyer's account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.

The Seller warrants and represents to the Buyer that all environmental laws and regulations have been complied with, no hazardous conditions or substances exist on the land, no limitations or restrictions affecting the continue use of the property exist, other than those specifically provided for herein, no pending litigation respecting Environmental matters, no outstanding Ministry of Environment Orders, investigation, charges or prosecutions respecting Environmental matter exist, there has been no prior use as a waste disposal site, and all applicable licenses are in force. The Seller agrees to provide to the Buyer upon request, all documents, records, and reports relating to environmental matters in possession of the Seller. The Seller further authorizes Ministry of Environment, to release to the Buyer, the Buyer's Agent or Solicitor, any and all information that may be on record in the Ministry office with respect to the said property.

The Seller agrees to authorize his planner (Western Consulting, Planning + Urban Design) to release all information within Three (3) days after the acceptance of this offer and allow access for any and all inspections in order to fulfill the above noted conditions at Buyer's own expenses.

Initial Deposit. The Buyer submits, within 24 Hours of final acceptance of this Offer, \$150,000.00 payable by Certified Cheque or Bank Draft to the Seller's solicitor, in trust, (the "Deposit Holder") as a deposit to be held by the Deposit Holder in trust pending completion or other termination of this Agreement and to be credited on account of the purchase price on completion. The deposit is non refundable.

Buyer authorize to release the deposit from the Solicitor's account to The Seller subject to Monitor or Court Approval. (e)(u)

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

(Handwritten initials)

INITIALS OF SELLER(S):

(Handwritten initials)

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The Buyer, on the closing, agrees to pay off the following existing the Charges/Mortgages held by for approximately: the 1st Mortgage of Two Million Eight Hundred Thousand Dollars \$2,800,000.00 (registered on 64-76 Old Kennedy Rd, Markham) & the 2nd Mortgage of Five Million Dollars \$5,000,000.00 respectively (registered on 64-76 Old Kennedy & 82 & 58 Old Kennedy Rd, Markham & 20 Thelma Ave, Markham)

The Buyer represents that it is now or will by no later than the closing date be registered for the purpose of the HST tac ("HST") in accordance with the applicable provisions in that regard pursuant to the relevant Tax Act of Canada/Ontario, as amended. The Buyer covenants to deliver a Statutory Declaration on closing confirming its HST registration number, which shall be conclusive of such HST registration, and shall preclude the Seller from collection of HST from the Buyer on closing. The Buyer further covenants to deliver an indemnity in favor of the Seller on closing as to any obligation or liability for payment of HST arising from completion of this Agreement.

Buyer agrees to assume the existing tenancies which the Seller warrants are the only tenancies affecting the property currently.

The Seller covenant to deliver to the Buyer, within three (3) days following the date of acceptance of this Agreement, each of the following:

1. Full copy of all written lease or other rental/tenancy arrangement, including any amendment thereto binding upon the whole or any portion of the property.
2. If any such rental/tenancy arrangements are pursuant to verbal agreements. Seller shall deliver written confirmation of detail of all such arrangements.
3. Statutory Declaration of the Seller attesting to the fact that all written and verbal rental/tenancy arrangements, including any amendments to any such arrangements, have been disclosed in full to the Buyer.
4. The Buyer shall receive an abatement for all rents or his property manager will provide a notice to all tenants advising them of the new owner or new property manager and requiring all future rents to be paid as the Buyer directs. All first or/and last month rent deposits plus all accrued interest shall be abated to the Buyer on closing.
5. By 5 Days prior to closing date, the Seller or his property manager will provide a notice to all tenants advising them of the new owner or new property manager and requiring all future rents to be paid as the Buyer directs. All first or/and last month rent deposits plus all accrued interest shall be abated to the Buyer on closing.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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The Seller agrees to provide the Buyer or Buyer's representative with all keys or codes in his or his property manager's possession for all buildings, rooms, doors and mailboxes on closing. The Seller promises not to keep any key on closing.

The Buyer shall have the right to re-visit the property Two (2) further times prior to completion, provided that notice is given to the Seller. The visit shall be at a mutually agreed upon time within a 24 hour period following the giving of such notice. During these visits, the Buyer shall be permitted to make measurements and to bring the consultants.

This Offer is subject to the approval pursuant to the proceedings under the Section 50.4 of the Bankruptcy and Insolvency Act ("BIA") in respect of the subject "NOI" Companies (76 Old Kennedy Development Inc. with Estate No. 31-2436604)

INITIALS OF BUYER(S):

INITIALS OF SELLERS(S):



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AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made with effect as of the 15 day of January, 2019 (this "Amending Agreement").

BETWEEN:

76 OLD KENNEDY DEVELOPMENT INC.
(hereinafter called the "Seller")

OF THE FIRST PART;

- and -

CHENG YI WEI in trust for a company to be incorporated
(hereinafter called the "Buyer")

OF THE SECOND PART.

WHEREAS:

- A. By an agreement of purchase and sale between the Seller, as vendor, and Buyer, as purchaser, dated for reference December 8, 2018, as amended, supplemented, or restated from time to time (collectively, the "**Purchase Agreement**"), the Seller agreed to sell and the Buyer agreed to purchase, *inter alia*, the property legally described as PT LT 1 CON 5 MARKHAM AS IN R649696 ; MARKHAM; CITY OF MARKHAM, being all of PIN 02953-0016 (LT), and municipally known as 76 Old Kennedy Road (the "**Property**") on the terms and conditions set forth in the said Purchase Agreement;
- B. The Buyer and Seller wish to amend the Purchase Agreement in accordance with the terms and conditions contained here; and
- C. Words and phrases which are capitalized herein and which are defined in the Purchase Agreement shall have the same meaning in this Amending Agreement as in the Purchase Agreement, except to the extent otherwise specifically provided herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the completion of the transaction contemplated by the Purchase Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

1. Amendment to Purchase Agreement

- a) The **DEPOSIT** section of the Purchase Agreement shall be amended so as to read:

"Buyer Submits Upon Acceptance One Hundred and Fifty Thousand Dollars (CDN\$) \$150,000 by negotiable cheque payable to ~~Seller's solicitors~~ KSV Kofman Inc., proposal trustee "Deposit Holder" [...]"

- b) The **TITLE SEARCH** section of the Purchase Agreement shall be amended so as to read:

"Buyer shall be allowed until 6:00 p.m. on the ~~14~~ 25th day of January, 2019, (Requisition Date) to examine the title to the property [...]"

- c) Schedule A of the Purchase Agreement shall be removed in its entirety, and replaced with the Schedule Attached hereto as Schedule A.

2. Other Terms in Purchase Agreement

The undersigned agree that by signing this Amending Agreement they shall treat the Purchase Agreement as valid and subsisting, subject to the terms and amendments contained herein. All of the other terms and conditions in the Purchase Agreement remain unchanged, and time shall be of the essence.

3. Governing Law

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

4. Enurement

This Amending Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

5. Counterparts

This Amending Agreement may be executed in counterparts and delivered by facsimile and when each party has so executed a counterpart each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.

[Remainder of page intentionally left blank; signature page to follow]

IT WITNESS WHEREOF this Amending Agreement has been executed as of the day and year first above written.

SELLER:

76 OLD KENNEDY DEVELOPMENT INC.

Per:  _____

Name: *MIKE WANG.*

Title: *president .*

I have the authority to bind the corporation.

BUYER:



Witness *RYAN LI*



CHENG YI WEI in trust for a company to be incorporated

Schedule A
Agreement of Purchase and Sale - Commercial

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, Cheng Yi Wei in trust for a company to be incorporated

SELLER, 76 Old Kennedy Development Inc.

for the purchase and sale of **64-76 Old Kennedy Road**

Markham dated the **8th** day of **December**, 20**18**

Buyer agrees to pay the balance as follows:

- 1) Legal Description of Land:
76 Old Kennedy Road: PT LT 1 CON 5 MARKHAM AS IN R649696 ; MARKHAM; CITY OF MARKHAM, being all of PIN 02953-0016 (LT).
- 2) The Buyer Agrees to pay the balance of the purchase price, subject to adjustment, to the Seller on completion of this transaction, with funds drawn on a Lawyer's account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 3) The Buyer acknowledges it is purchasing the property on an "as is/where is" basis, with no representations or warranties.
- 4) The Seller agrees to authorize his planner (Western Consulting, Planning + Urban Design) to release all information within Three (3) days after acceptance of this offer and allow access for any and all inspections at the Buyer's own expenses.
- 5) Initial Deposit. The Buyer submits, within 24 Hours of final acceptance of this Offer \$150,000.00 payable by Certified Cheque or Bank Draft to KSV Kofman Inc., proposal trustee, in trust, (the "Deposit Holder") as a deposit, and to be credited on account of the purchase price on completion. The deposit is non refundable.
- 6) On Closing the Purchase Price will be satisfied by:
 - a. the Buyer, on the closing, agrees to pay off the existing 1st Charge/Mortgage for approximately Two Million Eight Hundred Thousand Dollars \$2,800,000.00 (registered on 64-76 Old Kennedy Rd, Markham);
 - b. the Buyer, on the closing, agrees to pay off the existing 2nd Charge/Mortgage for approximately Five Million Dollars \$5,000,000.00 (registered on 58 Old Kennedy; 64-76 Old Kennedy; 82 Old Kennedy; and 20 Thelma Avenue, Markham);
 - c. the Buyer, on closing, will pay the balance of the Purchase Price, in cash, to KSV Kofman Inc, proposal trustee.
- 7) In addition to the representations, warranties, covenants, and obligations contained with paragraph 7 of this agreement (HST), the Buyer represents that it is now or will by no later than the closing date be registered for the purpose of the HST tax ("HST") in



accordance with the applicable provisions in that regard pursuant to the relevant Tax Act of Canada/Ontario, as amended. The Buyer covenants to deliver a Statutory Declaration on closing confirming its HST registration number, and shall preclude the Seller from collection of HST from the Buyer on closing. The Buyer further covenants to deliver an indemnity in favour of the Seller on closing as to any obligation or liability for payment of HST arising from completion of this Agreement.

- 8) Buyer agrees to assume the existing tenancies which the Seller warrants are the only tenancies affecting the property currently.
- 9) The Seller covenants to deliver to the Buyer, within three (3) days following the date of the acceptance of this Agreement, each of the following:
 - a. full copy of all written lease or other rental/tenancy arrangement, including any amendment thereto binding upon the whole or any portion of the property.
 - b. if any such rental/tenancy arrangements are pursuant to verbal agreements, Seller shall deliver written confirmation setting out the details of all such arrangements.
 - c. statutory Declaration of the Seller attesting to the fact that all written and verbal rental/tenancy arrangements, including any amendments to any such arrangements, have been disclosed in full to the Buyer.
 - d. all first or/and last month rent deposits plus all accrued interest shall be abated to the Buyer on closing.
- 10) On closing, the Seller or his property manager will provide a notice to all tenants advising them of the new owner and requiring all future rents to be paid as the Buyer directs.
- 11) The Seller agrees to provide the Buyer or Buyer's representative with all keys or codes in his or his property manager's possession for all buildings, rooms, doors and mailboxes on closing. The Seller promises not to keep any keys on closing.
- 12) The Buyer shall have the right to re-visit the property two (2) further times prior to completion, provided that notice is given to the Seller and KSV Kofman Inc., proposal trustee. The visit shall be at a mutually agreed upon time within a one (1) business day period following the giving of such notice. During these visits, the Buyer shall be permitted to make measurements and to bring consultants.
- 13) This Offer is subject to approval pursuant to the proceedings under the Section 50.4 of the Bankruptcy and Insolvency Act ("BIA") in respect of the subject "NOI" Companies (58 Old Kennedy Development Inc. with Estate No. 31-2436600).
- 14) The obligation of the Seller to complete the transaction contemplated herein is conditional on there being no order issued by a court or governmental authority preventing, enjoining, or restraining the completion of said transaction.
- 15) On closing, the Buyer will deliver to the Vendor:
 - a. a certificate noting that the Buyer is a duly formed and validly subsisting corporation under the laws of the Province in which it has been registered; and
 - b. a certificate noting that the Buyer has all the necessary corporate power and authority to enter into this Agreement of Purchase and Sale, and carry out the



transaction contemplated herein, and that doing so does not violate any constating documents, agreements, judgments, orders, or applicable laws.

- 16) The parties hereto agree that each shall take all commercially reasonable actions necessary to have the transaction contemplated herein approved pursuant to proceedings under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, on substantially the same terms and conditions contained herein.
- 17) The Buyer cannot assign this agreement without the prior written consent of the Seller and the Proposal Trustee, in their sole discretion.
- 18) Further to the other permitted tenancies, reservations, qualifications, and registrations provided for herein, the Buyer agrees to accept title subject to:
 - a. those encumbrances currently registered on title.
 - b. any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this agreement;
 - c. any municipal by-laws or regulations affecting the land or its use and any other municipal land use instruments including without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes;
 - d. 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, engineering, grading or landscaping agreements and similar agreements;
 - e. any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Buyer's intended use of the property;
 - f. any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the property;
 - g. such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the property or any part thereof, or materially impair the value thereof;
 - h. any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute; and
 - i. the following exceptions and qualifications contained in Section 44(1) of the Land Titles Act: paragraphs 7, 8, 9, 10, 12 and 14.

Appendix “G”

Agreement of Purchase and Sale Commercial

Form 500

for use in the Province of Ontario

This Agreement of Purchase and Sale dated this 8th day of December, 2018

BUYER, Cheng Yi Wei in trust for a company to be incorporated, agrees to purchase from
(Full legal names of all Buyers)

SELLER, 82 Old Kennedy Development Inc., the following
(Full legal names of all Sellers)

REAL PROPERTY:

Address 82 Old Kennedy Road

fronting on the west side of Old Kennedy Road

in the City of Markham

and having a frontage of as per deed more or less by a depth of as per deed more or less

and legally described as as per deed

as per Schedule A (the "property")
(Legal description of land including easements not described elsewhere)

PURCHASE PRICE: Dollars (CDN\$) 15,000,000.00

Fifteen Million Dollars

DEPOSIT: Buyer submits Upon Acceptance
(Herewith/Upon Acceptance/as otherwise described in this Agreement)

Three Hundred Thousand Dollars (CDN\$) 300,000.00

by negotiable cheque payable to Seller's solicitors "Deposit Holder" to be held in trust pending completion or other termination of this Agreement and to be credited toward the Purchase Price on completion. For the purposes of this Agreement, "Upon Acceptance" shall mean that the Buyer is required to deliver the deposit to the Deposit Holder within 24 hours of the acceptance of this Agreement. The parties to this Agreement hereby acknowledge that, unless otherwise provided for in this Agreement, the Deposit Holder shall place the deposit in trust in the Deposit Holder's non-interest bearing Real Estate Trust Account and no interest shall be earned, received or paid on the deposit.

Buyer agrees to pay the balance as more particularly set out in Schedule A attached.

SCHEDULE(S) A attached hereto form(s) part of this Agreement.

1. IRREVOCABILITY: This offer shall be irrevocable by Buyer until 11:59 ~~xx~~ p.m. on the 10th day of December, 2018, after which time, if not accepted, this offer shall be null and void and the deposit shall be returned to the Buyer in full without interest.

2. COMPLETION DATE: This Agreement shall be completed by no later than 6:00 p.m. on the 31st day of January, 2019. Upon completion, vacant possession of the property shall be given to the Buyer unless otherwise provided for in this Agreement.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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3. NOTICES: The Seller hereby appoints the Listing Brokerage as agent for the Seller for the purpose of giving and receiving notices pursuant to this Agreement. Where a Brokerage (Buyer's Brokerage) has entered into a representation agreement with the Buyer, the Buyer hereby appoints the Buyer's Brokerage as agent for the purpose of giving and receiving notices pursuant to this Agreement. **Where a Brokerage represents both the Seller and the Buyer (multiple representation), the Brokerage shall not be appointed or authorized to be agent for either the Buyer or the Seller for the purpose of giving and receiving notices.** Any notice relating hereto or provided for herein shall be in writing. In addition to any provision contained herein and in any Schedule hereto, this offer, any counter-offer, notice of acceptance thereof or any notice to be given or received pursuant to this Agreement or any Schedule hereto (any of them, "Document") shall be deemed given and received when delivered personally or hand delivered to the Address for Service provided in the Acknowledgement below, or where a facsimile number or email address is provided herein, when transmitted electronically to that facsimile number or email address, respectively, in which case, the signature(s) of the party (parties) shall be deemed to be original.

FAX No.:
 (For delivery of Documents to Seller)

FAX No.:
 (For delivery of Documents to Buyer)

Email Address:
 (For delivery of Documents to Seller)

Email Address:
 (For delivery of Documents to Buyer)

4. CHATELS INCLUDED:

.....

.....

.....

.....

Unless otherwise stated in this Agreement or any Schedule hereto, Seller agrees to convey all fixtures and chattels included in the Purchase Price free from all liens, encumbrances or claims affecting the said fixtures and chattels.

5. FIXTURES EXCLUDED:

.....

.....

.....

.....

6. RENTAL ITEMS (Including Lease, Lease to Own): The following equipment is rented and **not** included in the Purchase Price. The Buyer agrees to assume the rental contract(s), if assumable:

.....

.....

.....

.....

The Buyer agrees to co-operate and execute such documentation as may be required to facilitate such assumption.

7. HST: If the sale of the property (Real Property as described above) is subject to Harmonized Sales Tax (HST), then such tax shall be in addition to the Purchase Price. The Seller will not collect HST if the Buyer provides to the Seller a warranty that the Buyer is registered under the Excise Tax Act ("ETA"), together with a copy of the Buyer's ETA registration, a warranty that the Buyer shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Seller in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the transaction. If the sale of the property is not subject to HST, Seller agrees to certify on or before closing, that the transaction is not subject to HST. Any HST on chattels, If applicable, is not included in the Purchase Price.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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8. **TITLE SEARCH:** Buyer shall be allowed until 6:00 p.m. on the 14 day of January, 2019, (Requisition Date) to examine the title to the property at his own expense and until the earlier of: (i) thirty days from the later of the Requisition Date or the date on which the conditions in this Agreement are fulfilled or otherwise waived or; (ii) five days prior to completion, to satisfy himself that there

are no outstanding work orders or deficiency notices affecting the property, that its present use (Commercial) may be lawfully continued and that the principal building may be insured against risk of fire. Seller hereby consents to the municipality or other governmental agencies releasing to Buyer details of all outstanding work orders and deficiency notices affecting the property, and Seller agrees to execute and deliver such further authorizations in this regard as Buyer may reasonably require.

9. **FUTURE USE:** Seller and Buyer agree that there is no representation or warranty of any kind that the future intended use of the property by Buyer is or will be lawful except as may be specifically provided for in this Agreement.

10. **TITLE:** Provided that the title to the property is good and free from all registered restrictions, charges, liens, and encumbrances except as otherwise specifically provided in this Agreement and save and except for (a) any registered restrictions or covenants that run with the land providing that such are complied with; (b) any registered municipal agreements and registered agreements with publicly regulated utilities providing such have been complied with, or security has been posted to ensure compliance and completion, as evidenced by a letter from the relevant municipality or regulated utility; (c) any minor easements for the supply of domestic utility or telephone services to the property or adjacent properties; and (d) any easements for drainage, storm or sanitary sewers, public utility lines, telephone lines, cable television lines or other services which do not materially affect the use of the property. If within the specified times referred to in paragraph 8 any valid objection to title or to any outstanding work order or deficiency notice, or to the fact the said present use may not lawfully be continued, or that the principal building may not be insured against risk of fire is made in writing to Seller and which Seller is unable or unwilling to remove, remedy or satisfy or obtain insurance save and except against risk of fire (Title Insurance) in favour of the Buyer and any mortgagee, (with all related costs at the expense of the Seller), and which Buyer will not waive, this Agreement notwithstanding any intermediate acts or negotiations in respect of such objections, shall be at an end and all monies paid shall be returned without interest or deduction and Seller, Listing Brokerage and Co-operating Brokerage shall not be liable for any costs or damages. Save as to any valid objection so made by such day and except for any objection going to the root of the title, Buyer shall be conclusively deemed to have accepted Seller's title to the property.

11. **CLOSING ARRANGEMENTS:** Where each of the Seller and Buyer retain a lawyer to complete the Agreement of Purchase and Sale of the property, and where the transaction will be completed by electronic registration pursuant to Part III of the Land Registration Reform Act, R.S.O. 1990, Chapter L4 and the Electronic Registration Act, S.O. 1991, Chapter 44, and any amendments thereto, the Seller and Buyer acknowledge and agree that the exchange of closing funds, non-registrable documents and other items (the "Requisite Deliveries") and the release thereof to the Seller and Buyer will (a) not occur at the same time as the registration of the transfer/deed (and any other documents intended to be registered in connection with the completion of this transaction) and (b) be subject to conditions whereby the lawyer(s) receiving any of the Requisite Deliveries will be required to hold same in trust and not release same except in accordance with the terms of a document registration agreement between the said lawyers. The Seller and Buyer irrevocably instruct the said lawyers to be bound by the document registration agreement which is recommended from time to time by the Law Society of Upper Canada. Unless otherwise agreed to by the lawyers, such exchange of the Requisite Deliveries will occur in the applicable Land Titles Office or such other location agreeable to both lawyers.

12. **DOCUMENTS AND DISCHARGE:** Buyer shall not call for the production of any title deed, abstract, survey or other evidence of title to the property except such as are in the possession or control of Seller. If requested by Buyer, Seller will deliver any sketch or survey of the property within Seller's control to Buyer as soon as possible and prior to the Requisition Date. If a discharge of any Charge/Mortgage held by a corporation incorporated pursuant to the Trust And Loan Companies Act (Canada), Chartered Bank, Trust Company, Credit Union, Caisse Populaire or Insurance Company and which is not to be assumed by Buyer on completion, is not available in registrable form on completion, Buyer agrees to accept Seller's lawyer's personal undertaking to obtain, out of the closing funds, a discharge in registrable form and to register same, or cause same to be registered, on title within a reasonable period of time after completion, provided that on or before completion Seller shall provide to Buyer a mortgage statement prepared by the mortgagee setting out the balance required to obtain the discharge, and, where a real-time electronic cleared funds transfer system is not being used, a direction executed by Seller directing payment to the mortgagee of the amount required to obtain the discharge out of the balance due on completion.

13. **INSPECTION:** Buyer acknowledges having had the opportunity to inspect the property and understands that upon acceptance of this offer there shall be a binding agreement of purchase and sale between Buyer and Seller.

14. **INSURANCE:** All buildings on the property and all other things being purchased shall be and remain until completion at the risk of Seller. Pending completion, Seller shall hold all insurance policies, if any, and the proceeds thereof in trust for the parties as their interests may appear and in the event of substantial damage, Buyer may either terminate this Agreement and have all monies paid returned without interest or deduction or else take the proceeds of any insurance and complete the purchase. No insurance shall be transferred on completion. If Seller is taking back a Charge/Mortgage, or Buyer is assuming a Charge/Mortgage, Buyer shall supply Seller with reasonable evidence of adequate insurance to protect Seller's or other mortgagee's interest on completion.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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- 15. PLANNING ACT:** This Agreement shall be effective to create an interest in the property only if Seller complies with the subdivision control provisions of the Planning Act by completion and Seller covenants to proceed diligently at his expense to obtain any necessary consent by completion.
- 16. DOCUMENT PREPARATION:** The Transfer/Deed shall, save for the Land Transfer Tax Affidavit, be prepared in registrable form at the expense of Seller, and any Charge/Mortgage to be given back by the Buyer to Seller at the expense of the Buyer. If requested by Buyer, Seller covenants that the Transfer/Deed to be delivered on completion shall contain the statements contemplated by Section 50(22) of the Planning Act, R.S.O.1990.
- 17. RESIDENCY:** (a) Subject to (b) below, the Seller represents and warrants that the Seller is not and on completion will not be a non-resident under the non-residency provisions of the Income Tax Act which representation and warranty shall survive and not merge upon the completion of this transaction and the Seller shall deliver to the Buyer a statutory declaration that Seller is not then a non-resident of Canada;
(b) provided that if the Seller is a non-resident under the non-residency provisions of the Income Tax Act, the Buyer shall be credited towards the Purchase Price with the amount, if any, necessary for Buyer to pay to the Minister of National Revenue to satisfy Buyer's liability in respect of tax payable by Seller under the non-residency provisions of the Income Tax Act by reason of this sale. Buyer shall not claim such credit if Seller delivers on completion the prescribed certificate.
- 18. ADJUSTMENTS:** Any rents, mortgage interest, realty taxes including local improvement rates and unmetered public or private utility charges and unmetered cost of fuel, as applicable, shall be apportioned and allowed to the day of completion, the day of completion itself to be apportioned to Buyer.
- 19. TIME LIMITS:** Time shall in all respects be of the essence hereof provided that the time for doing or completing of any matter provided for herein may be extended or abridged by an agreement in writing signed by Seller and Buyer or by their respective lawyers who may be specifically authorized in that regard.
- 20. PROPERTY ASSESSMENT:** The Buyer and Seller hereby acknowledge that the Province of Ontario has implemented current value assessment and properties may be re-assessed on an annual basis. The Buyer and Seller agree that no claim will be made against the Buyer or Seller, or any Brokerage, Broker or Salesperson, for any changes in property tax as a result of a re-assessment of the property, save and except any property taxes that accrued prior to the completion of this transaction.
- 21. TENDER:** Any tender of documents or money hereunder may be made upon Seller or Buyer or their respective lawyers on the day set for completion. Money shall be tendered with funds drawn on a lawyer's trust account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 22. FAMILY LAW ACT:** Seller warrants that spousal consent is not necessary to this transaction under the provisions of the Family Law Act, R.S.O.1990 unless the spouse of the Seller has executed the consent hereinafter provided.
- 23. UFFI:** Seller represents and warrants to Buyer that during the time Seller has owned the property, Seller has not caused any building on the property to be insulated with insulation containing ureaformaldehyde, and that to the best of Seller's knowledge no building on the property contains or has ever contained insulation that contains ureaformaldehyde. This warranty shall survive and not merge on the completion of this transaction, and if the building is part of a multiple unit building, this warranty shall only apply to that part of the building which is the subject of this transaction.
- 24. LEGAL, ACCOUNTING AND ENVIRONMENTAL ADVICE:** The parties acknowledge that any information provided by the brokerage is not legal, tax or environmental advice, and that it has been recommended that the parties obtain independent professional advice prior to signing this document.
- 25. CONSUMER REPORTS:** **The Buyer is hereby notified that a consumer report containing credit and/or personal information may be referred to in connection with this transaction.**
- 26. AGREEMENT IN WRITING:** If there is conflict or discrepancy between any provision added to this Agreement (including any Schedule attached hereto) and any provision in the standard pre-set portion hereof, the added provision shall supersede the standard pre-set provision to the extent of such conflict or discrepancy. This Agreement including any Schedule attached hereto, shall constitute the entire Agreement between Buyer and Seller. There is no representation, warranty, collateral agreement or condition, which affects this Agreement other than as expressed herein. For the purposes of this Agreement, Seller means vendor and Buyer means purchaser. This Agreement shall be read with all changes of gender or number required by the context.
- 27. TIME AND DATE:** Any reference to a time and date in this Agreement shall mean the time and date where the property is located.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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28. SUCCESSORS AND ASSIGNS: The heirs, executors, administrators, successors and assigns of the undersigned are bound by the terms herein.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

.....
 (Witness) 
 (Witness)

 (Buyer/Authorized Signing Officer)
 (Buyer/Authorized Signing Officer)
 (Seal) DATE Dec. 8th, 2018
 (Seal) DATE

I, the Undersigned Seller, agree to the above offer. I hereby irrevocably instruct my lawyer to pay directly to the brokerage(s) with whom I have agreed to pay commission, the unpaid balance of the commission together with applicable Harmonized Sales Tax (and any other taxes as may hereafter be applicable), from the proceeds of the sale prior to any payment to the undersigned on completion, as advised by the brokerage(s) to my lawyer.

SIGNED, SEALED AND DELIVERED in the presence of: IN WITNESS whereof I have hereunto set my hand and seal:

.....
 (Witness) 
 (Witness)

 (Seller/Authorized Signing Officer)
 (Seller/Authorized Signing Officer)
 (Seal) DATE DEC 09, 2018
 (Seal) DATE

SPOUSAL CONSENT: The undersigned spouse of the Seller hereby consents to the disposition evidenced herein pursuant to the provisions of the Family Law Act, R.S.O. 1990, and hereby agrees to execute all necessary or incidental documents to give full force and effect to the sale evidenced herein.

.....
 (Witness)
 (Spouse)
 (Seal) DATE

CONFIRMATION OF ACCEPTANCE: Notwithstanding anything contained herein to the contrary, I confirm this Agreement with all changes both typed and written was finally accepted by all parties at 10 a.m./p.m. this 09 day of Dec, 2018


 (Signature of Seller or Buyer)

INFORMATION ON BROKERAGE(S)	
Listing Brokerage TD Cornerstone Commercial Realty Inc	Tel.No. (<u>416</u>) <u>509-2668</u>
Ashley Martis	(Salesperson / Broker Name)
Co-op/Buyer Brokerage	Tel.No. (.....)
.....	(Salesperson / Broker Name)

ACKNOWLEDGEMENT

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

..... DATE

(Seller)

..... DATE

(Seller)

Address for Service

..... Tel.No. (.....)

Seller's Lawyer

Address

Email

(.....) Tel.No. (.....) FAX No.

I acknowledge receipt of my signed copy of this accepted Agreement of Purchase and Sale and I authorize the Brokerage to forward a copy to my lawyer.

..... DATE

(Buyer)

..... DATE

(Buyer)

Address for Service

..... Tel.No. (.....)

Buyer's Lawyer

Address

Email

(.....) Tel.No. (.....) FAX No.

FOR OFFICE USE ONLY	COMMISSION TRUST AGREEMENT
To: Co-operating Brokerage shown on the foregoing Agreement of Purchase and Sale:	In consideration for the Co-operating Brokerage procuring the foregoing Agreement of Purchase and Sale, I hereby declare that all moneys received or receivable by me in connection with the Transaction as contemplated in the MLS® Rules and Regulations of my Real Estate Board shall be receivable and held in trust. This agreement shall constitute a Commission Trust Agreement as defined in the MLS® Rules and shall be subject to and governed by the MLS® Rules pertaining to Commission Trust.
DATED as of the date and time of the acceptance of the foregoing Agreement of Purchase and Sale.	Acknowledged by:
..... (Authorized to bind the Listing Brokerage) (Authorized to bind the Co-operating Brokerage)

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Schedule A

Agreement of Purchase and Sale - Commercial

Form 500

for use in the Province of Ontario

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, Cheng Yi Wei in trust for a company to be incorporated, and

SELLER, 82 Old Kennedy Development Inc.

for the purchase and sale of 82 Old Kennedy Road

Markham dated the 8th day of December, 2018

Buyer agrees to pay the balance as follows:

Legal Description of Land

82 Old Kennedy RD: LT 3 PL 3580 MARKHAM; S/T EASE OVER PT 2. 65R25475. AS IN YR301388; S/T EASE OVER PT 3, 65R25475, AS IN YR301389.

The Buyer agrees to pay the balance of the purchase price, subject to adjustment, to the Seller on completion of this transaction, with funds drawn on a Lawyer's account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.

The Seller warrants and represents to the Buyer that all environmental laws and regulations have been complied with, no hazardous conditions or substances exist on the land, no limitations or restrictions affecting the continue use of the property exist, other than those specifically provided for herein, no pending litigation respecting Environmental matters, no outstanding Ministry of Environment Orders, investigation, charges or prosecutions respecting Environmental matter exist, there has been no prior use as a waste disposal site, and all applicable licenses are in force. The Seller agrees to provide to the Buyer upon request, all documents, records, and reports relating to environmental matters in possession of the Seller. The Seller further authorizes Ministry of Environment, to release to the Buyer, the Buyer's Agent or Solicitor, any and all information that may be on record in the Ministry office with respect to the said property.

The Seller agrees to authorize his planner (Western Consulting, Planning + Urban Design) to release all information within Three (3) days after the acceptance of this offer and allow access for any and all inspections at Buyer's own expenses.

Initial Deposit. The Buyer submits, within 24 Hours of final acceptance of this Offer \$300,000.00 payable by Certified Cheque or Bank Draft to the Seller's solicitor, in trust, (the "Deposit Holder") as a deposit to be held by the Deposit Holder in trust pending completion or other termination of this Agreement and to be credited on account of the purchase price on completion. The deposit is non refundable.

Buyer authorize to release the deposit from the Solicitor's account to The Seller subject to Monitor or Court Approval. 

This form must be initialed by all parties to the Agreement of Purchase and Sale.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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The Buyer agrees to assume the following existing first Charges/Mortgages held by for approximately: Eight Million Six Hundred Twenty-Five Thousand Dollars \$8,625,000.00 (registered on 82 Old Kennedy Rd).

The Buyer, on the closing, agrees to pay off the following existing the Charges/Mortgages held by for approximately: the 2nd Mortgage of Five Million Dollars \$5,000,000.00 respectively (registered on 64-76 Old Kennedy & 82 & 58 Old Kennedy Rd, Markham & 20 Thelma Ave, Markham).

The Buyer represents that it is now or will by no later than the closing date be registered for the purpose of the HST tac ("HST") in accordance with the applicable provisions in that regard pursuant to the relevant Tax Act of Canada/Ontario, as amended. The Buyer covenants to deliver a Statutory Declaration on closing confirming its HST registration number, which shall be conclusive of such HST registration, and shall preclude the Seller from collection of HST from the Buyer on closing. The Buyer further covenants to deliver an indemnity in favor of the Seller on closing as to any obligation or liability for payment of HST arising from completion of this Agreement.

Buyer agrees to assume the existing tenancies which the Seller warrants are the only tenancies affecting the property currently.

The Seller covenant to deliver to the Buyer, within three (3) days following the date of acceptance of this Agreement, each of the following:

1. Full copy of all written lease or other rental/tenancy arrangement, including any amendment thereto binding upon the whole or any portion of the property.
2. If any such rental/tenancy arrangements are pursuant to verbal agreements. Seller shall deliver written confirmation of detail of all such arrangements.
3. Statutory Declaration of the Seller attesting to the fact that all written and verbal rental/tenancy arrangements, including any amendments to any such arrangements, have been disclosed in full to the Buyer.
4. The Buyer shall receive an abatement for all rents or his property manager will provide a notice to all tenants advising them of the new owner or new property manager and requiring all future rents to be paid as the Buyer directs. All first or/and last month rent deposits plus all accrued interest shall be abated to the Buyer on closing.
5. By 5 Days prior to closing date, the Seller or his property manager will provide a notice to all tenants advising them of the new owner or new property manager and requiring all future rents to be paid as the Buyer directs. All first or/and last month rent deposits plus all accrued interest shall be abated to the Buyer on closing.

INITIALS OF BUYER(S):

INITIALS OF SELLER(S):



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The Seller agrees to provide the Buyer or Buyer's representative with all keys or codes in his or his property manager's possession for all buildings, rooms, doors and mailboxes on closing. The Seller promises not to keep any key on closing.

The Buyer shall have the right to re-visit the property Two (2) further times prior to completion, provided that notice is given to the Seller. The visit shall be at a mutually agreed upon time within a 24 hour period following the giving of such notice. During these visits, the Buyer shall be permitted to make measurements and to bring the consultants.

This Offer is subject to the approval pursuant to the proceedings under the Section 50.4 of the Bankruptcy and Insolvency Act ("BIA") in respect of the subject "NOI" Companies (82 Old Kennedy Development Inc. with Estate No. 31-2438977).

INITIALS OF BUYER(S):

INITIALS OF SELLERS(S):



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AMENDMENT TO AGREEMENT OF PURCHASE AND SALE

THIS AGREEMENT made with effect as of the 15 day of January, 2019 (this "Amending Agreement").

BETWEEN:

82 OLD KENNEDY DEVELOPMENT INC.
(hereinafter called the "Seller")

OF THE FIRST PART;

- and -

CHENG YI WEI in trust for a company to be incorporated
(hereinafter called the "Buyer")

OF THE SECOND PART.

WHEREAS:

- A. By an agreement of purchase and sale between the Seller, as vendor, and Buyer, as purchaser, dated for reference December 8, 2018, as amended, supplemented, or restated from time to time (collectively, the "Purchase Agreement"), the Seller agreed to sell and the Buyer agreed to purchase, *inter alia*, the property legally described as 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), and municipally known as 82 Old Kennedy Road (the "Property") on the terms and conditions set forth in the said Purchase Agreement;
- B. The Buyer and Seller wish to amend the Purchase Agreement in accordance with the terms and conditions contained here; and
- C. Words and phrases which are capitalized herein and which are defined in the Purchase Agreement shall have the same meaning in this Amending Agreement as in the Purchase Agreement, except to the extent otherwise specifically provided herein.

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the completion of the transaction contemplated by the Purchase Agreement and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto covenant and agree as follows:

1. **Amendment to Purchase Agreement**

- a) The **DEPOSIT** section of the Purchase Agreement shall be amended so as to read:

"Buyer Submits Upon Acceptance Three Hundred Thousand Dollars (CDN\$) \$300,000 by negotiable cheque payable to ~~Seller's solicitors~~ KSV Kofman Inc., proposal trustee "Deposit Holder" [...]"

- b) The **TITLE SEARCH** section of the Purchase Agreement shall be amended so as to read:

“Buyer shall be allowed until 6:00 p.m. on the 14 25th day of January, 2019, (Requisition Date) to examine the title to the property [...]”

- c) Schedule A of the Purchase Agreement shall be removed in its entirety, and replaced with the Schedule Attached hereto as Schedule A.

2. Other Terms in Purchase Agreement

The undersigned agree that by signing this Amending Agreement they shall treat the Purchase Agreement as valid and subsisting, subject to the terms and amendments contained herein. All of the other terms and conditions in the Purchase Agreement remain unchanged, and time shall be of the essence.

3. Governing Law

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

4. Enurement

This Amending Agreement shall enure to the benefit of and be binding upon the parties hereto and their respective permitted successors and assigns.

5. Counterparts

This Amending Agreement may be executed in counterparts and delivered by facsimile and when each party has so executed a counterpart each of such counterparts shall be deemed to be an original and all of such counterparts when taken together shall constitute one and the same agreement.

[Remainder of page intentionally left blank; signature page to follow]

IT WITNESS WHEREOF this Amending Agreement has been executed as of the day and year first above written.

SELLER:

82 OLD KENNEDY DEVELOPMENT INC.

Per:  _____

Name: *MIKE WANG.*

Title: *president*

I have the authority to bind the corporation.

BUYER:

 _____

CHENG YI WEI in trust for a company to be incorporated


Witness **RYAN LI**

Schedule A
Agreement of Purchase and Sale – Commercial

This Schedule is attached to and forms part of the Agreement of Purchase and Sale between:

BUYER, Cheng Yi Wei in trust for a company to be incorporated, and

SELLER, 82 Old Kennedy Development Inc.

for the purchase and sale of 82 Old Kennedy Road

Markham dated the 8th day of December, 2018

Buyer agrees to pay the balance as follows:

- 1) Legal Description of Land:
82 Old Kennedy Road: 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).
- 2) The Buyer Agrees to pay the balance of the purchase price, subject to adjustment, to the Seller on completion of this transaction, with funds drawn on a Lawyer's account in the form of a bank draft, certified cheque or wire transfer using the Large Value Transfer System.
- 3) The Buyer acknowledges it is purchasing the property on an "as is/where is" basis, with no representations or warranties.
- 4) The Seller agrees to authorize his planner (Western Consulting, Planning + Urban Design) to release all information within Three (3) days after acceptance of this offer and allow access for any and all inspections at the Buyer's own expenses.
- 5) Initial Deposit. The Buyer submits, within 24 Hours of final acceptance of this Offer \$300,000.00 payable by Certified Cheque or Bank Draft to KSV Kofman Inc., proposal trustee, in trust, (the "Deposit Holder") as a deposit, and to be credited on account of the purchase price on completion. The deposit is non refundable.
- 6) On Closing the Purchase Price will be satisfied by:
 - a. the Buyer, on the closing, agrees to pay off the existing 1st Charge/Mortgage for approximately Eight Million Six Hundred and Twenty-Five Thousand Dollars \$8,625,000.00 (registered on 82 Old Kennedy Rd, Markham);
 - b. the Buyer, on the closing, agrees to pay off the existing 2nd Charge/Mortgage for approximately Five Million Dollars \$5,000,000.00 (registered on 58 Old Kennedy; 64-76 Old Kennedy; 82 Old Kennedy; and 20 Thelma Avenue, Markham);
 - c. the Buyer, on closing, will pay the balance of the Purchase Price, in cash, to KSV Kofman Inc, proposal trustee.
- 7) In addition to the representations, warranties, covenants, and obligations contained with paragraph 7 of this agreement (HST), the Buyer represents that it is now or will by no

later than the closing date be registered for the purpose of the HST tax ("HST") in accordance with the applicable provisions in that regard pursuant to the relevant Tax Act of Canada/Ontario, as amended. The Buyer covenants to deliver a Statutory Declaration on closing confirming its HST registration number, and shall preclude the Seller from collection of HST from the Buyer on closing. The Buyer further covenants to deliver an indemnity in favour of the Seller on closing as to any obligation or liability for payment of HST arising from completion of this Agreement.

- 8) Buyer agrees to assume the existing tenancies which the Seller warrants are the only tenancies affecting the property currently.
- 9) The Seller covenants to deliver to the Buyer, within three (3) days following the date of the acceptance of this Agreement, each of the following:
 - a. full copy of all written lease or other rental/tenancy arrangement, including any amendment thereto binding upon the whole or any portion of the property.
 - b. if any such rental/tenancy arrangements are pursuant to verbal agreements, Seller shall deliver written confirmation setting out the details of all such arrangements.
 - c. statutory Declaration of the Seller attesting to the fact that all written and verbal rental/tenancy arrangements, including any amendments to any such arrangements, have been disclosed in full to the Buyer.
 - d. all first or/and last month rent deposits plus all accrued interest shall be abated to the Buyer on closing.
- 10) On closing, the Seller or his property manager will provide a notice to all tenants advising them of the new owner and requiring all future rents to be paid as the Buyer directs.
- 11) The Seller agrees to provide the Buyer or Buyer's representative with all keys or codes in his or his property manager's possession for all buildings, rooms, doors and mailboxes on closing. The Seller promises not to keep any keys on closing.
- 12) The Buyer shall have the right to re-visit the property two (2) further times prior to completion, provided that notice is given to the Seller and KSV Kofman Inc., proposal trustee. The visit shall be at a mutually agreed upon time within a one (1) business day period following the giving of such notice. During these visits, the Buyer shall be permitted to make measurements and to bring consultants.
- 13) This Offer is subject to approval pursuant to the proceedings under the Section 50.4 of the Bankruptcy and Insolvency Act ("BIA") in respect of the subject "NOI" Companies (58 Old Kennedy Development Inc. with Estate No. 31-2436600).
- 14) The obligation of the Seller to complete the transaction contemplated herein is conditional on there being no order issued by a court or governmental authority preventing, enjoining, or restraining the completion of said transaction.
- 15) On closing, the Buyer will deliver to the Vendor:
 - a. a certificate noting that the Buyer is a duly formed and validly subsisting corporation under the laws of the Province in which it has been registered; and



- b. a certificate noting that the Buyer has all the necessary corporate power and authority to enter into this Agreement of Purchase and Sale, and carry out the transaction contemplated herein, and that doing so does not violate any constating documents, agreements, judgments, orders, or applicable laws.
- 16) The parties hereto agree that each shall take all commercially reasonable actions necessary to have the transaction contemplated herein approved pursuant to proceedings under the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, on substantially the same terms and conditions contained herein.
- 17) The Buyer cannot assign this agreement without the prior written consent of the Seller and the Proposal Trustee, in their sole discretion.
- 18) Further to the other permitted tenancies, reservations, qualifications, and registrations provided for herein, the Buyer agrees to accept title subject to:
- a. those encumbrances currently registered on title, including the instruments registered as Instrument Nos. YR301388, YR301389, and YR301475.
 - b. any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this agreement;
 - c. any municipal by-laws or regulations affecting the land or its use and any other municipal land use instruments including without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes;
 - d. 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, engineering, grading or landscaping agreements and similar agreements;
 - e. any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Buyer's intended use of the property;
 - f. any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the property;
 - g. such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the property or any part thereof, or materially impair the value thereof;
 - h. any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute; and
 - i. the following exceptions and qualifications contained in Section 44(1) of the Land Titles Act: paragraphs 7, 8, 9, 10, 12 and 14.