

**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 OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO (the "Applicants")

APPLICATION UNDER THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Estate File No.: 31-2436568

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

**MOTION RECORD OF THE MONITOR AND PROPOSAL TRUSTEE
(VOLUME 3 OF 3)**

February 18, 2021

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Counsel to KSV Restructuring Inc., solely in its capacity as Court-appointed monitor and proposal trustee and not in its personal capacity

TO: THE SERVICE LIST

INDEX

TAB NO.	DOCUMENT
MOTION RECORD VOLUME 1 of 3	
1.	Notice of Motion
2.	Sixteenth Report of the Monitor and the Twelfth Report of the Proposal Trustee dated February 18, 2021
A	List of Applicants
B	Initial Order
C	List of Non-Applicants
D	Claims Procedure Order dated October 22, 2019
MOTION RECORD VOLUME 2 of 3	
E	Settlement Agreements with the Birchmount Applicant's Lien Claimants
F	Cash Flow Forecast for the period February 22, 2021 to May 31, 2021
G	Monitor's Report of Cash Flow Forecast
H	Fee Affidavit for KSV Restructuring Inc.
I	Fee Affidavit for Bennett Jones LLP
MOTION RECORD VOLUME 3 of 3	
3.	Draft Ancillary Order
4.	Draft Settlement Approval Order – Spectrum Mechanical (2009) Ltd.
5.	Draft Settlement Approval Order – Lido Construction Inc.
6.	Draft Settlement Approval Order – A.C. Concrete Forming Ltd.
7.	Draft Birchmount Cash Collateral Order

SCHEDULE "A"
APPLICANTS

3310 Kingston Development Inc.
1296 Kennedy Development Inc.
1326 Wilson Development Inc.
5507 River Development Inc.
4439 John Development Inc.
2358825 Ontario Ltd.
250 Danforth Development Inc.
159 Carrville Development Inc.
169 Carrville Development Inc.
189 Carrville Development Inc.
27 Anglin Development Inc.
29 Anglin Development Inc.

TAB 3

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

THE HONOURABLE MR.) THURSDAY, THE 25th
)
JUSTICE HAINEY) DAY OF FEBRUARY, 2021

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 OTHER COMPANIES LISTED ON SCHEDULE "A"
HERETO (the "Applicants")

APPLICATION UNDER THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Estate File No.: 31-2436568

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

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

ANCILLARY ORDER

THIS MOTION, made by KSV Restructuring Inc.¹ ("**KSV**"), in its capacity as Court-
appointed monitor (in such capacity, the "**Monitor**") of the Applicants in their proceedings
pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended, and in

¹ Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

its capacity as proposal trustee of 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., and 82 Old Kennedy Development Inc. (in such capacity, the "**Proposal Trustee**"), for an Order, *inter alia*: (i) abridging the time for service of the Notice of Motion and the Motion Record herein, if necessary, and validating service thereof; (ii) extending the Stay Period (as defined in paragraph 15 of the Initial Order of this Court made on November 30, 2018, as amended and restated) to and including May 31, 2021; (iii) authorizing the Monitor to make the Proposed Distribution (as defined below) to 2592898 Ontario Inc. ("**259 Inc.**"); (iv) approving the Sixteenth Report of the Monitor and the Twelfth Report of the Proposal Trustee dated February 18, 2021 (the "**Report**") and the activities of the Monitor and the Proposal Trustee described therein; and (v) approving the fees and disbursements of the Monitor and its counsel, was heard via videoconference.

ON READING the Notice of Motion of the Monitor and the Report, together with the appendices thereto, and on hearing the submissions of counsel for the Monitor, and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of Aiden Nelms, sworn;

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record herein be and are hereby abridged and validated so that the Motion is properly returnable today.

STAY EXTENSION

2. **THIS COURT ORDERS** that the Stay Period be and is hereby extended until and including May 31, 2021.

PROPOSED DISTRIBUTION

3. **THIS COURT ORDERS** that the Monitor is authorized to make one or more distributions from the Surplus (the "**Proposed Distribution**") to 259 Inc., or as it may direct, up to the amount owing to it under its secured Claim against Mr. Wang.

APPROVAL OF THE REPORT AND ACTIVITIES

4. **THIS COURT ORDERS** that the Report and the activities of the Monitor and the Proposal Trustee referred to therein be and are hereby approved; provided, however, that only the Monitor and the Proposal Trustee, in their personal capacities and only with respect to their own personal liability, shall be entitled to rely upon or utilize in any way such approval.

5. **THIS COURT ORDERS** that the fees and disbursements of the Monitor and its counsel, as set out in the affidavits of David Sieradzki sworn February 18, 2021 and Sean Zweig sworn February 18, 2021 be and are hereby approved.

GENERAL

6. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01a.m. Toronto time on the date of this Order.

SCHEDULE "A"
APPLICANTS

3310 Kingston Development Inc.
1296 Kennedy Development Inc.
1326 Wilson Development Inc.
5507 River Development Inc.
4439 John Development Inc.
2358825 Ontario Ltd.
250 Danforth Development Inc.
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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
OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO (the "Applicants")

Estate No. 31-2436538

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

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

Proceeding commenced at Toronto

ANCILLARY ORDER

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Counsel to KSV Restructuring Inc., solely in its
capacity as Court-appointed monitor and proposal
trustee, and not in its personal capacity

TAB 4

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

THE HONOURABLE MR.) THURSDAY, THE 25th
)
JUSTICE HAINEY) DAY OF FEBRUARY, 2021

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 OTHER COMPANIES LISTED ON SCHEDULE "A"
HERETO (the "Applicants")

APPLICATION UNDER THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Estate File No.: 31-2436568

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

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

ORDER

THIS MOTION, made by KSV Restructuring Inc. ("**KSV**"), solely in its capacity as Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") in their proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and in its capacity as the proposal trustee (in such capacity, the "**Proposal Trustee**") of 58 Old Kennedy Development Inc., 76 Old Kenned Development Inc.,

and 82 Old Kennedy Development Inc. (collectively, the “**NOI Entities**”) in their proceedings (the “**Proposal Proceedings**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) for an order, *inter alia*: (i) approving and giving effect to the Settlement Agreement dated February 11, 2021, and all schedules attached thereto including the Full and Final Release (collectively, the “**Agreement**”) among the Monitor, the Proposal Trustee and Charles Advisory Services Inc., solely in its capacity as the trustee in bankruptcy of Spectrum Mechanical (2009) Ltd. (in such capacity, the “**Trustee**”), subject in all cases to the terms, conditions and exceptions provided in the Agreement; and (ii) authorizing and directing the Monitor to take any and all steps necessary to give effect to the Agreement, was heard this day via videoconference;

ON READING the Notice of Motion and the Sixteenth Report of the Monitor and the Twelfth Report of the Proposal Trustee dated February 18, 2021 and the exhibits thereto, and on hearing the submissions of counsel for the Monitor and the Trustee, and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of Aiden Nelms, sworn;

1. **THIS COURT ORDERS** that, to the extent necessary, the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the settlement, mutual releases and other matters contemplated by the Agreement are hereby approved, that the Monitor and the Proposal Trustee are hereby directed and empowered, *nunc pro tunc*, to execute and deliver the Agreement on behalf of the Applicants and the NOI Entities, and that such execution is approved. The Monitor and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of such settlement and mutual releases.
3. **THIS COURT ORDERS** that pursuant to subsection 44(5) of the *Construction Act*, R.S.O. 1990, c. C.30, as amended and Rule 72.03(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the “**Rules**”) (i) CDN\$121,720.00 shall be paid from the CDN \$243,439.68 that was paid into court (the “**Court Funds**”) with Court File No.: CV-17-568016 as security for the full amount of the construction lien filed by Spectrum Mechanical (2009) Ltd. and the costs

related thereto in connection with the Action (as defined below), to the Trustee, and (ii) the entirety of the remainder of the Court Funds thereafter shall be paid to the Monitor. For the purposes of this Order, Rule 72.03(2)(c)(ii) of the Rules shall be deemed to have been complied with.

4. **THIS COURT ORDERS AND DECLARES** that the Monitor, the Proposal Trustee and the Forme Group (as defined in the Agreement), as well as the Trustee and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, insurers, privies, officers, directors, employees, members, servants, agents and partners, are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all “Claims” as that term is defined in paragraph 2(e) of the Claims Procedure Order of Justice Hainey dated October 22, 2019 bearing Court File No. CV-18-608313-00CL arising out of or in any way relating to the Released Matters (as defined below).

5. **THIS COURT ORDERS AND DECLARES** that the Monitor, the Proposal Trustee and the Trustee and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, insurers, privies, officers, directors, employees, members, servants, agents and partners, are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all manner of actions, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues and liabilities of any nature whatsoever, whether joint or several, legal, contractual, statutory, equitable or otherwise, that now exist, have existed or may exist, arising out of or in any way relating to the Released Matters.

6. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the “Released Matters” means, collectively: (1) the proceedings commenced by Spectrum Mechanical (2009) Ltd. in the Ontario Superior Court of Justice in Toronto bearing Court File No. CV-17-568016 (the “Action”) against 2358825 Ontario Ltd., 2358825 Ontario Limited, 2043102 Ontario Limited operating as YYZed Project Management, YYZed Project Management, Trisura Guarantee Insurance Company, MCAP Financial Corporation and HMT Holdings Inc. (collectively, the “Defendants”); (2) all of the known and unknown facts and issues in dispute amongst the Trustee, the Forme Group, the Defendants, the Monitor and the Proposal Trustee, all

of the known and unknown Claims that have been or could be commenced or asserted by the Trustee against the Forme Group and all of the known and unknown claims that have been or could be commenced or asserted by the Trustee against the Monitor or the Proposal Trustee, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action, and (3) facts and issues arising from or relating to (i) the Forme Group; (ii) Yuan (Mike) Hua Wang; and 101 Columbia Development Inc., 186 Old Kennedy Development Inc., 19 Turff Development Inc., 22 Old Kennedy Development Inc., 31 Victory Development Inc., 35 Thelma Development Inc., 376 Derry Development Inc., 390 Derry Development Inc., 4 Don Hillock Development Inc., 4208 Kingston Development Inc., 4550 Steeles Development Inc., 7397 Islington Development Inc., 9500 Dufferin Development Inc. and 2495393 Ontario Inc.

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

- (a) the pendency of the CCAA Proceedings;
- (b) the pendency of the Proposal Proceedings;
- (c) the pendency of the Action;
- (d) any applications for any bankruptcy order now or hereafter issued pursuant to the BIA in respect of one or more of any of the Defendants, the Applicants or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the Identified Parties.

the payment to the Trustee, or as it may direct, of the Settlement Funds (as defined in the Agreement) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA at any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 15 of the Initial Order) shall be and is hereby lifted for the sole purpose of authorizing and permitting the Trustee to:

(a) discontinue the Action as against the Defendants; and

(b) take whatever steps are necessary to comply with its obligations under the Agreement.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor or the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor or the Proposal Trustee, as officers of this Court, as may be necessary or desirable to give effect to this order or to assist the Monitor or the Proposal Trustee, the and their respective agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that the Monitor or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers, duties and obligations under the Agreement.

SCHEDULE "A"
APPLICANTS

3310 Kingston Development Inc.

1296 Kennedy Development Inc.

1326 Wilson Development Inc.

5507 River Development Inc.

4439 John Development Inc.

2358825 Ontario Ltd.

250 Danforth Development Inc.

159 Carrville Development Inc.

169 Carrville Development Inc.

189 Carrville Development Inc.

27 Anglin Development Inc.

29 Anglin Development Inc.

SCHEDULE "B"
SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT, DECLARATIONS AND FULL AND FINAL RELEASE

THIS AGREEMENT, effective this 11th day of February, 2021

AMONGST:

KSV RESTRUCTURING INC., SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED MONITOR OF 2358825 ONTARIO LTD., 3310 KINGSTON DEVELOPMENT INC., 1296 KENNEDY DEVELOPMENT INC., 1326 WILSON DEVELOPMENT INC., 5507 RIVER DEVELOPMENT INC., 4439 JOHN DEVELOPMENT INC., 250 DANFORTH DEVELOPMENT INC., 159 CARRVILLE DEVELOPMENT INC., 169 CARRVILLE DEVELOPMENT INC., 189 CARRVILLE DEVELOPMENT INC., 27 ANGLIN DEVELOPMENT INC., 29 ANGLIN DEVELOPMENT INC.

(in such capacity, the “**Monitor**”)

-and-

KSV RESTRUCTURING INC., SOLELY IN ITS CAPACITY AS THE PROPOSAL TRUSTEE OF 58 OLD KENNEDY DEVELOPMENT INC., 76 OLD KENNEDY DEVELOPMENT INC., AND 82 OLD KENNEDY DEVELOPMENT INC.

(in such capacity, the “**Proposal Trustee**”)

-and-

CHARLES ADVISORY SERVICES INC., SOLELY IN ITS CAPACITY AS THE TRUSTEE IN BANKRUPTCY OF SPECTRUM MECHANICAL (2009) LTD.

(in such capacity, the “**Trustee**”)

WHEREAS:

- A. Spectrum Mechanical (2009) Ltd. ("**Spectrum**") commenced an action in the Ontario Superior Court of Justice by the issuance of a Statement of Claim dated January 19, 2017 in Court File No. CV-17-568016 (the "**Action**") against 2358825 Ontario Ltd. ("**Birchmount**") and the following parties: 2358825 Ontario Limited, 2043102 Ontario Limited operating as YYZed Project Management, YYZed Project Management, Trisura Guarantee Insurance Company, MCAP Financial Corporation and HMT Holdings Inc. (collectively with Birchmount, the "**Defendants**"), and filed a related construction lien claim in accordance with the *Construction Act* (the "**Lien**");
- B. CDN\$243,439.68 (the "**Court Funds**") was paid into court as security for the full amount of the Lien and costs related thereto, causing the Lien to be vacated and to become a charge on the Court Funds pursuant to section 44 of the *Construction Act*;
- C. Spectrum was deemed to have filed an assignment in bankruptcy on March 28, 2018 under the *Bankruptcy and Insolvency Act* (the "**BIA**") with Charles Advisory Services Inc. appointed as the Trustee;
- D. KSV Restructuring Inc. (f/k/a KSV Kofman Inc.) was appointed as the Monitor of the Applicants (as defined below) pursuant to an initial order (as amended and restated from time to time, the "**Initial Order**") of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") issued on November 30, 2018 under the *Companies' Creditors Arrangement Act* (the "**CCAA Proceedings**");
- E. KSV Restructuring Inc. was also appointed as Proposal Trustee of three of the Applicants' affiliates, being 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc. and 82 Old Kennedy Development Inc. (collectively, the "**NOI Entities**") in proceedings commenced on October 26, 2018 under the BIA (the "**NOI Proceedings**");
- F. Pursuant to the Initial Order, the Monitor, as "super monitor" was, among other things, directed and empowered to cause the Applicants (as defined below) to perform such functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Applicants in dealing with the Property (as defined in the Initial Order);
- G. On October 22, 2019, the Court granted an order (the "**Claims Procedure Order**") approving a procedure for the identification, delivery and determination of Claims (as defined in the Claims Procedure Order) against Birchmount, 3310 Kingston Development Inc., 1296 Kennedy Development Inc., 1326 Wilson Development Inc., 5507 River Development Inc., 4439 John Development Inc., 250 Danforth Development Inc., 159 Carrville Development Inc., 169 Carrville Development Inc., 189 Carrville Development Inc., 27 Anglin Development Inc., 29 Anglin Development Inc. (collectively, the "**Applicants**"), the NOI Entities (together with the Applicants, the "**Forme Group**"), Yuan (Mike) Hua Wang, 101 Columbia Development Inc., 186 Old Kennedy Development Inc., 19 Turff Development Inc., 22 Old Kennedy Development Inc., 31 Victory Development Inc., 35 Thelma Development Inc., 376 Derry Development Inc., 390 Derry Development Inc., 4 Don Hillock Development Inc., 4208 Kingston Development Inc., 4550 Steeles Development Inc., 7397 Islington Development Inc., 9500 Dufferin Development Inc. and 2495393 Ontario Inc.;

- H. Neither Spectrum nor the Trustee filed a Proof of Claim (as defined in the Claims Procedure Order) in respect of the Action on or prior to the Claims Bar Date (as defined in the Claims Procedure Order);
- I. The Monitor, the Proposal Trustee and the Forme Group, on the one hand, and the Trustee, on the other hand, wish to resolve all of the known and unknown facts and issues in dispute amongst them in respect to all of the known and unknown Claims that have been or could be commenced or asserted by the Trustee against the Forme Group or the Defendants and all known and unknown claims that have been or could be commenced or asserted by the Trustee against the Monitor or the Proposal Trustee, whether in the Action or in a separate claim or proceeding, including, without limitation, the CCAA Proceedings and the NOI Proceedings, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action;
- J. In that regard, the Monitor and the Proposal Trustee have agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto), arrange for payment directly out of Court to the Trustee, or as it may direct, the all-inclusive sum of one hundred twenty-one thousand seven hundred twenty dollars in lawful Canadian currency (CDN\$121,720.00) (the “**Settlement Funds**”) from the Court Funds;
- K. Having received inspector approval pursuant to subsection 30(1) of the BIA, the Trustee has agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto):
- i. accept the Settlement Funds in full and final satisfaction of the Action and any other potential Claims and proceedings against the Forme Group or the Defendants and any other potential claims and proceedings against the Monitor or the Proposal Trustee;
 - ii. discontinue the Action as against the Defendants on a strictly with prejudice, without costs basis;
 - iii. refrain from commencing or continuing Claims or proceedings against the Forme Group and/or the Defendants;
 - iv. refrain from commencing or continuing claims or proceedings against the Monitor or the Proposal Trustee;
 - v. fully and finally release the Forme Group, the Defendants, the Monitor and the Proposal Trustee; and
 - vi. provide cooperation to the Monitor and the Proposal Trustee in connection with having the Settlement Funds paid out of court to the Trustee and the remainder of the Court Funds thereafter, paid out of court to the Monitor.

NOW THEREFORE in consideration of the promises set forth herein, the mutual covenants and agreements contained herein, and for further and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

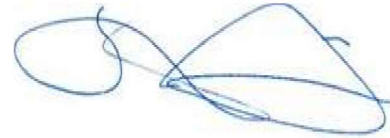
1. The above recitals are true and accurate, and form part of this Agreement together with the Schedules attached hereto.
2. The claims asserted or that could be asserted in the Action constitute "Claims" as that term is defined in the Claims Procedure Order.
3. The Monitor and the Proposal Trustee shall apply to the Court for, and recommend, an order approving and giving full effect to this Agreement, including all of the Schedules attached hereto (the "**Order**"). The Order shall include language substantially in the form of the draft language attached hereto as **Schedule "B"**. In the event the Court declines to issue the Order, this Agreement, including the Schedules attached hereto, shall be null and void and of no further force or effect.
4. At the same time as the Monitor and the Proposal Trustee apply for the Order, the Trustee shall apply to the Court in Spectrum's proceedings under the BIA, for, and recommend, an order approving and giving full effect to this Agreement, including all of the Schedules attached hereto, in form and substance satisfactory to the Monitor and the Proposal Trustee (the "**BIA Order**"). In the event the Court declines to issue the BIA Order, this Agreement, including the Schedules attached hereto, shall be null and void and of no further force or effect.
5. Prior to the issuance of the Order, the Trustee shall provide the Monitor and the Proposal Trustee with an executed full and final release substantially in the form attached hereto as **Schedule "A"** (the "**Full and Final Release**"), which shall be held in escrow by the Monitor and the Proposal Trustee, and not released, unless and until the Order and the BIA Order are issued by the Court.
6. As soon as reasonably possible following the issuance of the Order and the BIA Order, the Monitor, the Proposal Trustee and the Trustee shall take all reasonable steps to have the Settlement Funds paid out of court to the Trustee and the remainder of the Court Funds paid out of court to the Monitor, including by obtaining an order to that effect pursuant to section 44(5) of the *Construction Act*.
7. As soon as reasonably possible following the issuance of the Order and the BIA Order, and, if possible, in conjunction with obtaining the order releasing the Court Funds, the Trustee shall, with the consent of the Monitor to a limited lifting of the stay of proceedings afforded to the Applicants in the CCAA Proceedings, discontinue the Action as against the Defendants on a strictly with prejudice and without costs basis.
8. This Agreement is entered into for the purposes of settlement and compromise only. This Agreement will not in any way be construed as an admission by any party, and the parties hereto each specifically disclaim any liability in connection with this Agreement and the Action.
9. The parties to this Agreement hereby declare, represent and warrant that they have consulted with, and been advised by, independent legal counsel with respect to the terms of the settlement set forth herein, that they have read and fully understand all of the terms and consequences of this Agreement, including all of the Schedules attached hereto, and that they enter into this Agreement freely and voluntarily, without coercion or duress, and without reliance upon any representation, warranty, condition or agreement, whether written or oral, other than as expressly set out or referred to herein.

10. The parties to this Agreement shall execute all documents and take all steps as are necessary and reasonable to accomplish the objectives of this Agreement, including its Schedules, and give effect thereto.
11. This Agreement may not be altered, amended or modified except by written agreement of the parties to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Any dispute arising out of or in connection with this Agreement shall be exclusively and finally determined by the Court.
12. The terms of this Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors, assigns, executors, administrators, affiliates, parents, subsidiaries, partners, officers, directors, managers, employees, stakeholders, legal or personal representatives, insurers and predecessors, as applicable, as well as the Forme Group's respective heirs, successors, assigns, executors, administrators, affiliates, parents, subsidiaries, partners, officers, directors, managers, employees, stakeholders, legal or personal representatives, insurers and predecessors, as applicable.
13. This Agreement, including the Schedules attached hereto, constitutes the entire agreement among the parties, and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.
14. This Agreement, including the Schedules attached hereto, may be executed in counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

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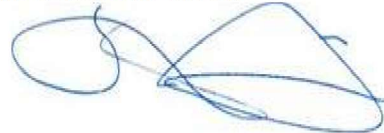
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective this 11th day of February, 2021, notwithstanding the actual date of execution.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS
THE COURT-APPOINTED
MONITOR OF 2358825
ONTARIO LTD., 3310
KINGSTON DEVELOPMENT
INC., 1296 KENNEDY
DEVELOPMENT INC., 1326
WILSON DEVELOPMENT INC.,
5507 RIVER DEVELOPMENT
INC., 4439 JOHN
DEVELOPMENT INC., 250
DANFORTH DEVELOPMENT
INC., 159 CARRVILLE
DEVELOPMENT INC., 169
CARRVILLE DEVELOPMENT
INC., 189 CARRVILLE
DEVELOPMENT INC., 27
ANGLIN DEVELOPMENT INC.,
29 ANGLIN DEVELOPMENT
INC.**



Name: David Sieradzki
Title: Managing Director

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS
THE PROPOSAL TRUSTEE OF
58 OLD KENNEDY
DEVELOPMENT INC., 76 OLD
KENNEDY DEVELOPMENT
INC., AND 82 OLD KENNEDY
DEVELOPMENT INC.**



Name: David Sieradzki
Title: Managing Director

**CHARLES ADVISORY SERVICES
INC., SOLELY IN ITS CAPACITY AS
THE TRUSTEE IN BANKRUPTCY OF
SPECTRUM MECHANICAL (2009)
LTD.**



Name: Robert Charles
Title: President.

SCHEDULE "A"

FORM OF FULL AND FINAL RELEASE

WHEREAS this is a mutual Full and Final Release between:

KSV Restructuring Inc., solely in its capacity as the Court-appointed Monitor of 2358825 Ontario Ltd. (in such capacity, the "Monitor")

-and-

KSV Restructuring Inc., solely in its capacity as the Proposal Trustee of 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., and 82 Old Kennedy Development Inc. (in such capacity, the "Proposal Trustee")

-and-

Charles Advisory Services Inc., solely in its capacity as the Trustee in bankruptcy of Spectrum Mechanical (2009) Ltd. (in such capacity, the "Trustee", and together with the Monitor and the Proposal Trustee, the "Parties" and, individually, a "Party")

relating to: (1) the proceedings commenced by Spectrum Mechanical (2009) Ltd. in the Ontario Superior Court of Justice in Toronto bearing Court File No. CV-17-568016 (the "Action") against 2358825 Ontario Ltd. ("Birchmount") and 2358825 Ontario Limited, 2043102 Ontario Limited operating as YYZed Project Management, YYZed Project Management, Trisura Guarantee Insurance Company, MCAP Financial Corporation and HMT Holdings Inc. (collectively with Birchmount, the "Defendants"); (2) all of the known and unknown facts and issues in dispute amongst the Trustee, the Forme Group (as defined below), the Defendants, the Monitor and the Proposal Trustee, all of the known and unknown Claims (as defined below) that have been or could be commenced or asserted by the Trustee against the Forme Group and all of the known and unknown claims that have been or could be commenced or asserted by the Trustee against the Monitor or the Proposal Trustee, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action, and (3) facts and issues arising from or relating to: (i) the real estate development projects of Birchmount, 3310 Kingston Development Inc., 1296 Kennedy Development Inc., 1326 Wilson Development Inc., 5507 River Development Inc., 4439 John Development Inc., 250 Danforth Development Inc., 159 Carrville Development Inc., 169 Carrville Development Inc., 189 Carrville Development Inc., 27 Anglin Development Inc., 29 Anglin Development Inc., 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., 82 Old Kennedy Development Inc. (collectively, the "Forme Group"); (ii) Yuan (Mike) Hua Wang; and (iii) 101 Columbia Development Inc., 186 Old Kennedy Development Inc., 19 Turff Development Inc., 22 Old Kennedy Development Inc., 31 Victory Development Inc., 35 Thelma Development Inc., 376 Derry Development Inc., 390 Derry Development Inc., 4 Don Hillock Development Inc., 4208 Kingston Development Inc., 4550 Steeles Development Inc., 7397 Islington Development Inc., 9500 Dufferin Development Inc. and 2495393 Ontario Inc. (collectively, the "Released Matters");

AND WHEREAS the Monitor, the Proposal Trustee and the Forme Group, on the one hand, and the Trustee, on the other hand, wish to fully and finally resolve and settle the Released Matters and have agreed to release each other from any and all manners of claims relating to the Released

Matters, subject to the terms and conditions of the Settlement Agreement to which this Full and Final Release is attached as **Schedule “A”**;

NOW THEREFORE in consideration of the mutual covenants contained in this Full and Final Release and the terms set out in the Settlement Agreement to which this Full and Final Release is attached as **Schedule “A”**, and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged by the Parties:

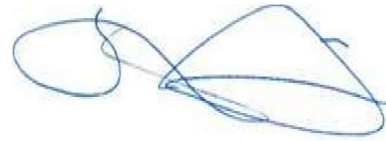
1. The recitals set out above are true and accurate, and form part of this Full and Final Release.
2. The Monitor, the Proposal Trustee and the Forme Group, on the one hand, and the Trustee, on the other, hereby fully and forever release, remise, acquit and discharge each other and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, privies, officers, directors, employees, members, servants, agents and partners, from any and all “Claims” as that term is defined in paragraph 2(e) of the Claims Procedure Order of Justice Hailey dated October 22, 2019 bearing Court File No. CV-18-608313-00CL arising out of or in any way relating to the Released Matters (the “**Forme Released Claims**”), provided, however, that nothing in this Full and Final Release shall in any way release or affect, or shall be considered, construed or deemed to release or affect any of the Parties’ rights or obligations under the Settlement Agreement.
3. The Monitor and the Proposal Trustee on the one hand, and the Trustee on the other, hereby fully and forever release, remise, acquit and discharge each other and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, privies, officers, directors, employees, members, servants, agents and partners, from any and all manner of actions, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues and liabilities of any nature whatsoever, whether joint or several, legal, contractual, statutory, equitable or otherwise, that now exist, have existed or may exist, arising out of or in any way relating to the Released Matters (collectively with the Forme Released Claims, the “**Released Claims**”), provided, however, that nothing in this Full and Final Release shall in any way release or affect, or shall be considered, construed or deemed to release or affect any of the Parties’ rights or obligations under the Settlement Agreement.
4. Without limiting the generality of the foregoing, the Parties declare that the intent of this Full and Final Release is to conclude all issues in respect of, relating to or arising out of the Released Claims and it is understood and agreed that this Full and Final Release is intended to cover, and does cover, not only all known injuries, losses and damages in respect of the Released Claims, but also injuries, losses and damages in respect of the Released Claims not now known or anticipated but which may later be discovered, including all the effects and consequences thereof.
5. The Parties each covenant and agree that this Full and Final Release shall be binding upon and shall enure to the benefit of their respective heirs, successors, assigns, executors, administrators, affiliates, parents, subsidiaries, partners, officers, directors, managers, employees, stakeholders, legal or personal representatives, insurers and predecessors, as applicable, as well as the Forme Group’s respective heirs, successors, assigns, executors, administrators, affiliates, parents, subsidiaries, partners, officers, directors, managers, employees, stakeholders, legal or personal representatives, insurers and predecessors, as applicable.

6. The Parties understand, acknowledge and agree that this Full and Final Release shall be immediately, unconditionally, and irrevocably effective upon the issuance of a court order approving the settlement as contemplated under the terms of the Settlement Agreement.
7. The Parties agree that this Full and Final Release shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada as applicable therein. Any dispute arising from or relating to the interpretation, application or enforcement of this Full and Final Release shall be exclusively within the jurisdiction of the Ontario Superior Court of Justice (Commercial List), and the Parties hereby irrevocably attorn to the exclusive jurisdiction of such Court with respect to any and all matters covered by, or in any way relating to, this Full and Final Release.
8. The Parties each covenant and agree that each part and provision of this Full and Final Release is distinct and severable and if, in any jurisdiction, any part or provision of this Full and Final Release or its application to any Party or circumstance is restricted, prohibited or unenforceable, for public policy reasons or otherwise, that that part or provision shall be interpreted in a manner so as to not make it unenforceable at law, but if such interpretation is not possible, the Parties agree that the part or provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining parts and provisions hereof and without affecting the validity or enforceability of such part or provision in any other jurisdiction or its application to other parties or circumstances.
9. The Parties each hereby expressly acknowledge, declare and agree that they have had an opportunity to fully review this Full and Final Release and they have consulted with independent legal counsel. The Parties each acknowledge, declare and agree that they fully understand the meaning and effect of each paragraph of this Full and Final Release and freely and voluntarily agree to its terms for the purpose of making full and final compromise, adjustment and settlement of the Released Matters. The Parties each further expressly acknowledge, declare and agree that there is no condition, express or implied, or collateral agreement affecting their respective abilities to enter into this Full and Final Release, other than those set out in the Settlement Agreement to which this Full and Final Release is attached. The Parties further acknowledge and agree that any statute, case law, or rule of interpretation or construction that would or might cause any part or provision of this Full and Final Release to be construed against the drafters of this Full and Final Release shall be of no force or effect.
10. The Parties each agree that this Full and Final Release may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

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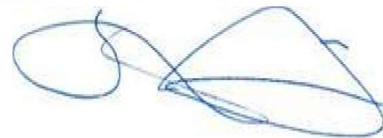
The parties hereto have duly executed this Full and Final Release effective this 11th day of February, 2021, notwithstanding the actual date of execution:

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS
THE COURT-APPOINTED
MONITOR OF 2358825
ONTARIO LTD., 3310
KINGSTON DEVELOPMENT
INC., 1296 KENNEDY
DEVELOPMENT INC., 1326
WILSON DEVELOPMENT INC.,
5507 RIVER DEVELOPMENT
INC., 4439 JOHN
DEVELOPMENT INC., 250
DANFORTH DEVELOPMENT
INC., 159 CARRVILLE
DEVELOPMENT INC., 169
CARRVILLE DEVELOPMENT
INC., 189 CARRVILLE
DEVELOPMENT INC., 27
ANGLIN DEVELOPMENT INC.,
29 ANGLIN DEVELOPMENT
INC.**



Name: David Sieradzki
Title: Managing Director

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS
THE PROPOSAL TRUSTEE OF
58 OLD KENNEDY
DEVELOPMENT INC., 76 OLD
KENNEDY DEVELOPMENT
INC., AND 82 OLD KENNEDY
DEVELOPMENT INC.**



Name: David Sieradzki
Title: Managing Director

**CHARLES ADVISORY SERVICES
INC., SOLELY IN ITS CAPACITY AS
THE TRUSTEE IN BANKRUPTCY OF
SPECTRUM MECHANICAL (2009)
LTD.**



Name: Robert Charles
Title: President

SCHEDULE "B"

FORM OF LANGUAGE TO BE INCORPORATED INTO DRAFT ORDER

THIS MOTION, made by KSV Restructuring Inc. ("KSV"), solely in its capacity as Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") in their proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and in its capacity as the proposal trustee (in such capacity, the "**Proposal Trustee**") of 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., and 82 Old Kennedy Development Inc. (collectively, the "**NOI Entities**") in their proceedings (the "**Proposal Proceedings**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") for an order, *inter alia*: (i) approving and giving effect to the Settlement Agreement dated February 11, 2021, and all schedules attached thereto including the Full and Final Release (collectively, the "**Agreement**") among the Monitor, the Proposal Trustee and Charles Advisory Services Inc., solely in its capacity as the trustee in bankruptcy of Spectrum Mechanical (2009) Ltd. (in such capacity, the "**Trustee**"), subject in all cases to the terms, conditions and exceptions provided in the Agreement; and (ii) authorizing and directing the Monitor to take any and all steps necessary to give effect to the Agreement, was heard this day via videoconference;

ON READING the Notice of Motion and the • Report of the Monitor dated and the Report of the Proposal Trustee dated •, 2021 and the exhibits thereto, and on hearing the submissions of counsel for the Monitor and the Trustee, and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of • sworn on •, 2021;

1. **THIS COURT ORDERS** that, to the extent necessary, the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the settlement, mutual releases and other matters contemplated by the Agreement are hereby approved, that the Monitor and the Proposal Trustee are hereby directed and empowered, *nunc pro tunc*, to execute and deliver the Agreement on behalf of the Applicants and the NOI Entities, and that such execution is approved. The Monitor and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of such settlement and mutual releases.

3. **THIS COURT ORDERS AND DECLARES** that the Monitor, the Proposal Trustee and the Forme Group (as defined in the Agreement), as well as the Trustee and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, insurers, privies, officers, directors, employees, members, servants, agents and partners, are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all "Claims" as that term is defined in paragraph 2(e) of the Claims Procedure Order of Justice Hailey dated October 22, 2019 bearing Court File No. CV-18-608313-00CL arising out of or in any way relating to the Released Matters (as defined below).
4. **THIS COURT ORDERS AND DECLARES** that the Monitor, the Proposal Trustee and the Trustee and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, insurers, privies, officers, directors, employees, members, servants, agents and partners, are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all manner of actions, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues and liabilities of any nature whatsoever, whether joint or several, legal, contractual, statutory, equitable or otherwise, that now exist, have existed or may exist, arising out of or in any way relating to the Released Matters.
5. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the "Released Matters" means, collectively: (1) the proceedings commenced by Spectrum Mechanical (2009) Ltd. in the Ontario Superior Court of Justice in Toronto bearing Court File No. CV-17-568016 (the "Action") against 2358825 Ontario Ltd., 2358825 Ontario Limited, 2043102 Ontario Limited operating as YYZed Project Management, YYZed Project Management, Trisura Guarantee Insurance Company, MCAP Financial Corporation and HMT Holdings Inc. (collectively, the "Defendants"); (2) all of the known and unknown facts and issues in dispute amongst the Trustee, the Forme Group, the Defendants, the Monitor and the Proposal Trustee, all of the known and unknown Claims that have been or could be commenced or asserted by the Trustee against the Forme Group and all of the known and unknown claims that have been or could be commenced or asserted by the Trustee against the Monitor or the Proposal Trustee, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action, and (3) facts and issues arising from or relating to (i) the Forme Group; (ii) Yuan (Mike) Hua Wang; and 101 Columbia Development Inc., 186 Old Kennedy Development Inc., 19 Turff Development Inc., 22 Old

Kennedy Development Inc., 31 Victory Development Inc., 35 Thelma Development Inc., 376 Derry Development Inc., 390 Derry Development Inc., 4 Don Hillock Development Inc., 4208 Kingston Development Inc., 4550 Steeles Development Inc., 7397 Islington Development Inc., 9500 Dufferin Development Inc. and 2495393 Ontario Inc.

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

- (a) the pendency of the CCAA Proceedings;
- (b) the pendency of the Proposal Proceedings;
- (c) the pendency of the Action;
- (d) any applications for any bankruptcy order now or hereafter issued pursuant to the BIA in respect of one or more of any of the Defendants, the Applicants or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the Identified Parties.

the payment to the Trustee, or as it may direct, of the Settlement Funds (as defined in the Agreement) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA at any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 15 of the Initial Order) shall be and is hereby lifted for the sole purpose of authorizing and permitting the Trustee to:

- (a) discontinue the Action as against the Defendants; and
- (b) take whatever steps are necessary to comply with its obligations under the Agreement.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor or the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor

or the Proposal Trustee, as officers of this Court, as may be necessary or desirable to give effect to this order or to assist the Monitor or the Proposal Trustee, the and their respective agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that the Monitor or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers, duties and obligations under the Agreement.

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 OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO (the "Applicants")

Estate No. 31-2436538

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

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

Proceedings Commenced in Toronto

ORDER

BENNETT JONES LLP
3400 First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4
Sean H. Zweig (LSO #573071)
Tel: (416) 777-6253
Fax: (416) 863-1716

Aiden Nelms (LSO#74170S)
Tel:(416) 777-4642
Fax: (416) 863-1716
Counsel to KSV Restructuring Inc., solely in its capacity as Court-appointed monitor and proposal trustee, and not in its personal capacity

TAB 5

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

THE HONOURABLE MR.) THURSDAY, THE 25th
)
JUSTICE HAINEY) DAY OF FEBRUARY, 2021

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 OTHER COMPANIES LISTED ON SCHEDULE "A"
HERETO (the "Applicants")

APPLICATION UNDER THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Estate File No.: 31-2436568

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

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

ORDER

THIS MOTION, made by KSV Restructuring Inc. ("**KSV**"), solely in its capacity as Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") in their proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and in its capacity as the proposal trustee (in such capacity, the "**Proposal Trustee**") of 58 Old Kennedy Development Inc., 76 Old Kenned Development Inc.,

and 82 Old Kennedy Development Inc. (collectively, the “**NOI Entities**”) in their proceedings (the “**Proposal Proceedings**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) for an order, *inter alia*: (i) approving and giving effect to the Settlement Agreement attached hereto as Schedule “B” dated February 3, 2021, and all schedules attached thereto including the Full and Final Release (collectively, the “**Agreement**”) among the Monitor, the Proposal Trustee and Lido Construction Inc. (“**Lido**”), subject in all cases to the terms, conditions and exceptions provided in the Agreement; and (ii) authorizing and directing the Monitor to take any and all steps necessary to give effect to the Agreement, was heard this day via videoconference;

ON READING the Notice of Motion and the Sixteenth Report of the Monitor and the Twelfth Report of the Proposal Trustee dated February 18, 2021 and the exhibits thereto, and on hearing the submissions of counsel for the Monitor and Lido, and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of Aiden Nelms, sworn;

1. **THIS COURT ORDERS** that, to the extent necessary, the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the settlement, mutual releases and other matters contemplated by the Agreement are hereby approved, that the Monitor and the Proposal Trustee are hereby directed and empowered, *nunc pro tunc*, to execute and deliver the Agreement on behalf of the Applicants and the NOI Entities, and that such execution is approved. The Monitor and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of such settlement and mutual releases.

3. **THIS COURT ORDERS** that pursuant to subsection 44(5) of the *Construction Act*, R.S.O. 1990, c. C.30, as amended and Rule 72.03(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the “**Rules**”) (i) CDN\$63,103.00 shall be paid from the CDN\$96,838.18 that was paid into court (the “**Court Funds**”) with Court File No.: CV-16-00564598 as security for the full amount of the construction lien filed by Lido and the costs related thereto in connection

with the Lien (as defined below), to Lido or Hammond Flesias in Trust, and (ii) the entirety of the remainder of the Court Funds thereafter shall be paid to the Monitor. For the purposes of this Order, Rule 72.03(2)(c)(ii) of the Rules shall be deemed to have been complied with.

4. **THIS COURT ORDERS AND DECLARES** that the Monitor, the Proposal Trustee and the Forme Group (as defined in the Agreement), as well as Lido and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, insurers, privies, officers, directors, employees, members, servants, agents and partners, are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all “Claims” as that term is defined in paragraph 2(e) of the Claims Procedure Order of Justice Hainey dated October 22, 2019 bearing Court File No. CV-18-608313-00CL arising out of or in any way relating to the Released Matters (as defined below).

5. **THIS COURT ORDERS AND DECLARES** that the Monitor, the Proposal Trustee and Lido and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, insurers, privies, officers, directors, employees, members, servants, agents and partners, are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all manner of actions, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues and liabilities of any nature whatsoever, whether joint or several, legal, contractual, statutory, equitable or otherwise, that now exist, have existed or may exist, arising out of or in any way relating to the Released Matters.

6. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the “Released Matters” means, collectively: (1) the construction lien registered as against the properties municipally known as 1483 Birchmount Road, Toronto, Ontario and 1485 Birchmount Road, Toronto, Ontario on September 28, 2016, bearing Instrument Nos.: AT4355774 and AT4363572 in respect of 2358825 Ontario Ltd. (“Birchmount”) and funds in the amount of \$96,838.18 posted with the Accountant for the Ontario Superior Court of Justice an assigned Court File No.: CV-16-00564589 (the “Lien”); (2) all of the known and unknown facts and issues in dispute amongst Lido, the Forme Group, the Monitor and the Proposal Trustee, all of the known and unknown Claims that have been or could be commenced or asserted by Lido against the Forme

Group and all of the known and unknown claims that have been or could be commenced or asserted by Lido against the Monitor or the Proposal Trustee, whether in respect to the Lien or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, with respect to the Lien, and (3) facts and issues arising from or relating to: (i) the Forme Group; (ii) Yuan (Mike) Hua Wang; and (iii) 101 Columbia Development Inc., 186 Old Kennedy Development Inc., 19 Turff Development Inc., 22 Old Kennedy Development Inc., 31 Victory Development Inc., 35 Thelma Development Inc., 376 Derry Development Inc., 390 Derry Development Inc., 4 Don Hillock Development Inc., 4208 Kingston Development Inc., 4550 Steeles Development Inc., 7397 Islington Development Inc., 9500 Dufferin Development Inc. and 2495393 Ontario Inc.

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

- (a) the pendency of the CCAA Proceedings;
- (b) the pendency of the Proposal Proceedings;
- (c) any applications for any bankruptcy order now or hereafter issued pursuant to the BIA in respect of one or more of any of the Applicants or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (d) any assignment in bankruptcy made in respect of any of the Identified Parties.

the payment to Lido, or as it may direct, of the Settlement Funds (as defined in the Agreement) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA at any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 15 of the Initial Order) shall be and is hereby lifted for the sole purpose of authorizing and permitting Lido to take whatever steps are necessary to comply with its obligations under the Agreement.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor or the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor or the Proposal Trustee, as officers of this Court, as may be necessary or desirable to give effect to this order or to assist the Monitor or the Proposal Trustee, the and their respective agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that the Monitor or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers, duties and obligations under the Agreement.

SCHEDULE "A"
APPLICANTS

3310 Kingston Development Inc.

1296 Kennedy Development Inc.

1326 Wilson Development Inc.

5507 River Development Inc.

4439 John Development Inc.

2358825 Ontario Ltd.

250 Danforth Development Inc.

159 Carrville Development Inc.

169 Carrville Development Inc.

189 Carrville Development Inc.

27 Anglin Development Inc.

29 Anglin Development Inc.

SCHEDULE "B"
SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT, DECLARATIONS AND FULL AND FINAL RELEASE

THIS AGREEMENT, effective this 3rd day of February, 2021

AMONGST:

KSV RESTRUCTURING INC., SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED MONITOR OF 2358825 ONTARIO LTD., 3310 KINGSTON DEVELOPMENT INC., 1296 KENNEDY DEVELOPMENT INC., 1326 WILSON DEVELOPMENT INC., 5507 RIVER DEVELOPMENT INC., 4439 JOHN DEVELOPMENT INC., 250 DANFORTH DEVELOPMENT INC., 159 CARRVILLE DEVELOPMENT INC., 169 CARRVILLE DEVELOPMENT INC., 189 CARRVILLE DEVELOPMENT INC., 27 ANGLIN DEVELOPMENT INC., 29 ANGLIN DEVELOPMENT INC.

(in such capacity, the “**Monitor**”)

-and-

KSV RESTRUCTURING INC., SOLELY IN ITS CAPACITY AS THE PROPOSAL TRUSTEE OF 58 OLD KENNEDY DEVELOPMENT INC., 76 OLD KENNEDY DEVELOPMENT INC., AND 82 OLD KENNEDY DEVELOPMENT INC.

(in such capacity, the “**Proposal Trustee**”)

-and-

LIDO CONSTRUCTION INC.

(“**Lido**”)

WHEREAS:

- A. Lido Construction Inc. registered a construction lien as against the properties municipally known as 1483 Birchmount Road, Toronto, Ontario and 1485 Birchmount Road, Toronto, Ontario on September 28, 2016, bearing Instrument Nos.: AT4355774 and AT4363572 in respect of 2358825 Ontario Ltd. (“**Birchmount**”) in accordance with the *Construction Lien Act* (the “**Lien**”);
- B. The amount of CDN\$96,838.18 (the “**Court Funds**”) was paid into court as security for the full amount of the Lien and costs related thereto, causing the Lien to be vacated and to become a charge on the Court Funds pursuant to section 44 of the *Construction Lien Act*;
- C. The Court Funds were posted with the Accountant for the Ontario Superior Court and assigned Court File No.: CV-16-00564589;
- D. KSV Restructuring Inc. (f/k/a KSV Kofman Inc.) was appointed as the Monitor of the Applicants (as defined below) pursuant to an initial order (as amended and restated from time to time, the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on November 30, 2018 under the *Companies’ Creditors Arrangement Act* (the “**CCA Proceedings**”);
- E. KSV Restructuring Inc. was also appointed as Proposal Trustee of three of the Applicants’ affiliates, being 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc. and 82 Old Kennedy Development Inc. (collectively, the “**NOI Entities**”) in proceedings commenced on October 26, 2018 under the *Bankruptcy and Insolvency Act* (the “**NOI Proceedings**”);
- F. Pursuant to the Initial Order, the Monitor, as “super monitor” was, among other things, directed and empowered to cause the Applicants (as defined below) to perform such functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Applicants in dealing with the Property (as defined in the Initial Order);
- G. On October 22, 2019, the Court granted an order (the “**Claims Procedure Order**”) approving a procedure for the identification, delivery and determination of Claims (as defined in the Claims Procedure Order) against Birchmount, 3310 Kingston Development Inc., 1296 Kennedy Development Inc., 1326 Wilson Development Inc., 5507 River Development Inc., 4439 John Development Inc., 250 Danforth Development Inc., 159 Carrville Development Inc., 169 Carrville Development Inc., 189 Carrville Development Inc., 27 Anglin Development Inc., 29 Anglin Development Inc. (collectively, the “**Applicants**”), the NOI Entities (together with the Applicants, the “**Forme Group**”), Yuan (Mike) Hua Wang, 101 Columbia Development Inc., 186 Old Kennedy Development Inc., 19 Turff Development Inc., 22 Old Kennedy Development Inc., 31 Victory Development Inc., 35 Thelma Development Inc., 376 Derry Development Inc., 390 Derry Development Inc., 4 Don Hillock Development Inc., 4208 Kingston Development Inc., 4550 Steeles Development Inc., 7397 Islington Development Inc., 9500 Dufferin Development Inc. and 2495393 Ontario Inc.;
- H. Lido did not file a Proof of Claim (as defined in the Claims Procedure Order) in respect of the Lien on or prior to the Claims Bar Date (as defined in the Claims Procedure Order);

- I. The Monitor, the Proposal Trustee and the Forme Group, on the one hand, and Lido, on the other hand, wish to resolve all of the known and unknown facts and issues in dispute amongst them in respect to all of the known and unknown claims that have been or could be commenced or asserted by Lido against the Forme Group and all known and unknown claims that have been or could be commenced or asserted by Lido against the Monitor or the Proposal Trustee, whether in respect of the Lien or a separate claim or proceeding, including, without limitation, in the CCAA Proceedings and the NOI Proceedings, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, with respect to the Lien;
- J. In that regard, the Monitor and the Proposal Trustee have agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto), arrange for payment directly out of Court to "Hammond Flesias in Trust", lawyers for Lido, the all-inclusive sum of sixty-three thousand one hundred three dollars in lawful Canadian currency (CDN \$63,103.00) (the "**Settlement Funds**") from the Court Funds;
- K. In turn, Lido has agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto):
 - i. accept the Settlement Funds in full and final satisfaction of the Lien and any other potential claims and proceedings against the Forme Group and any other potential claims and proceedings against the Monitor or the Proposal Trustee;
 - ii. discontinue any action/proceeding and/or settle the Lien on a strictly with prejudice, without costs basis;
 - iii. refrain from commencing or continuing Claims or proceedings against the Forme Group;
 - iv. refrain from commencing or continuing claims or proceedings against the Monitor or the Proposal Trustee;
 - v. fully and finally release the Forme Group, the Monitor and the Proposal Trustee; and,
 - vi. provide cooperation to the Monitor and the Proposal Trustee in connection with having the Settlement Funds paid out of court to Hammond Flesias in Trust, lawyers for Lido, and the remainder of the Court Funds thereafter, paid out of court to the Monitor.

NOW THEREFORE in consideration of the promises set forth herein, the mutual covenants and agreements contained herein, and for further and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. The above recitals are true and accurate, and form part of this Agreement together with the Schedules attached hereto.
2. The claims asserted or that could be asserted in respect to the Lien constitute "Claims" as that term is defined in the Claims Procedure Order.

3. The Monitor and the Proposal Trustee shall apply to the Court for, and recommend, an order approving and giving full effect to this Agreement, including all of the Schedules attached hereto (the "**Order**"). The Order shall include language substantially in the form of the draft language attached hereto as **Schedule "B"**. In the event the Court declines to issue the Order, this Agreement, including the Schedules attached hereto, shall be null and void and of no further force or effect.
4. Prior to the issuance of the Order, Lido shall provide the Monitor and the Proposal Trustee with an executed full and final release substantially in the form attached hereto as **Schedule "A"** (the "**Full and Final Release**"), which shall be held in escrow by the Monitor and the Proposal Trustee, and not released, unless and until the Order is issued by the Court.
5. As soon as reasonably possible following the issuance of the Order, the Monitor, the Proposal Trustee and Lido shall take all reasonable steps to have the Settlement Funds paid out of court to Lido and the remainder of the Court Funds paid out of court to the Monitor, including by obtaining an order to that effect pursuant to section 44(5) of the *Construction Act*.
6. This Agreement is entered into for the purposes of settlement and compromise only. This Agreement will not in any way be construed as an admission by any party, and the parties hereto each specifically disclaim any liability in connection with this Agreement and the Lien.
7. The undersigned each agree to execute and deliver such further documents and to take such further actions as may be reasonably required or necessary to effect and carry out the terms of this Agreement, including its Schedules, and give effect thereto.
8. This Agreement, and the rights and obligations created hereunder, cannot be assigned without the prior written consent of the parties hereto.
9. The undersigned agree that this Agreement shall not be effective until it has been signed by all of the parties hereto.
10. The parties to this Agreement hereby declare, represent and warrant that they have consulted with, and been advised by, independent legal counsel with respect to the terms of the settlement set forth herein, that they have read and fully understand all of the terms and consequences of this Agreement, including all of the Schedules attached hereto, and that they enter into this Agreement freely and voluntarily, without coercion or duress, and without reliance upon any representation, warranty, condition or agreement, whether written or oral, other than as expressly set out or referred to herein.
11. This Agreement may not be altered, amended or modified except by written agreement of the parties to this Agreement. This Agreement and the rights, obligations and relations of the undersigned hereunder shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The undersigned hereby irrevocably attorn to the exclusive jurisdiction of the courts of the Province of Ontario. Any dispute arising out of or in connection with this Agreement shall be exclusively and finally determined by the Court.
12. The terms of this Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors, assigns, executors, administrators,

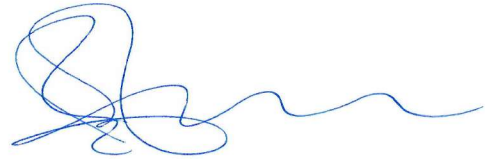
affiliates, parents, subsidiaries, partners, officers, directors, managers, employees, stakeholders, legal or personal representatives, insurers and predecessors, as applicable, as well as the Forme Group's respective heirs, successors, assigns, executors, administrators, affiliates, parents, subsidiaries, partners, officers, directors, managers, employees, stakeholders, legal or personal representatives, insurers and predecessors, as applicable.

13. This Agreement, including the Schedules attached hereto, constitutes the entire agreement among the parties, and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.
14. This Agreement, including the Schedules attached hereto, may be executed in counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

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IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective this 3rd day of February, 2021, notwithstanding the actual date of execution.

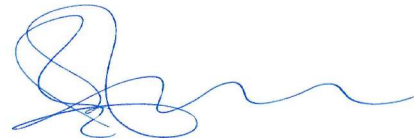
**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS
THE COURT-APPOINTED
MONITOR OF 2358825
ONTARIO LTD., 3310
KINGSTON DEVELOPMENT
INC., 1296 KENNEDY
DEVELOPMENT INC., 1326
WILSON DEVELOPMENT INC.,
5507 RIVER DEVELOPMENT
INC., 4439 JOHN
DEVELOPMENT INC., 250
DANFORTH DEVELOPMENT
INC., 159 CARRVILLE
DEVELOPMENT INC., 169
CARRVILLE DEVELOPMENT
INC., 189 CARRVILLE
DEVELOPMENT INC., 27
ANGLIN DEVELOPMENT INC.,
29 ANGLIN DEVELOPMENT
INC.**



Name: Bobby Kofman

Title: President and Managing Director

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS
THE PROPOSAL TRUSTEE OF
58 OLD KENNEDY
DEVELOPMENT INC., 76 OLD
KENNEDY DEVELOPMENT
INC., AND 82 OLD KENNEDY
DEVELOPMENT INC.**



Name: Bobby Kofman

Title: President and Managing Director

LIDO CONSTRUCTION INC.

A handwritten signature in blue ink, appearing to read "Sonia M. [unclear]". The signature is written in a cursive style and is positioned above a horizontal line.

Name:

Title:

SCHEDULE "A"

FORM OF FULL AND FINAL RELEASE

WHEREAS this is a mutual Full and Final Release between:

KSV Restructuring Inc., solely in its capacity as the Court-appointed Monitor of 2358825 Ontario Ltd. (in such capacity, the "**Monitor**")

-and-

KSV Restructuring Inc., solely in its capacity as the Proposal Trustee of 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., and 82 Old Kennedy Development Inc. (in such capacity, the "**Proposal Trustee**")

-and-

Lido Construction Inc. ("**Lido**", and together with the Monitor and the Proposal Trustee, the "**Parties**" and, individually, a "**Party**")

relating to: (1) the construction lien registered as against the properties municipally known as 1483 Birchmount Road, Toronto, Ontario and 1485 Birchmount Road, Toronto, Ontario on September 28, 2016, bearing Instrument Nos.: AT4355774 and AT4363572 in respect of 2358825 Ontario Ltd. ("**Birchmount**") and funds in the amount of \$96,838.18 posted with the Accountant for the Ontario Superior Court of Justice an assigned Court File No.: CV-16-00564589 (the "**Lien**"); (2) all of the known and unknown facts and issues in dispute amongst Lido, the Forme Group (as defined below), the Monitor and the Proposal Trustee, all of the known and unknown Claims (as defined below) that have been or could be commenced or asserted by Lido against the Forme Group and all of the known and unknown claims that have been or could be commenced or asserted by Lido against the Monitor or the Proposal Trustee, whether in respect to the Lien or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, with respect to the Lien, and (3) facts and issues arising from or relating to: (i) the real estate development projects of Birchmount, 3310 Kingston Development Inc., 1296 Kennedy Development Inc., 1326 Wilson Development Inc., 5507 River Development Inc., 4439 John Development Inc., 250 Danforth Development Inc., 159 Carrville Development Inc., 169 Carrville Development Inc., 189 Carrville Development Inc., 27 Anglin Development Inc., 29 Anglin Development Inc., 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., 82 Old Kennedy Development Inc. (collectively, the "**Forme Group**"); (ii) Yuan (Mike) Hua Wang; and (iii) 101 Columbia Development Inc., 186 Old Kennedy Development Inc., 19 Turff Development Inc., 22 Old Kennedy Development Inc., 31 Victory Development Inc., 35 Thelma Development Inc., 376 Derry Development Inc., 390 Derry Development Inc., 4 Don Hillock Development Inc., 4208 Kingston Development Inc., 4550 Steeles Development Inc., 7397 Islington Development Inc., 9500 Dufferin Development Inc. and 2495393 Ontario Inc. (collectively, the "**Released Matters**");

AND WHEREAS the Monitor, the Proposal Trustee and the Forme Group, on the one hand, and Lido, on the other hand, wish to fully and finally resolve and settle the Released Matters and have agreed to release each other from any and all manners of claims relating to the Released Matters, subject to the terms and conditions of the Settlement Agreement to which this Full and Final Release is attached as **Schedule "A"**;

NOW THEREFORE in consideration of the mutual covenants contained in this Full and Final Release and the terms set out in the Settlement Agreement to which this Full and Final Release is attached as **Schedule "A"**, including, without limitation, the payment of the global amount of CDN\$63,103.00 to "Hammond Flesias, in Trust" as counsel for Lido, and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged by the Parties:

1. The recitals set out above are true and accurate in all material respects, and form part of this Full and Final Release.
2. The Monitor, the Proposal Trustee and the Forme Group, on the one hand, and Lido, on the other, hereby fully and forever release, remise, acquit and discharge each other and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, privies, officers, directors, employees, members, servants, agents and partners, from any and all "Claims" as that term is defined in paragraph 2(e) of the Claims Procedure Order of Justice Haaney dated October 22, 2019 bearing Court File No. CV-18-608313-00CL arising out of or in any way relating to the Released Matters (the "**Forme Released Claims**"), provided, however, that nothing in this Full and Final Release shall in any way release or affect, or shall be considered, construed or deemed to release or affect any of the Parties' rights or obligations under the Settlement Agreement.
3. The Monitor and the Proposal Trustee on the one hand, and Lido on the other, hereby fully and forever release, remise, acquit and discharge each other and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, privies, officers, directors, employees, members, servants, agents and partners, from any and all manner of actions, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues and liabilities of any nature whatsoever, whether joint or several, legal, contractual, statutory, equitable or otherwise, that now exist, have existed or may exist, arising out of or in any way relating to the Released Matters (collectively with the Forme Released Claims, the "**Released Claims**"), provided, however, that nothing in this Full and Final Release shall in any way release or affect, or shall be considered, construed or deemed to release or affect any of the Parties' rights or obligations under the Settlement Agreement.
4. Without limiting the generality of the foregoing, the Parties declare that the intent of this Full and Final Release is to conclude all issues in respect of, relating to or arising out of the Released Claims and it is understood and agreed that this Full and Final Release is intended to cover, and does cover, not only all known injuries, losses and damages in respect of the Released Claims, but also injuries, losses and damages in respect of the Released Claims not now known or anticipated but which may later be discovered, including all the effects and consequences thereof.
5. The Parties hereby specifically covenant and agree not to make any claim or demand, or to commence or maintain any action, suit, claim or proceeding against any person, corporation, the Crown or other legal entity, in or from which any action, suit, claim, demand or proceeding (whether or not valid or ultimately successful) could arise against each other for contribution or indemnity, or otherwise, in respect of any of the Released Claims.
6. The Parties hereby acknowledge that in the event that any of them should make hereafter any claim, demand or complaint or commence or threaten to commence any action or

proceeding, or make any claim against any other of them arising out of, or in any way connected to the Released Claims, this Full and Final Release may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

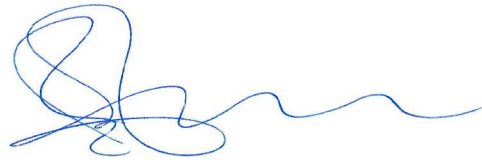
7. The Parties each covenant and agree that this Full and Final Release shall be binding upon and shall enure to the benefit of their respective heirs, successors, assigns, executors, administrators, affiliates, parents, subsidiaries, partners, officers, directors, managers, employees, stakeholders, legal or personal representatives, insurers and predecessors, as applicable, as well as the Forme Group's respective heirs, successors, assigns, executors, administrators, affiliates, parents, subsidiaries, partners, officers, directors, managers, employees, stakeholders, legal or personal representatives, insurers and predecessors, as applicable.
8. The Parties understand, acknowledge and agree that this Full and Final Release shall be immediately, unconditionally, and irrevocably effective upon the issuance of a court order approving the settlement as contemplated under the terms of the Settlement Agreement.
9. The Parties agree that this Full and Final Release shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada as applicable therein. Any dispute arising from or relating to the interpretation, application or enforcement of this Full and Final Release shall be exclusively within the jurisdiction of the Ontario Superior Court of Justice (Commercial List), and the Parties hereby irrevocably attorn to the exclusive jurisdiction of such Court with respect to any and all matters covered by, or in any way relating to, this Full and Final Release.
10. The Parties each covenant and agree that each part and provision of this Full and Final Release is distinct and severable and if, in any jurisdiction, any part or provision of this Full and Final Release or its application to any Party or circumstance is restricted, prohibited or unenforceable, for public policy reasons or otherwise, that that part or provision shall be interpreted in a manner so as to not make it unenforceable at law, but if such interpretation is not possible, the Parties agree that the part or provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining parts and provisions hereof and without affecting the validity or enforceability of such part or provision in any other jurisdiction or its application to other parties or circumstances.
11. The Parties each hereby expressly acknowledge, declare and agree that they have had an opportunity to fully review this Full and Final Release and they have consulted with independent legal counsel. The Parties each acknowledge, declare and agree that they fully understand the meaning and effect of each paragraph of this Full and Final Release and freely and voluntarily agree to its terms for the purpose of making full and final compromise, adjustment and settlement of the Released Matters. The Parties each further expressly acknowledge, declare and agree that there is no condition, express or implied, or collateral agreement affecting their respective abilities to enter into this Full and Final Release, other than those set out in the Settlement Agreement to which this Full and Final Release is attached. The Parties further acknowledge and agree that any statute, case law, or rule of interpretation or construction that would or might cause any part or provision of this Full and Final Release to be construed against the drafters of this Full and Final Release shall be of no force or effect.

12. The Parties agree that the Full and Final Release shall not be effective unless it has been signed by each Party hereto.
13. The Parties each agree that this Full and Final Release may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.
14. The Parties hereby understand and agree that that the aforementioned consideration shall not be deemed to be an admission of liability or responsibility on the part of the Parties, and that any such liability or responsibility is denied.
15. The Parties hereby acknowledge and confirm that nothing in this Full and Final Release shall affect the rights of any Party to make any claim or demand or to commence any action, claim or proceeding against the other in respect of a breach of the terms of settlement.

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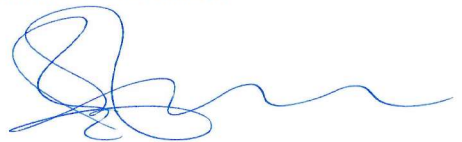
The parties hereto have duly executed this Full and Final Release effective this 3rd day of February, 2021, notwithstanding the actual date of execution:

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS
THE COURT-APPOINTED
MONITOR OF 2358825
ONTARIO LTD., 3310
KINGSTON DEVELOPMENT
INC., 1296 KENNEDY
DEVELOPMENT INC., 1326
WILSON DEVELOPMENT INC.,
5507 RIVER DEVELOPMENT
INC., 4439 JOHN
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CARRVILLE DEVELOPMENT
INC., 189 CARRVILLE
DEVELOPMENT INC., 27
ANGLIN DEVELOPMENT INC.,
29 ANGLIN DEVELOPMENT
INC.**



Name: Bobby Kofman
Title: President and Managing Director

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS
THE PROPOSAL TRUSTEE OF
58 OLD KENNEDY
DEVELOPMENT INC., 76 OLD
KENNEDY DEVELOPMENT
INC., AND 82 OLD KENNEDY
DEVELOPMENT INC.**



Name: Bobby Kofman
Title: President and Managing Director

LIDO CONSTRUCTION INC.

A handwritten signature in blue ink, appearing to read "Sandra Quirk", written over a horizontal line.

Name:

Title:

SCHEDULE "B"

FORM OF LANGUAGE TO BE INCORPORATED INTO DRAFT ORDER

THIS MOTION, made by KSV Restructuring Inc. ("**KSV**"), solely in its capacity as Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") in their proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and in its capacity as the proposal trustee (in such capacity, the "**Proposal Trustee**") of 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., and 82 Old Kennedy Development Inc. (collectively, the "**NOI Entities**") in their proceedings (the "**Proposal Proceedings**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the "**BIA**") for an order, *inter alia*: (i) approving and giving effect to the Settlement Agreement dated February 3, 2021, and all schedules attached thereto including the Full and Final Release (collectively, the "**Agreement**") among the Monitor, the Proposal Trustee and Lido Construction Inc. ("**Lido**"), subject in all cases to the terms, conditions and exceptions provided in the Agreement; and (ii) authorizing and directing the Monitor to take any and all steps necessary to give effect to the Agreement, was heard this day via videoconference;

ON READING the Notice of Motion and the • Report of the Monitor dated and the Report of the Proposal Trustee dated •, 2021 and the exhibits thereto, and on hearing the submissions of counsel for the Monitor and Lido, and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of • sworn on •, 2021;

1. **THIS COURT ORDERS** that, to the extent necessary, the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the settlement, mutual releases and other matters contemplated by the Agreement are hereby approved, that the Monitor and the Proposal Trustee are hereby directed and empowered, *nunc pro tunc*, to execute and deliver the Agreement on behalf of the Applicants and the NOI Entities, and that such execution is approved. The Monitor and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of such settlement and mutual releases.

3. **THIS COURT ORDERS AND DECLARES** that the Monitor, the Proposal Trustee and the Forme Group (as defined in the Agreement), as well as Lido and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, insurers, privies, officers, directors, employees, members, servants, agents and partners, are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all “Claims” as that term is defined in paragraph 2(e) of the Claims Procedure Order of Justice Hainey dated October 22, 2019 bearing Court File No. CV-18-608313-00CL arising out of or in any way relating to the Released Matters (as defined below).
4. **THIS COURT ORDERS AND DECLARES** that the Monitor, the Proposal Trustee and Lido and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, insurers, privies, officers, directors, employees, members, servants, agents and partners, are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all manner of actions, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues and liabilities of any nature whatsoever, whether joint or several, legal, contractual, statutory, equitable or otherwise, that now exist, have existed or may exist, arising out of or in any way relating to the Released Matters.
5. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the “Released Matters” means, collectively: (1) the construction lien registered as against the properties municipally known as 1483 Birchmount Road, Toronto, Ontario and 1485 Birchmount Road, Toronto, Ontario on September 28, 2016, bearing Instrument Nos.: AT4355774 and AT4363572 in respect of 2358825 Ontario Ltd. (“Birchmount”) and funds in the amount of \$96,838.18 posted with the Accountant for the Ontario Superior Court of Justice an assigned Court File No.: CV-16-00564589 (the “Lien”); (2) all of the known and unknown facts and issues in dispute amongst Lido, the Forme Group, the Monitor and the Proposal Trustee, all of the known and unknown Claims that have been or could be commenced or asserted by Lido against the Forme Group and all of the known and unknown claims that have been or could be commenced or asserted by Lido against the Monitor or the Proposal Trustee, whether in respect to the Lien or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, with respect to the Lien, and (3) facts and issues arising from or relating to: (i) the Forme Group; (ii) Yuan (Mike) Hua Wang; and (iii) 101 Columbia Development Inc., 186 Old Kennedy Development Inc., 19 Turff Development Inc., 22 Old Kennedy Development Inc., 31 Victory Development Inc., 35 Thelma Development Inc., 376 Derry

Development Inc., 390 Derry Development Inc., 4 Don Hillock Development Inc., 4208 Kingston Development Inc., 4550 Steeles Development Inc., 7397 Islington Development Inc., 9500 Dufferin Development Inc. and 2495393 Ontario Inc.

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

- (a) the pendency of the CCAA Proceedings;
- (b) the pendency of the Proposal Proceedings;
- (c) any applications for any bankruptcy order now or hereafter issued pursuant to the BIA in respect of one or more of any of the Applicants or any of their respective predecessors, successors or heirs (collectively, the "**Identified Parties**"), and any bankruptcy order issued pursuant to any such applications; and
- (d) any assignment in bankruptcy made in respect of any of the Identified Parties.

the payment to Lido, or as it may direct, of the Settlement Funds (as defined in the Agreement) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA at any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 15 of the Initial Order) shall be and is hereby lifted for the sole purpose of authorizing and permitting Lido to take whatever steps are necessary to comply with its obligations under the Agreement.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor or the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor or the Proposal Trustee, as officers of this Court, as may be necessary or desirable to give effect to this order or to assist the Monitor or the Proposal Trustee, the and their respective agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that the Monitor or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers, duties and obligations under the Agreement.

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 OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO (the "Applicants")

Estate No. 31-2436538

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

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

Proceedings Commenced in Toronto

ORDER

BENNETT JONES LLP
3400 First Canadian Place
P.O. Box 130
Toronto, Ontario M5X 1A4
Sean H. Zweig (LSO #573071)
Tel: (416) 777-6253
Fax: (416) 863-1716

Aiden Nelms (LSO#74170S)
Tel:(416) 777-4642
Fax: (416) 863-1716
Counsel to KSV Restructuring Inc., solely in its capacity as Court-appointed monitor and proposal trustee, and not in its personal capacity

TAB 6

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

THE HONOURABLE MR.) THURSDAY, THE 25th
)
JUSTICE HAINEY) DAY OF FEBRUARY, 2021

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 OTHER COMPANIES LISTED ON SCHEDULE "A"
HERE TO (the "Applicants")

APPLICATION UNDER THE *COMPANIES' CREDITORS
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Estate File No.: 31-2436568

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

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

ORDER

THIS MOTION, made by KSV Restructuring Inc. ("**KSV**"), solely in its capacity as Court-appointed monitor of the Applicants (in such capacity, the "**Monitor**") in their proceedings (the "**CCAA Proceedings**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), and in its capacity as the proposal trustee (in such capacity, the "**Proposal Trustee**") of 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., and 82 Old Kennedy Development Inc. (collectively, the "**NOI Entities**") in their proceedings (the

“**Proposal Proceedings**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) for an order, *inter alia*: (i) approving and giving effect to the Settlement Agreement attached hereto as Schedule “B” dated February 8, 2021, and all schedules attached thereto including the Full and Final Release (collectively, the “**Agreement**”) among the Monitor, the Proposal Trustee and A.C. Concrete Forming Ltd. (“**A.C.**”), subject in all cases to the terms, conditions and exceptions provided in the Agreement; and (ii) authorizing and directing the Monitor to take any and all steps necessary to give effect to the Agreement, was heard this day via videoconference;

ON READING the Notice of Motion and the Sixteenth Report of the Monitor and the Twelfth Report of the Proposal Trustee dated February 18, 2021 and the exhibits thereto, and on hearing the submissions of counsel for the Monitor, and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of Aiden Nelms, sworn;

1. **THIS COURT ORDERS** that, to the extent necessary, the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

2. **THIS COURT ORDERS** that the settlement, mutual releases and other matters contemplated by the Agreement are hereby approved, that the Monitor and the Proposal Trustee are hereby directed and empowered, *nunc pro tunc*, to execute and deliver the Agreement on behalf of the Applicants and the NOI Entities, and that such execution is approved. The Monitor and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of such settlement and mutual releases.

3. **THIS COURT ORDERS** that pursuant to subsection 44(5) of the *Construction Act*, R.S.O. 1990, c. C.30, as amended and Rule 72.03(2) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, as amended (the “**Rules**”) (i) CDN\$154,016.00 shall be paid from the CDN\$308,031.64 that was paid into court (the “**Court Funds**”) with Court File No.: CV-15-00526635 as security for the full amount of the construction lien filed by A.C. and the costs related thereto in connection with the Action (as defined below), to A.C. or as it may direct, and (ii) the entirety of the remainder

of the Court Funds thereafter shall be paid to the Monitor. For the purposes of this Order, Rule 72.03(2)(c)(ii) of the Rules shall be deemed to have been complied with.

4. **THIS COURT ORDERS AND DECLARES** that the Monitor, the Proposal Trustee and the Forme Group (as defined in the Agreement), as well as A.C. and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, insurers, privies, officers, directors, employees, members, servants, agents and partners, are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all “Claims” as that term is defined in paragraph 2(e) of the Claims Procedure Order of Justice Hainey dated October 22, 2019 bearing Court File No. CV-18-608313-00CL (the “**Claims Procedure Order**”) arising out of or in any way relating to the Released Matters (as defined below).

5. **THIS COURT ORDERS AND DECLARES** that the Monitor, the Proposal Trustee and A.C. and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, insurers, privies, officers, directors, employees, members, servants, agents and partners, are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all manner of actions, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues and liabilities of any nature whatsoever, whether joint or several, legal, contractual, statutory, equitable or otherwise, that now exist, have existed or may exist, arising out of or in any way relating to the Released Matters.

6. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the “**Released Matters**” means, collectively: (1) the proceedings commenced by A.C. in the Ontario Superior Court of Justice in Toronto bearing Court File No. CV-15-526710 (the “**Action**”) against 2358825 Ontario Ltd. (“**Birchmount**”) and Vector Financial Services Limited, Trisura Guarantee Insurance Company, and MCAP Financial Corporation (collectively with Birchmount, the “**Defendants**”); (2) all of the known and unknown facts and issues in dispute amongst A.C., the Forme Group, the Defendants, the Monitor and the Proposal Trustee, all of the known and unknown Claims that have been or could be commenced or asserted by A.C. against the Forme Group and all of the known and unknown claims that have been or could be commenced or asserted

by A.C. against the Monitor or the Proposal Trustee, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action, and (3) facts and issues arising from or relating to: (i) the Forme Group; (ii) Yuan (Mike) Hua Wang; (iii) 101 Columbia Development Inc., 186 Old Kennedy Development Inc., 19 Turff Development Inc., 22 Old Kennedy Development Inc., 31 Victory Development Inc., 35 Thelma Development Inc., 376 Derry Development Inc., 390 Derry Development Inc., 4 Don Hillock Development Inc., 4208 Kingston Development Inc., 4550 Steeles Development Inc., 7397 Islington Development Inc., 9500 Dufferin Development Inc. and 2495393 Ontario Inc.; and (iv) the Proof of Claim and Notice of Dispute filed by A.C. pursuant to the Claims Procedure Order.

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

- (a) the pendency of the CCAA Proceedings;
- (b) the pendency of the Proposal Proceedings;
- (c) the pendency of the Action;
- (d) any applications for any bankruptcy order now or hereafter issued pursuant to the BIA in respect of one or more of any of the Defendants, the Applicants or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the Identified Parties.

the payment to A.C., or as it may direct, of the Settlement Funds (as defined in the Agreement) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA at any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

8. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 15 of the Initial Order) shall be and is hereby lifted for the sole purpose of authorizing and permitting A.C. to:

- (a) discontinue the Action as against the Defendants; and

(b) take whatever steps are necessary to comply with its obligations under the Agreement.

9. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor or the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor or the Proposal Trustee, as officers of this Court, as may be necessary or desirable to give effect to this order or to assist the Monitor or the Proposal Trustee, the and their respective agents in carrying out the terms of this Order.

10. **THIS COURT ORDERS** that the Monitor or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers, duties and obligations under the Agreement.

SCHEDULE "A"
APPLICANTS

3310 Kingston Development Inc.

1296 Kennedy Development Inc.

1326 Wilson Development Inc.

5507 River Development Inc.

4439 John Development Inc.

2358825 Ontario Ltd.

250 Danforth Development Inc.

159 Carrville Development Inc.

169 Carrville Development Inc.

189 Carrville Development Inc.

27 Anglin Development Inc.

29 Anglin Development Inc.

SCHEDULE "B"
SETTLEMENT AGREEMENT

SETTLEMENT AGREEMENT, DECLARATIONS AND FULL AND FINAL RELEASE

THIS AGREEMENT, effective this 8th day of February, 2021

AMONGST:

KSV RESTRUCTURING INC., SOLELY IN ITS CAPACITY AS THE COURT-APPOINTED MONITOR OF 2358825 ONTARIO LTD., 3310 KINGSTON DEVELOPMENT INC., 1296 KENNEDY DEVELOPMENT INC., 1326 WILSON DEVELOPMENT INC., 5507 RIVER DEVELOPMENT INC., 4439 JOHN DEVELOPMENT INC., 250 DANFORTH DEVELOPMENT INC., 159 CARRVILLE DEVELOPMENT INC., 169 CARRVILLE DEVELOPMENT INC., 189 CARRVILLE DEVELOPMENT INC., 27 ANGLIN DEVELOPMENT INC., 29 ANGLIN DEVELOPMENT INC.

(in such capacity, the “**Monitor**”)

-and-

KSV RESTRUCTURING INC., SOLELY IN ITS CAPACITY AS THE PROPOSAL TRUSTEE OF 58 OLD KENNEDY DEVELOPMENT INC., 76 OLD KENNEDY DEVELOPMENT INC., AND 82 OLD KENNEDY DEVELOPMENT INC.

(in such capacity, the “**Proposal Trustee**”)

-and-

A.C. CONCRETE FORMING LTD.

(“**A.C.**”)

WHEREAS:

- A. A.C. commenced an action in the Ontario Superior Court of Justice by the issuance of a Statement of Claim dated April 23, 2015 in Court File No. CV-15-526710 (the “**Action**”) against 2358825 Ontario Ltd. (“**Birchmount**”) and the following parties: Vector Financial Services Limited, Trisura Guarantee Insurance Company, and MCAP Financial Corporation (collectively with Birchmount, the “**Defendants**”), and filed a related construction lien claim in accordance with the *Construction Act* bearing Instrument No.: AT3841678 (the “**Lien**”);
- B. In response to the action, Birchmount filed a statement of defence and counterclaim dated May 27, 2015 (the “**Counterclaim**”);
- C. CDN\$308,031.64 (the “**Court Funds**”) was paid into court as security for the full amount of the Lien and costs related thereto, causing the Lien to be vacated and to become a charge on the Court Funds pursuant to section 44 of the *Construction Act*;
- D. KSV Restructuring Inc. (f/k/a KSV Kofman Inc.) was appointed as the Monitor of the Applicants (as defined below) pursuant to an initial order (as amended and restated from time to time, the “**Initial Order**”) of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) issued on November 30, 2018 under the *Companies’ Creditors Arrangement Act* (the “**CCA Proceedings**”);
- E. KSV Restructuring Inc. was also appointed as Proposal Trustee of three of the Applicants’ affiliates, being 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc. and 82 Old Kennedy Development Inc. (collectively, the “**NOI Entities**”) in proceedings commenced on October 26, 2018 under the *Bankruptcy and Insolvency Act* (the “**NOI Proceedings**”);
- F. Pursuant to the Initial Order, the Monitor, as “super monitor” was, among other things, directed and empowered to cause the Applicants (as defined below) to perform such functions or duties as the Monitor considers necessary or desirable in order to facilitate or assist the Applicants in dealing with the Property (as defined in the Initial Order);
- G. On October 22, 2019, the Court granted an order (the “**Claims Procedure Order**”) approving a procedure for the identification, delivery and determination of Claims (as defined in the Claims Procedure Order) against Birchmount, 3310 Kingston Development Inc., 1296 Kennedy Development Inc., 1326 Wilson Development Inc., 5507 River Development Inc., 4439 John Development Inc., 250 Danforth Development Inc., 159 Carrville Development Inc., 169 Carrville Development Inc., 189 Carrville Development Inc., 27 Anglin Development Inc., 29 Anglin Development Inc. (collectively, the “**Applicants**”), the NOI Entities (together with the Applicants, the “**Forme Group**”), Yuan (Mike) Hua Wang (“**Mr. Wang**”), 101 Columbia Development Inc., 186 Old Kennedy Development Inc., 19 Turff Development Inc., 22 Old Kennedy Development Inc., 31 Victory Development Inc., 35 Thelma Development Inc., 376 Derry Development Inc., 390 Derry Development Inc., 4 Don Hillock Development Inc., 4208 Kingston Development Inc., 4550 Steeles Development Inc., 7397 Islington Development Inc., 9500 Dufferin Development Inc. and 2495393 Ontario Inc.;
- H. A.C. filed a Proof of Claim and Notice of Dispute (each as defined in the Claims Procedure Order and together, the “**A.C. Proof of Claim**”) in respect of the Action

against Birchmount, Mr. Wang, and the directors and officers of Birchmount (the “D&Os”);

- I. The Monitor, the Proposal Trustee and the Forme Group, on the one hand, and A.C., on the other hand, wish to resolve all of the known and unknown facts and issues in dispute amongst them in respect to all of the known and unknown Claims that have been or could be commenced or asserted by A.C. against the Forme Group, Mr. Wang, the D&Os or the Defendants and all known and unknown claims that have been or could be commenced or asserted by A.C. against the Monitor or the Proposal Trustee, whether in the Action or in a separate claim or proceeding, including, without limitation, the CCAA Proceedings and the NOI Proceedings, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action or the A.C. Proof of Claim;
- J. In that regard, the Monitor and the Proposal Trustee have agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto), arrange for payment directly out of Court to A.C., or as it may direct, the all-inclusive sum of one hundred fifty-four thousand sixteen dollars in lawful Canadian currency (CDN\$154,016.00) (the “Settlement Funds”) from the Court Funds;
- K. In turn, A.C. has agreed to, among other things (and subject to and in accordance with the terms, conditions and exceptions provided in this Agreement, including the Schedules attached hereto):
 - i. accept the Settlement Funds in full and final satisfaction of the Action, the A.C. Proof of Claim and any other potential Claims and proceedings against the Forme Group, Mr. Wang, the D&Os or the Defendants and any other potential claims and proceedings against the Monitor or the Proposal Trustee;
 - ii. discontinue the Action as against the Defendants on a strictly with prejudice, without costs basis;
 - iii. refrain from commencing or continuing Claims or proceedings against the Forme Group, Mr. Wang, the D&Os and/or the Defendants;
 - iv. refrain from commencing or continuing claims or proceedings against the Monitor or the Proposal Trustee;
 - v. fully and finally release the Forme Group, the Defendants, the Monitor and the Proposal Trustee; and
 - vi. provide cooperation to the Monitor and the Proposal Trustee in connection with having the Settlement Funds paid out of court to A.C. and the remainder of the Court Funds thereafter, paid out of court to the Monitor.

NOW THEREFORE in consideration of the promises set forth herein, the mutual covenants and agreements contained herein, and for further and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

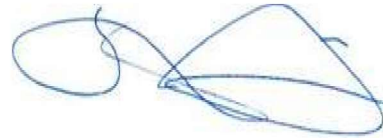
1. The above recitals are true and accurate, and form part of this Agreement together with the Schedules attached hereto.
2. The claims asserted or that could be asserted in the Action constitute “Claims” as that term is defined in the Claims Procedure Order.
3. The Monitor and the Proposal Trustee shall apply to the Court for, and recommend, an order approving and giving full effect to this Agreement, including all of the Schedules attached hereto (the “**Order**”). The Order shall include language substantially in the form of the draft language attached hereto as **Schedule “B”**. In the event the Court declines to issue the Order, this Agreement, including the Schedules attached hereto, shall be null and void and of no further force or effect.
4. Prior to the issuance of the Order, A.C. shall provide the Monitor and the Proposal Trustee with an executed full and final release substantially in the form attached hereto as **Schedule “A”** (the “**Full and Final Release**”), which shall be held in escrow by the Monitor and the Proposal Trustee, and not released, unless and until the Order is issued by the Court.
5. As soon as reasonably possible following the issuance of the Order, the Monitor, the Proposal Trustee and A.C. shall take all reasonable steps to have the Settlement Funds paid out of court to A.C. and the remainder of the Court Funds paid out of court to the Monitor, including by obtaining an order to that effect pursuant to section 44(5) of the *Construction Act*.
6. As soon as reasonably possible following the issuance of the Order, and, if possible, in conjunction with obtaining the order releasing the Court Funds, A.C. shall, with the consent of the Monitor to a limited lifting of the stay of proceedings afforded to the Applicants in the CCAA Proceedings, discontinue the Action as against the Defendants on a strictly with prejudice and without costs basis.
7. As soon as reasonably possible following the issuance of the Order, and, if possible, in conjunction with obtaining the order releasing the Court Funds, the Monitor shall discontinue or cause Birchmount to discontinue the Counterclaim on a strictly with prejudice and without costs basis.
8. This Agreement is entered into for the purposes of settlement and compromise only. This Agreement will not in any way be construed as an admission by any party, and the parties hereto each specifically disclaim any liability in connection with this Agreement and the Action.
9. The parties to this Agreement hereby declare, represent and warrant that they have consulted with, and been advised by, independent legal counsel with respect to the terms of the settlement set forth herein, that they have read and fully understand all of the terms and consequences of this Agreement, including all of the Schedules attached hereto, and that they enter into this Agreement freely and voluntarily, without coercion or duress, and without reliance upon any representation, warranty, condition or agreement, whether written or oral, other than as expressly set out or referred to herein.
10. The parties to this Agreement shall execute all documents and take all steps as are necessary and reasonable to accomplish the objectives of this Agreement, including its Schedules, and give effect thereto.

11. This Agreement may not be altered, amended or modified except by written agreement of the parties to this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. Any dispute arising out of or in connection with this Agreement shall be exclusively and finally determined by the Court.
12. The terms of this Agreement shall enure to the benefit of, and be binding upon, the parties hereto and their respective heirs, successors, assigns, executors, administrators, affiliates, parents, subsidiaries, partners, officers, directors, managers, employees, stakeholders, legal or personal representatives, insurers and predecessors, as applicable, as well as the Forme Group's respective heirs, successors, assigns, executors, administrators, affiliates, parents, subsidiaries, partners, officers, directors, managers, employees, stakeholders, legal or personal representatives, insurers and predecessors, as applicable.
13. This Agreement, including the Schedules attached hereto, constitutes the entire agreement among the parties, and supersedes all other prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof.
14. This Agreement, including the Schedules attached hereto, may be executed in counterparts, all of which taken together shall be deemed to constitute one and the same instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

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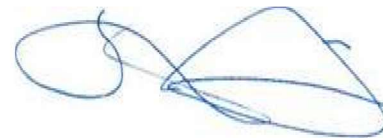
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement effective this 8th day of February, 2021, notwithstanding the actual date of execution.

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS
THE COURT-APPOINTED
MONITOR OF 2358825
ONTARIO LTD., 3310
KINGSTON DEVELOPMENT
INC., 1296 KENNEDY
DEVELOPMENT INC., 1326
WILSON DEVELOPMENT INC.,
5507 RIVER DEVELOPMENT
INC., 4439 JOHN
DEVELOPMENT INC., 250
DANFORTH DEVELOPMENT
INC., 159 CARRVILLE
DEVELOPMENT INC., 169
CARRVILLE DEVELOPMENT
INC., 189 CARRVILLE
DEVELOPMENT INC., 27
ANGLIN DEVELOPMENT INC.,
29 ANGLIN DEVELOPMENT
INC.**



Name: David Sieradzki
Title: Managing Director

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS
THE PROPOSAL TRUSTEE OF
58 OLD KENNEDY
DEVELOPMENT INC., 76 OLD
KENNEDY DEVELOPMENT
INC., AND 82 OLD KENNEDY
DEVELOPMENT INC.**



Name: David Sieradzki
Title: Managing Director

A.C. CONCRETE FORMING LTD.

jose catarino

jose catarino (Feb 11, 2021 13:13 EST)

Name:

Title:

SCHEDULE "A"

FORM OF FULL AND FINAL RELEASE

WHEREAS this is a mutual Full and Final Release between:

KSV Restructuring Inc., solely in its capacity as the Court-appointed Monitor of 2358825 Ontario Ltd. (in such capacity, the "**Monitor**")

-and-

KSV Restructuring Inc., solely in its capacity as the Proposal Trustee of 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., and 82 Old Kennedy Development Inc. (in such capacity, the "**Proposal Trustee**")

-and-

A.C. Concrete Forming Ltd. ("**A.C.**", and together with the Monitor and the Proposal Trustee, the "**Parties**" and, individually, a "**Party**")

relating to: (1) the proceedings commenced by A.C. in the Ontario Superior Court of Justice in Toronto bearing Court File No. CV-15-526710 (the "**Action**") against 2358825 Ontario Ltd. ("**Birchmount**") and Vector Financial Services Limited, Trisura Guarantee Insurance Company, and MCAP Financial Corporation (collectively with Birchmount, the "**Defendants**"); (2) all of the known and unknown facts and issues in dispute amongst A.C., the Forme Group (as defined below), the Defendants, the Monitor and the Proposal Trustee, all of the known and unknown Claims (as defined below) that have been or could be commenced or asserted by A.C. against the Forme Group and all of the known and unknown claims that have been or could be commenced or asserted by A.C. against the Monitor or the Proposal Trustee, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action, and (3) facts and issues arising from or relating to: (i) the real estate development projects of Birchmount, 3310 Kingston Development Inc., 1296 Kennedy Development Inc., 1326 Wilson Development Inc., 5507 River Development Inc., 4439 John Development Inc., 250 Danforth Development Inc., 159 Carrville Development Inc., 169 Carrville Development Inc., 189 Carrville Development Inc., 27 Anglin Development Inc., 29 Anglin Development Inc., 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., 82 Old Kennedy Development Inc. (collectively, the "**Forme Group**"); (ii) Yuan (Mike) Hua Wang; (iii) 101 Columbia Development Inc., 186 Old Kennedy Development Inc., 19 Turff Development Inc., 22 Old Kennedy Development Inc., 31 Victory Development Inc., 35 Thelma Development Inc., 376 Derry Development Inc., 390 Derry Development Inc., 4 Don Hillock Development Inc., 4208 Kingston Development Inc., 4550 Steeles Development Inc., 7397 Islington Development Inc., 9500 Dufferin Development Inc. and 2495393 Ontario Inc.; and (iv) the Proof of Claim and Notice of Dispute filed by A.C. pursuant to the Claims Procedure Order of Justice Hainey dated October 22, 2019 bearing Court File No. CV-18-608313-00CL (the "**Claims Procedure Order**") (collectively, the "**Released Matters**");

AND WHEREAS the Monitor, the Proposal Trustee and the Forme Group, on the one hand, and A.C., on the other hand, wish to fully and finally resolve and settle the Released Matters and have agreed to release each other from any and all manners of claims relating to the Released Matters,

subject to the terms and conditions of the Settlement Agreement to which this Full and Final Release is attached as **Schedule “A”**;

NOW THEREFORE in consideration of the mutual covenants contained in this Full and Final Release and the terms set out in the Settlement Agreement to which this Full and Final Release is attached as **Schedule “A”**, and for other good and valuable consideration, the receipt and sufficiency of which is hereby irrevocably acknowledged by the Parties:

1. The recitals set out above are true and accurate, and form part of this Full and Final Release.
2. The Monitor, the Proposal Trustee and the Forme Group, on the one hand, and A.C., on the other, hereby fully and forever release, remise, acquit and discharge each other and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, privies, officers, directors, employees, members, servants, agents and partners, from any and all “Claims” as that term is defined in paragraph 2(e) of the Claims Procedure Order arising out of or in any way relating to the Released Matters (the “**Forme Released Claims**”), provided, however, that nothing in this Full and Final Release shall in any way release or affect, or shall be considered, construed or deemed to release or affect any of the Parties’ rights or obligations under the Settlement Agreement.
3. The Monitor and the Proposal Trustee on the one hand, and A.C. on the other, hereby fully and forever release, remise, acquit and discharge each other and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, privies, officers, directors, employees, members, servants, agents and partners, from any and all manner of actions, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues and liabilities of any nature whatsoever, whether joint or several, legal, contractual, statutory, equitable or otherwise, that now exist, have existed or may exist, arising out of or in any way relating to the Released Matters (collectively with the Forme Released Claims, the “**Released Claims**”), provided, however, that nothing in this Full and Final Release shall in any way release or affect, or shall be considered, construed or deemed to release or affect any of the Parties’ rights or obligations under the Settlement Agreement.
4. Without limiting the generality of the foregoing, the Parties declare that the intent of this Full and Final Release is to conclude all issues in respect of, relating to or arising out of the Released Claims and it is understood and agreed that this Full and Final Release is intended to cover, and does cover, not only all known injuries, losses and damages in respect of the Released Claims, but also injuries, losses and damages in respect of the Released Claims not now known or anticipated but which may later be discovered, including all the effects and consequences thereof.
5. The Parties hereby specifically covenant and agree not to make any claim or demand, or to commence or maintain any action, suit, claim or proceeding against any person, corporation, the Crown or other legal entity, in or from which any action, suit, claim, demand or proceeding (whether or not valid or ultimately successful) could arise against each other for contribution or indemnity, or otherwise, in respect of any of the Released Claims.
6. The Parties hereby acknowledge that in the event that any of them should make hereafter any claim, demand or complaint or commence or threaten to commence any action or proceeding, or make any claim against any other of them arising out of, or in any way

connected to the Released Claims, this Full and Final Release may be raised as an estoppel and complete bar to any such claim, demand, action, proceeding or complaint.

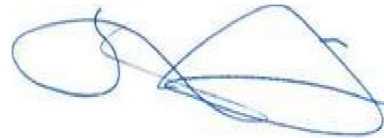
7. The Parties each covenant and agree that this Full and Final Release shall be binding upon and shall enure to the benefit of their respective heirs, successors, assigns, executors, administrators, affiliates, parents, subsidiaries, partners, officers, directors, managers, employees, stakeholders, legal or personal representatives, insurers and predecessors, as applicable, as well as the Forme Group's respective heirs, successors, assigns, executors, administrators, affiliates, parents, subsidiaries, partners, officers, directors, managers, employees, stakeholders, legal or personal representatives, insurers and predecessors, as applicable.
8. The Parties understand, acknowledge and agree that this Full and Final Release shall be immediately, unconditionally, and irrevocably effective upon the issuance of a court order approving the settlement as contemplated under the terms of the Settlement Agreement.
9. The Parties agree that this Full and Final Release shall be governed by and construed and interpreted in accordance with the laws of the Province of Ontario and the federal laws of Canada as applicable therein. Any dispute arising from or relating to the interpretation, application or enforcement of this Full and Final Release shall be exclusively within the jurisdiction of the Ontario Superior Court of Justice (Commercial List), and the Parties hereby irrevocably attorn to the exclusive jurisdiction of such Court with respect to any and all matters covered by, or in any way relating to, this Full and Final Release.
10. The Parties each covenant and agree that each part and provision of this Full and Final Release is distinct and severable and if, in any jurisdiction, any part or provision of this Full and Final Release or its application to any Party or circumstance is restricted, prohibited or unenforceable, for public policy reasons or otherwise, that that part or provision shall be interpreted in a manner so as to not make it unenforceable at law, but if such interpretation is not possible, the Parties agree that the part or provision shall, as to such jurisdiction, be ineffective only to the extent of such restriction, prohibition or unenforceability without invalidating the remaining parts and provisions hereof and without affecting the validity or enforceability of such part or provision in any other jurisdiction or its application to other parties or circumstances.
11. The Parties each hereby expressly acknowledge, declare and agree that they have had an opportunity to fully review this Full and Final Release and they have consulted with independent legal counsel. The Parties each acknowledge, declare and agree that they fully understand the meaning and effect of each paragraph of this Full and Final Release and freely and voluntarily agree to its terms for the purpose of making full and final compromise, adjustment and settlement of the Released Matters. The Parties each further expressly acknowledge, declare and agree that there is no condition, express or implied, or collateral agreement affecting their respective abilities to enter into this Full and Final Release, other than those set out in the Settlement Agreement to which this Full and Final Release is attached. The Parties further acknowledge and agree that any statute, case law, or rule of interpretation or construction that would or might cause any part or provision of this Full and Final Release to be construed against the drafters of this Full and Final Release shall be of no force or effect.
12. The Parties each agree that this Full and Final Release may be executed in any number of counterparts, all of which taken together shall be deemed to constitute one and the same

instrument, and a facsimile, email or electronically transmitted signature shall be deemed an original signature and of equally binding force and effect.

[Remainder of Page Intentionally Left Blank]


The parties hereto have duly executed this Full and Final Release effective this 8th day of February, 2021, notwithstanding the actual date of execution:

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS
THE COURT-APPOINTED
MONITOR OF 2358825
ONTARIO LTD., 3310
KINGSTON DEVELOPMENT
INC., 1296 KENNEDY
DEVELOPMENT INC., 1326
WILSON DEVELOPMENT INC.,
5507 RIVER DEVELOPMENT
INC., 4439 JOHN
DEVELOPMENT INC., 250
DANFORTH DEVELOPMENT
INC., 159 CARRVILLE
DEVELOPMENT INC., 169
CARRVILLE DEVELOPMENT
INC., 189 CARRVILLE
DEVELOPMENT INC., 27
ANGLIN DEVELOPMENT INC.,
29 ANGLIN DEVELOPMENT
INC.**



Name: David Sieradzki
Title: Managing Director

**KSV RESTRUCTURING INC.,
SOLELY IN ITS CAPACITY AS
THE PROPOSAL TRUSTEE OF
58 OLD KENNEDY
DEVELOPMENT INC., 76 OLD
KENNEDY DEVELOPMENT
INC., AND 82 OLD KENNEDY
DEVELOPMENT INC.**



Name: David Sieradzki
Title: Managing Director

A.C. CONCRETE FORMING LTD.

jose catarino

jose catarino (Feb 11, 2021 13:13 EST)

Name:

Title:

SCHEDULE “B”

FORM OF LANGUAGE TO BE INCORPORATED INTO DRAFT ORDER

THIS MOTION, made by KSV Restructuring Inc. (“KSV”), solely in its capacity as Court-appointed monitor of the Applicants (in such capacity, the “**Monitor**”) in their proceedings (the “**CCAA Proceedings**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), and in its capacity as the proposal trustee (in such capacity, the “**Proposal Trustee**”) of 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc., and 82 Old Kennedy Development Inc. (collectively, the “**NOI Entities**”) in their proceedings (the “**Proposal Proceedings**”) pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”) for an order, *inter alia*: (i) approving and giving effect to the Settlement Agreement dated February 8, 2021, and all schedules attached thereto including the Full and Final Release (collectively, the “**Agreement**”) among the Monitor, the Proposal Trustee and A.C. Concrete Forming Ltd. (“**A.C.**”), subject in all cases to the terms, conditions and exceptions provided in the Agreement; and (ii) authorizing and directing the Monitor to take any and all steps necessary to give effect to the Agreement, was heard this day via videoconference;

ON READING the Notice of Motion and the • Report of the Monitor dated and the Report of the Proposal Trustee dated •, 2021 and the exhibits thereto, and on hearing the submissions of counsel for the Monitor and A.C., and such other parties as were present, no one else appearing although duly served as appears from the affidavit of service of • sworn on •, 2021;

1. **THIS COURT ORDERS** that, to the extent necessary, the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.
2. **THIS COURT ORDERS** that the settlement, mutual releases and other matters contemplated by the Agreement are hereby approved, that the Monitor and the Proposal Trustee are hereby directed and empowered, *nunc pro tunc*, to execute and deliver the Agreement on behalf of the Applicants and the NOI Entities, and that such execution is approved. The Monitor and the Proposal Trustee are hereby authorized and directed to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of such settlement and mutual releases.

3. **THIS COURT ORDERS AND DECLARES** that the Monitor, the Proposal Trustee and the Forme Group (as defined in the Agreement), as well as A.C. and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, insurers, privies, officers, directors, employees, members, servants, agents and partners, are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all “Claims” as that term is defined in paragraph 2(e) of the Claims Procedure Order of Justice Hainey dated October 22, 2019 bearing Court File No. CV-18-608313-00CL (the “**Claims Procedure Order**”) arising out of or in any way relating to the Released Matters (as defined below).

4. **THIS COURT ORDERS AND DECLARES** that the Monitor, the Proposal Trustee and A.C. and, as applicable, their respective predecessors, successors, heirs, personal representatives, administrators, assigns, insurers, privies, officers, directors, employees, members, servants, agents and partners, are hereby fully and finally released and discharged (subject to and in accordance with the terms, conditions and exceptions provided in the Agreement) from any and all manner of actions, causes of action, suits, claims, proceedings, debts, covenants, obligations, penalties, indemnities, demands, issues and liabilities of any nature whatsoever, whether joint or several, legal, contractual, statutory, equitable or otherwise, that now exist, have existed or may exist, arising out of or in any way relating to the Released Matters.

5. **THIS COURT ORDERS AND DECLARES** that, for the purposes of this Order, the “**Released Matters**” means, collectively: (1) the proceedings commenced by A.C. in the Ontario Superior Court of Justice in Toronto bearing Court File No. CV-15-526710 (the “**Action**”) against 2358825 Ontario Ltd. (“**Birchmount**”) and Vector Financial Services Limited, Trisura Guarantee Insurance Company, and MCAP Financial Corporation (collectively with Birchmount, the “**Defendants**”); (2) all of the known and unknown facts and issues in dispute amongst A.C., the Forme Group, the Defendants, the Monitor and the Proposal Trustee, all of the known and unknown Claims that have been or could be commenced or asserted by A.C. against the Forme Group and all of the known and unknown claims that have been or could be commenced or asserted by A.C. against the Monitor or the Proposal Trustee, whether in the Action or in a separate claim or proceeding, which arise from or relate to the facts alleged or issues raised, or which could have been alleged or raised, in the Action, and (3) facts and issues arising from or relating to: (i) the Forme Group; (ii) Yuan (Mike) Hua Wang; (iii) 101 Columbia Development Inc., 186 Old Kennedy Development Inc., 19 Turff Development Inc., 22 Old Kennedy Development Inc., 31 Victory Development Inc., 35 Thelma Development Inc., 376 Derry Development Inc., 390 Derry

Development Inc., 4 Don Hillock Development Inc., 4208 Kingston Development Inc., 4550 Steeles Development Inc., 7397 Islington Development Inc., 9500 Dufferin Development Inc. and 2495393 Ontario Inc.; and (iv) the Proof of Claim and Notice of Dispute filed by A.C. pursuant to the Claims Procedure Order.

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

- (a) the pendency of the CCAA Proceedings;
- (b) the pendency of the Proposal Proceedings;
- (c) the pendency of the Action;
- (d) any applications for any bankruptcy order now or hereafter issued pursuant to the BIA in respect of one or more of any of the Defendants, the Applicants or any of their respective predecessors, successors or heirs (collectively, the “**Identified Parties**”), and any bankruptcy order issued pursuant to any such applications; and
- (e) any assignment in bankruptcy made in respect of any of the Identified Parties.

the payment to A.C., or as it may direct, of the Settlement Funds (as defined in the Agreement) shall be binding on any trustee in bankruptcy that is now or that may be appointed in respect of any of the Identified Parties and shall not be void or voidable by creditors of any of the Identified Parties, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue or other reviewable transaction under the BIA at any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

7. **THIS COURT ORDERS** that the Stay Period (as defined in paragraph 15 of the Initial Order) shall be and is hereby lifted for the sole purpose of authorizing and permitting A.C. to:

- (a) discontinue the Action as against the Defendants; and
- (b) take whatever steps are necessary to comply with its obligations under the Agreement.

8. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States to give effect to this Order and to assist the Monitor or the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor or the Proposal Trustee, as officers of this Court, as may be necessary or desirable to give effect

to this order or to assist the Monitor or the Proposal Trustee, the and their respective agents in carrying out the terms of this Order.

9. **THIS COURT ORDERS** that the Monitor or the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers, duties and obligations under the Agreement.

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 OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO (the "Applicants")

Estate No. 31-2436538

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

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

Proceedings Commenced in Toronto

ORDER

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Counsel to KSV Restructuring Inc., solely in its capacity as Court-appointed monitor and proposal trustee, and not in its personal capacity

TAB 7

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE MR.) THURSDAY, THE 25th
)
JUSTICE HAINEY) DAY OF FEBRUARY, 2021

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 OTHER COMPANIES LISTED ON SCHEDULE "A"
HERETO (the "Applicants")

APPLICATION UNDER THE *COMPANIES' CREDITORS*
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

ORDER
(Birchmount Cash Collateral Order)

THIS MOTION, made by KSV Restructuring Inc.¹ ("**KSV**"), in its capacity as Court-appointed monitor (in such capacity, the "**Monitor**") of the Applicants in their proceedings pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. c-36, as amended, for an order approving the Tarion Cash Collateral Procedure (as defined herein) was heard this day via Zoom because of the COVID-19 pandemic.

ON READING the Notice of Motion dated February 18, 2021, and the Sixteenth Report of the Monitor and the Twelfth Report of the Proposal Trustee dated February 18, 2021, and on hearing the submissions of counsel for the Monitor, for Tarion Warranty Corporation ("**Tarion**"), for Trisura Guarantee Insurance Company ("**Trisura**") and for such other parties as

¹ Effective August 31, 2020, KSV Kofman Inc. changed its name to KSV Restructuring Inc.

were present, no one appearing for any other person on the service list, although properly served with the Motion Record as appears from the affidavit of service of Aiden Nelms, filed,

SERVICE

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

INTERPRETATION

2. **THIS COURT ORDERS** that, for the purposes of this Order, the following terms shall have the following meanings:

- (a) **“Applicable Notice Period”** has the meaning ascribed thereto in paragraph 9;
- (b) **“Business Day”** means a day, other than a Saturday, Sunday or a statutory holiday, on which banks are generally open for business in Toronto, Ontario;
- (c) **“CCAA”** has the meaning ascribed thereto in the preamble to this Order;
- (d) **“Claimant”** means a Person asserting a Tarion Claim;
- (e) **“Court”** means the Ontario Superior Court of Justice (Commercial List);
- (f) **“Deposit Trust Account Agent”** means Goldman, Spring, Kichler & Sanders LLP;
- (g) **“Encumbrances”** has the meaning ascribed thereto in paragraph 6(b);
- (h) **“KSV”** has the meaning ascribed thereto in the preamble to this Order;
- (i) **“Monitor”** has the meaning ascribed thereto in the preamble to this Order;
- (j) **“ONHWPA”** means the *Ontario New Home Warranties Plan Act* (Ontario), R.S.O. 1990, c. O.31, as amended, and the regulations promulgated thereunder;
- (k) **“Order”** means this Order;
- (l) **“Outside Date”** means November 15, 2025;

- (m) “**Person**” means any individual, firm, corporation, limited or unlimited liability company, general or limited partnership, association, trust (including a real estate investment trust), unincorporated organization, joint venture, government or any agency or instrumentality thereof or any other entity;
- (n) “**Project**” means all phases and parts of the residential condominium development known as “*Birchmount Gardens*”;
- (o) “**Tarion**” has the meaning ascribed thereto in the preamble to this Order;
- (p) “**Tarion Bond**” means bond no. TDS0990110 issued by Trisura in favour of Tarion;
- (q) “**Tarion Cash Collateral**” has the meaning ascribed thereto in paragraph 4;
- (r) “**Tarion Cash Collateral Balance**” has the meaning ascribed thereto in paragraph 6(c);
- (s) “**Tarion Cash Collateral Charge**” has the meaning ascribed thereto in paragraph 14;
- (t) “**Tarion Cash Collateral Claims**” means accepted Tarion Claims, administration fees, legal fees, interest and other fees and costs paid or incurred by Tarion in connection with such Tarion Claims and the administration of the Tarion Cash Collateral Procedure;
- (u) “**Tarion Cash Collateral Procedure**” means the procedures outlined in this Order, including, without limitation, in connection with the payment, holding, administration, and release of the Tarion Cash Collateral;
- (v) “**Tarion Claim**” means any right or claim of any Person against Tarion under the ONHWPA in respect of the Project;
- (w) “**Trisura**” has the meaning ascribed thereto in the preamble to this Order; and
- (x) “**Trisura Distribution**” has the meaning ascribed thereto in paragraph 7.

3. **THIS COURT ORDERS** that all references to the word “including” shall mean “including without limitation”, all references to the singular herein include the plural, the plural include the singular, and any gender includes all genders.

TARION CASH COLLATERAL

4. **THIS COURT ORDERS** that Trisura shall, within five (5) Business Days of the granting of this Order, direct the Deposit Trust Account Agent to pay the amount of \$700,000 to Tarion (the “Tarion Cash Collateral”), against which amount Tarion may make, and process payments in respect of, Tarion Cash Collateral Claims in accordance with this Order.

5. **THIS COURT ORDERS** that:

- (a) Upon receipt by Tarion of the Tarion Cash Collateral, the Tarion Bond shall be void and cancelled and neither Tarion nor Trisura shall have any further obligations or liability whatsoever in respect of the Tarion Bond, the Applicants or the Project (in the case of Tarion, subject only to any Tarion Claims that are to be dealt with pursuant to paragraph 6); and
- (b) Tarion shall deliver the Tarion Bond to the lawyers for Trisura, Borden Ladner Gervais LLP, within five (5) Business Days of Tarion's offices reopening (following their closure as a result of the COVID-19 pandemic) and it being practicable to do so.

TARION CLAIMS

6. **THIS COURT ORDERS** that:

- (a) Tarion shall:
 - (i) review any Tarion Claim filed prior to the Outside Date and not already satisfied as of the date hereof, and accept, revise or reject them in accordance with Tarion's ordinary claims review procedures provided, however, that Tarion shall have the right, but not the obligation, to consult with the Monitor during its review of a Tarion Claim; and
 - (ii) provide a report to the Monitor as to the Tarion Claims received, Tarion Claims and Tarion Cash Collateral Claims paid and the amount of Tarion Cash Collateral remaining as at the date of such report, with such reports due on November 15, 2021, November 15, 2022, November 15, 2023, November 15, 2024, and November 15, 2025;

- (b) Tarion shall be entitled to utilize the Tarion Cash Collateral and process payments therefrom on account of accepted Tarion Claims and Tarion Cash Collateral Claims free and clear of and from any and all security interests (whether contractual, statutory, or otherwise), hypothecs, mortgages, trusts, or deemed trusts (whether contractual, statutory, or otherwise), liens, executions, rights of distraint, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, “**Encumbrances**”), and without further authorization from any Person or this Court;
- (c) the balance of the Tarion Cash Collateral (the “**Tarion Cash Collateral Balance**”), if any, shall be paid by Tarion to the Monitor, within ten (10) Business Days following the later of:
 - (i) the Outside Date;
 - (ii) the completion of the review by Tarion of all Tarion Claims filed prior to the Outside Date;
 - (iii) in the event that Tarion revises or rejects any Tarion Claim, the resolution of such Tarion Claim in accordance with the procedures provided for in the ONHWPA and/or any applicable litigation or dispute resolution processes; and
 - (iv) the processing and payment by Tarion of any Tarion Claims and Tarion Cash Collateral Claims from the Tarion Cash Collateral; and
- (d) Tarion shall have no further obligations or liability whatsoever in respect of the Tarion Cash Collateral Balance following Tarion’s payment of the Tarion Cash Collateral Balance to the Monitor.

TRISURA DISTRIBUTION

7. **THIS COURT ORDERS** that within forty-five (45) Business Days of Tarion's receipt of the Tarion Cash Collateral, Trisura shall:

- (a) register a discharge of its mortgage registered against Project;
- (b) register a discharge of its PPSA registration related to the Project; and
- (c) direct the Deposit Trust Account Agent to pay to the Monitor any amount remaining in the deposit trust account related to the Project after all reasonable and documented expenses of Trisura (including but not limited to premiums, legal and adjusting expense) and any outstanding Deposit Trust Account Agent legal accounts have been paid from the deposit trust account. (such distribution, the "**Trisura Distribution**").

8. **THIS COURT ORDERS** that upon payment of the Trisura Distribution, Trisura and its successors, assigns and agents shall not have any:

- (a) further right whatsoever to claim any further amount derived from or related to the Project;
- (b) remaining interest whatsoever in the property of the Applicants;
- (c) further liability to any party in respect of the Tarion Bond or to the Applicants.

WAIVER OF NOTICE OF ONHWPA NOTICE AND TARION AUTHORIZATION

9. **THIS COURT ORDERS** that the Monitor is hereby authorized but not required to waive all applicable statutory notice and vendor repair periods, if any, to which it or the Applicants, or any of them, may be entitled under the ONHWPA in respect of any warranty claims made in respect of the Project (each, an "**Applicable Notice Period**").

10. **THIS COURT ORDERS** that in the event that the Monitor waives an Applicable Notice Period, Tarion is thereby entitled, in its discretion, to take action and remediate any defects at the Project that are warrantied under the ONHWPA immediately upon receipt of confirmation of waiver of any such Applicable Notice Period, notwithstanding any

applicable notice or vendor repair periods in favour of a vendor prescribed by the ONHWPA, provided that (i) the ONHWPA and the regulations promulgated thereunder shall otherwise apply to all such remedial action taken by Tarion and (ii) nothing in this Order shall affect Tarion's determination of whether or not a defect is covered by the ONHWPA.

TRISURA, TARION AND THE MONITOR

11. **THIS COURT ORDERS** that none of Trisura, Tarion, the Deposit Trust Account Agent or the Monitor shall incur any liability or obligation as a result of the carrying out of the provisions of this Order, other than in respect of any gross negligence or wilful misconduct on their respective parts, and that no proceeding or process in any court or tribunal shall be commenced or continued against any of Trisura, Tarion, the Deposit Trust Account Agent or the Monitor in connection with the carrying out of the provisions of this Order except with the written consent of Trisura, Tarion, the Deposit Trust Account Agent or the Monitor, as applicable, or with leave of this Court on seven (7) Business Days' notice to Trisura, Tarion, the Deposit Trust Account Agent or the Monitor, as applicable. This Order is without prejudice to any other limitation of liability or protection afforded to Trisura, Tarion, the Deposit Trust Account Agent or the Monitor by order of the Court or otherwise.

12. **THIS COURT ORDERS** that, subject to paragraphs 14 - 16 of this Order, and in connection with the payment or receipt of any funds described herein, the Person receiving such funds shall do so free and clear of and from any and all Encumbrances.

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

- (a) the pendency of these proceedings; and
- (b) any assignment in bankruptcy made in respect of the Applicants, or any of them, or their property or the Project,

the Tarion Cash Collateral Procedure and its implementation pursuant to this Order shall be binding on any trustee in bankruptcy, receiver, receiver and manager or interim receiver of the Applicants, or any of them, their property or the Project and shall not be void or voidable by

creditors, nor shall it constitute nor be deemed to be a fraudulent preference, assignment, fraudulent conveyance, transfer at undervalue, or other reviewable transaction under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, as amended, or any other applicable federal or provincial legislation, nor shall it constitute oppressive or unfairly prejudicial conduct pursuant to any applicable federal or provincial legislation.

TARION CASH COLLATERAL CHARGE

14. **THIS COURT ORDERS** that Tarion shall be entitled to the benefit of, and is hereby granted, a fixed and specific charge and security interest (the “**Tarion Cash Collateral Charge**”) in the Tarion Cash Collateral.

15. **THIS COURT ORDERS** that the Tarion Cash Collateral Charge shall rank in priority to all Encumbrances against the Tarion Cash Collateral from time to time.

16. **THIS COURT ORDERS** that the filing, registration, recording or perfection of the Tarion Cash Collateral Charge shall not be required and that the Tarion Cash Collateral Charge shall be valid and enforceable for all purposes including, without limitation, as against any Encumbrances filed, registered, recorded or perfected subsequent to the Tarion Cash Collateral Charge coming into existence notwithstanding any failure to file, register, record or perfect the Tarion Cash Collateral Charge. The Tarion Cash Collateral Charge may be enforced by Tarion upon the terms and conditions as may be agreed to between the Monitor and Tarion.

MISCELLANEOUS

17. **THIS COURT ORDERS** that each of Tarion and the Monitor may from time to time apply to this Court for advice and directions in respect of the terms of this Order and in carrying out the terms of this Order.

18. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or the United States to give effect to this Order and to assist Tarion, the Monitor and their respective agents, in carrying out the terms of this Order. All courts, tribunals regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to Tarion, the Monitor

and their respective agents, as may be necessary or desirable to give effect to this Order or to assist Tarion, the Monitor and their respective agents, in carrying out the terms of this Order.

SCHEDULE "A"
APPLICANTS

3310 Kingston Development Inc.

1296 Kennedy Development Inc.

1326 Wilson Development Inc.

5507 River Development Inc.

4439 John Development Inc.

2358825 Ontario Ltd.

250 Danforth Development Inc.

159 Carrville Development Inc.

169 Carrville Development Inc.

189 Carrville Development Inc.

27 Anglin Development Inc.

29 Anglin Development Inc.

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 OTHER
COMPANIES LISTED ON SCHEDULE "A" HERETO (the "Applicants")

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

Proceeding commenced at Toronto

BIRCHMOUNT CASH COLLATERAL ORDER

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Counsel to KSV Restructuring Inc., solely in its capacity as
Court-appointed monitor and Proposal Trustee and not in its
personal capacity

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 OTHER
COMPANIES LISTED ON SCHEDULE "A" HERETO (the "Applicants")

Estate No. 31-2436538

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

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

MOTION RECORD OF THE MONITOR AND PROPOSAL TRUSTEE
(VOLUME 3 of 3)

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Court-appointed monitor and Proposal Trustee and not in its
personal capacity