

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

BETWEEN:

**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**

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

**RESPONDING MOTION RECORD OF FERINA CONSTRUCTION LIMITED  
(Motion returnable July 2, 2019)**

June 28, 2019

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**TO: THIS HONOURABLE COURT**  
**AND TO: THE PARTIES ON THE SERVICE LIST ATTACHED**

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

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ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

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APPLICATION UNDER THE *COMPANIES' CREDITORS  
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<p><b>LITMAN LAW</b> 3075 14<sup>TH</sup> Avenue Suite 216 Markham, ON L3R 0G9</p> <p><b>Cass I. Litman</b> Tel: 905.258.0051 Email: <a href="mailto:casslitman@litmanlaw.ca">casslitman@litmanlaw.ca</a></p> <p>Lawyers for Gladstone Media Inc.</p>	<p><b>CENTURY 21 LEADING EDGE REALTY INC.</b> 165 Main Street North Markham, ON L3P 1Y2</p> <p><b>Maria Mouratidis</b> Tel: 905.499.2825 Email: <a href="mailto:maria.mouratidis@century21.ca">maria.mouratidis@century21.ca</a></p>

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<p><b>JAMES GROUT PROFESSIONAL CORPORATION</b></p> <p><b>James Grout</b> Email: <a href="mailto:jimhgrout@gmail.com">jimhgrout@gmail.com</a></p> <p>Lawyer for Yuan Hua Wang</p>	<p><b>CASSELS BROCK &amp; BLACKWELL LLP</b> Suite 2100, Scotia Plaza 40 King Street West Toronto, ON M5H 3C2</p> <p><b>David Ward</b> Tel: 416.869.5960 Fax: 416.640.3154 Email: <a href="mailto:dward@casselsbrock.com">dward@casselsbrock.com</a></p> <p><b>Larry Ellis</b> Tel: 416.869.5406 Fax: 416.640.3004 Email: <a href="mailto:lellis@casselsbrock.com">lellis@casselsbrock.com</a></p> <p><b>Erin Craddock</b> Tel: 416.860.6480 Fax: 416.644.9324 Email: <a href="mailto:ecraddock@casselsbrock.com">ecraddock@casselsbrock.com</a></p> <p>Lawyers for the Non-Applicant Affiliates</p>

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**ONTARIO  
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(COMMERCIAL LIST)**

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**AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
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<b>1</b>	Affidavit of Gloria Kalkounis sworn June 28, 2019
<b>A</b>	Mortgage/Charge granted by 3310 Kingston Development Inc. registered on August 2, 2016 as Instrument No. AT4297240
<b>B</b>	Personal Guarantee of Yuan Hua Wang, also known as Mike Wang dated July 20, 2016
<b>C</b>	Email from D.J. Miller of TGF, counsel to Ferina Construction Limited, to counsel for the Monitor, Sean Zweig of Bennett Jones LLP

APPLICATION UNDER the *Companies' Creditors Arrangement Act*,  
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
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AND THE OTHER COMPANIES LISTED ON SCHEDULE "A"  
HERETO

Court File No.: CV-18-608313-00CL

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

Proceedings commenced at Toronto

**RESPONDING MOTION RECORD OF FERINA  
CONSTRUCTION LTD.  
(Motion returnable on July 2, 2019)**

**Thornton Grout Finnigan LLP**

TD West Tower, Toronto-Dominion Centre  
100 Wellington Street West, Suite 3200  
Toronto, ON M5K 1K7  
Fax: (416) 304-1313

**D.J. Miller (LSO# 34393P)**

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Email: [djmiller@tgf.ca](mailto:djmiller@tgf.ca)

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Lawyers for Ferina Construction Limited

# **TAB 1**

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

BETWEEN:

**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  
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AND THE OTHER COMPANIES LISTED ON SCHEDULE "A"  
HERETO**

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

**AFFIDAVIT OF GLORIA KALKOUNIS  
(Sworn June 28, 2019)**

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

1. I am a legal assistant with the law firm of Thornton Grout Finnigan LLP ("**TGF**"), insolvency counsel for Ferina Construction Limited ("**Ferina**") in this proceeding, and as such I have knowledge of the matters to which I hereinafter depose.
2. Ferina holds a second-ranking mortgage (the "**Ferina Mortgage**") granted by 3310 Kingston Development Inc., an Applicant in the within proceedings, over properties municipally known as 3310, 3312, and 3314 Kingston Road, Toronto, Ontario (the "**Kingston Road Property**"). Attached hereto and marked as Exhibit "A" is a true copy of the Ferina Mortgage.

3. I am advised by Rose Kudlac, a director of Ferina, and do verily believe, that Yuan Hua Wang, also known as Mike Wang, executed and delivered a personal guarantee of the obligations of the mortgagor under the Ferina Mortgage by separate written guarantee, assignment and postponement dated July 20, 2016 in the principal amount of \$2,000,000 plus interest and costs (the “**Wang Guarantee**”). Delivery of the Wang Guarantee was a condition to Ferina advancing funds pursuant to the Ferina Mortgage. Attached hereto and marked as Exhibit “**B**” is a true copy of the Wang Guarantee.
4. I am advised by D.J. Miller, a partner of TGF, and do verily believe that on June 26, 2019, she had an email exchange with Sean Zweig of Bennett Jones LLP, counsel for the Monitor in these proceedings, regarding the Wang Guarantee. Now shown to me and marked as Exhibit “**C**” is a true copy of such email exchange.
5. I make this affidavit in response to Mr. Wang’s motion returnable on July 2, 2019.

SWORN before me at the City of Toronto,  
in the Province of Ontario, this 28<sup>th</sup> day of  
June, 2019.



Commissioner for Taking Affidavits, etc.

Roxana Gabriela Manea, a Commissioner, etc.,  
Province of Ontario, for  
Thornton Grout Finnigan LLP,  
Barristers and Solicitors.  
Expires June 5, 2021.



GLORIA KALKOUNIS

# **EXHIBIT “A”**

**Properties**

PIN 06407 - 0225 LT Interest/Estate Fee Simple

Description PART OF LOT I PLAN 1834 SCARBOROUGH PART 2, PLAN 66R28678; SUBJECT TO AN EASEMENT AS IN AT4153357; CITY OF TORONTO

Address TORONTO

PIN 06407 - 0226 LT Interest/Estate Fee Simple

Description PART OF LOT I PLAN 1834 SCARBOROUGH PART 1, PLAN 66R28678; SUBJECT TO AN EASEMENT AS IN AT4153357; CITY OF TORONTO

Address TORONTO

This is Exhibit 7A1 referred to in the affidavit of Gloria Kalkounis sworn before me, this 28th day of June 2017. [Signature] A COMMISSIONER FOR TAKING AFFIDAVITS

**Chargor(s)**

The chargor(s) hereby charges the land to the chargee(s). The chargor(s) acknowledges the receipt of the charge and the standard charge terms, if any.

Name 3310 KINGSTON DEVELOPMENT INC.  
Address for Service 206-7100 Woodbine Ave  
Markham, ON L3R 5J2

Roxana Gabriela Manea, a Commissioner, etc.,  
Province of Ontario, for  
Thornton Grout Finnigan LLP,  
Barristers and Solicitors.  
Expires June 5, 2021.

I, Yuan Hua Wang, President, have the authority to bind the corporation.

This document is not authorized under Power of Attorney by this party.

**Chargee(s)** Capacity Share

Name FERINA CONSTRUCTION LIMITED  
Address for Service 9 Werwood Road  
Etobicoke, Ontario  
M9B 5B2

**Statements**

Schedule: See Schedules

**Provisions**

Principal	\$ 2,000,000.00	Currency	CDN
Calculation Period	INTEREST ONLY		
Balance Due Date	2017/08/01		
Interest Rate	12.0%		
Payments	\$ 20,000.00		
Interest Adjustment Date	2016 08 01		
Payment Date	1st day of each and every month		
First Payment Date	2016 09 01		
Last Payment Date	2017 08 01		
Standard Charge Terms	200033		
Insurance Amount	full insurable value		
Guarantor	Yuan Hua Wang		

**Additional Provisions**

The interest for a one month period will be held back from the first advance of funds as an interest reserve.

The Chargor may prepay all or any part of the principal amount outstanding herein at any time upon providing one month notice or bonus. Regardless of the date of prepayment, the Chargee shall have received a minimum of six months' interest.



**Signed By**

Devide Joseph Di Iulio	1000-120 Adelaide St. W. Toronto M5H 3V1	acting for Chargor(s)	Signed	2016 08 02
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Tel 416-363-2211

Fax 416-363-0645

I have the authority to sign and register the document on behalf of the Chargor(s).

**Submitted By**

SCHNEIDER RUGGIERO LLP	1000-120 Adelaide St. W. Toronto M5H 3V1	2016 08 02
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Tel 416-363-2211

Fax 416-363-0645

**Fees/Taxes/Payment**

Statutory Registration Fee \$62.85

Total Paid \$62.85

**File Number**

Chargee Client File Number : 38640

**SCHEDULE OF ADDITIONAL PROVISIONS**

In addition to the terms and provisions set out in the standard charge terms filed by Dyc & Durham Co. Ltd. as no. 200033, and subject to and in accordance with the provisions of a mortgage commitment made as of July 7<sup>th</sup>, 2016 between Ferina Construction Limited as the Chargee and 3310 Kingston Development Inc. as Chargor and Yuan Hua Wang as Guarantor (the "Mortgage Agreement"), it is understood and agreed that this Charge shall contain, and be subject to, the following terms and provisions:

1. Provided that the Chargor, when not in default under the Mortgage Agreement, shall at any time on or after the first payment date set out in this Charge, have the privilege of prepaying the whole or any part of the outstanding principal sum hereby secured (together with all interest accrued on any portion of principal so prepaid), with one month's notice. The rate of interest applicable to the monies secured by this Charge shall be Royal Bank Prime for Canadian dollar loans to commercial customers, calculated and compounded monthly, not in advance, until maturity.
2. **NOTWITHSTANDING** anything herein contained, it is declared and agreed that at any time, and from time to time, when there shall be an "Event of Default" (as such term is defined in the Mortgage Agreement) which is continuing default under the provisions of these presents, the Chargee may at such time, and from time to time, and with or without entering into possession of the lands charged by this Charge (the "Charged Property") appoint in writing a receiver (the "Receiver" which term shall include a receiver/manager) of the Charged Property, or any part thereof, and of the rents and profits thereof and with or without security and may from time to time by similar writing remove any such Receiver and appoint another in its place and stead, and in the making of any such appointment or removal, the Chargee shall be deemed to be acting as the agent or attorney for the Chargor. The Chargor hereby agrees and consents to the appointment of the Receiver of the Chargee's choice and without limitation, whether pursuant to this Charge, the Mortgages Act, the Construction Lien Act or pursuant to the Courts of Justice Act (as the Chargee may at its sole option require). Without limitation, the purpose of such appointment shall be the orderly management, administration and/or sale of the Charged Property and every part thereof. Upon the appointment of any such Receiver or Receivers from time to time the following provisions shall apply:
  - (a) a statutory declaration of an officer of the Chargee as to default under the provisions of these presents shall be conclusive evidence thereof;
  - (b) every such Receiver shall be the irrevocable agent or attorney of the Chargor for the collection of all rents falling due with respect to the Charged Property, and every part thereof, whether in respect of any tenancies created in priority to these presents or subsequent thereto;
  - (c) the Chargee may from time to time fix the remuneration of every such Receiver who shall be entitled to deduct same out of the Charged Property or the proceeds thereof;
  - (d) each such Receiver shall, so far as concerns responsibility and liability for its acts or omissions, be deemed to be the agent or attorney of the Chargor and in no event the agent of the Chargee;
  - (e) the appointment of every such Receiver by the Chargee shall not incur or create any liability on the part of the Chargee to the Receiver in any respect and such appointment or anything which may be done by any such Receiver or the removal of any such Receiver or the termination of any such Receivership shall not have the effect of constituting the Chargee a chargee in possession with respect to the Charged Property or any part thereof;
  - (f) the Receiver shall have the power to rent any portion of the Charged Property for such terms and subject to such provisions as it may deem advisable or expedient and in so doing such Receiver shall be acting as the attorney or agent of the Chargor and shall have the authority to execute any lease of any such premises in the name and on behalf of the Chargor and the Chargor undertakes to ratify and confirm whatever acts such Receiver may do in the Charged Property;

- (g) every such Receiver shall have full power to complete any unfinished construction upon the Charged Property;
- (h) any such Receiver shall have full power to carry on or concur in the carrying on of the business of the Chargor, and to employ and discharge such agents, workmen, accountants and other individuals or companies as are required to carry on the said business, upon such terms and with such salaries, wages or remuneration as it shall think proper, and to repair and keep in repair the Charged Property and to do all necessary acts and things for the carrying on of the business of the Chargor and the protection of the Charged Property;
- (i) any such Receiver shall have the power to sell or lease or concur in selling or leasing the Charged Property, or any part thereof, and to carry any such sale or lease into effect by conveying in the name of or on behalf of the Chargor or otherwise; and any such sale may be made either at public auction or private sale as to the Receiver may seem best and any such sale may be made from time to time as to the whole or any part of the Charged Property; and the Receiver may make any stipulations as to title or conveyance or commencement of title or otherwise as it shall deem proper;
- (j) any such Receiver shall have the power to borrow money to carry on the business of the Chargor or to maintain the whole or any part of the Charged Property, in such amounts as the Receiver may from time to time deem necessary and in so doing, the Receiver may issue certificates that may be payable when the Receiver thinks expedient and shall bear interest as stated therein and the amounts from time to time payable under such certificates shall charge the Charged Property in priority to this Charge;
- (k) any such Receiver shall have the power to execute and prosecute all suits, proceedings and actions which the Receiver in its opinion considers necessary for the proper protection of the Charged Property, to defend all suits, proceedings and actions against the Chargor or the Receiver, to appear in and conduct the prosecution and defence of any suit, proceeding or action then pending or thereafter instituted and to appeal any suit, proceeding or action;
- (l) any such Receiver shall have the full power to manage, operate, amend, repair, alter or extend the Charged Property, or any part thereof, in the name of the Chargor for the purpose of securing the payment of rentals from the Charged Property or any part thereof;
- (m) any such Receiver shall not be liable to the Chargor to account for moneys or damages other than cash received by it with respect to the Charged Property or any part thereof and out of such cash so received every such Receiver shall pay in the following order:
  - (i) its remuneration;
  - (ii) all payments made or incurred by the Receiver in connection with the management, operation, amendment, repair, alteration or extension of the Charged Property or any part thereof;
  - (iii) in payment of interest, principal and other money which may from time to time be or become a charge upon the Charged Property in priority to moneys owing hereunder and all taxes, insurance premiums and every other proper expenditure made or incurred by it with respect to the Charged Property or any part thereof;
  - (iv) in payment of all interest and arrears of interest and any other moneys remaining unpaid hereunder;
  - (v) the residue of any money so received by the Receiver shall be applied to the principal sum or any other amounts from time to time owing under this Charge;
  - (vi) subject to subparagraph (v) above, in the discretion of the Receiver, interest, principal and other moneys which may from time to time constitute a charge or encumbrance on the Charged Property subsequent in priority or subordinate to the interest of the Chargee under this Charge;

and that such Receiver may in its discretion retain reasonable reserves to meet accruing amounts and anticipated payments in connection with any of the foregoing, and further, that any surplus remaining in the hands of the Receiver, after payments made and such reasonable reserves retained as aforesaid, shall be payable to the Chargor.

3. Provided that this Charge shall not terminate until the outstanding principal sum secured hereunder, together with all interest accrued thereon, and all other amounts payable under this Charge, have been paid in full to the Chargee. Upon termination of this Charge, only the Chargee or its solicitors shall prepare the requisite discharge of this Charge, and the Chargee shall execute and deliver same to the Chargor upon receipt from the Chargor of a reasonable discharge fee to cover the Chargee's legal and administrative expenses for preparing, reviewing and executing the discharge. The Chargee shall be entitled to a reasonable period of time after payment of the outstanding principal, interest and other monies secured hereunder, within which to provide to the Chargor with a registrable discharge of this Charge.
4. It is understood and agreed that if payment of the outstanding principal and interest indebtedness secured by this Charge is made by or on behalf of the Chargor and received by or on behalf of the Chargee after the hour of 1:30 p.m. in the afternoon on the date that such payment is made or tendered to the Chargee (or to the Chargee's solicitors), then any such payment made and received after 1:30 p.m. on that day shall, for the purposes of calculating the accrued interest owing under this Charge, be deemed to have been received on the following day, and the Chargee shall be correspondingly entitled to be paid interest for the day on which such payment has actually been made and received, [and in the event that payment is made or tendered after 1:30 p.m. on a Friday, then such payment shall be deemed to have been received on the following Monday (or if such Monday is a statutory holiday, then on the next business day thereafter), and the Chargee shall be correspondingly entitled to be paid interest accruing on such Friday and throughout the succeeding weekend (and holiday, if applicable)] and this Charge shall not be terminated or discharged unless and until such additional interest is received by the Chargee from the Chargor. Payment of the outstanding principal and accrued interest on the maturity of this charge shall be made by bank draft of a certified solicitor's trust cheque.
5. In the event of a conflict or inconsistency between the provisions of the Standard Charge Terms filed as number 200033 (and incorporated as part of this Charge) and the provisions of this Schedule, then the provisions of this Schedule shall prevail and supersede in all events.
6. In the event of a conflict or inconsistency between: a) the provisions of the Standard Charge Terms filed as number 200033 and/or the provisions of this Schedule; and b) the provisions of the Mortgage Agreement, then the provisions of Mortgage Agreement shall prevail and supersede in all events.

# **EXHIBIT “B”**

"B"

This is Exhibit.....referred to in the affidavit of Gloria Kalkkonen sworn before me, this 28<sup>th</sup> day of June, 2019

*[Signature]*  
A COMMISSIONER FOR TAKING AFFIDAVITS

## GUARANTEE

TO: FERINA CONSTRUCTION LIMITED

AND TO: SCHNEIDER RUGGIERO LLP, its solicitors herein

FROM: YUAN HUA WANG (aka Mike Wang)

RE: Ferina Construction Limited (the "Ferina" or the "Lender") loan/mortgage to 3310 Kingston Development Inc. (the "Borrower") as guaranteed by Yuan Hua Wang (the "Guarantor"), pursuant to a Commitment Letter dated July 7, 2016 as it may be amended from time to time (the "Commitment") on the security of a second mortgage against those lands and premises municipally known as 3310-3312 and 3314 Kingston Road, Toronto, Ontario (the "Real Property")

Roxana Gabriela Manea, a Commissioner, etc.,  
Province of Ontario, for  
Thornton Grout Finnigan LLP,  
Barristers and Solicitors.  
Expires June 5, 2021.

IN CONSIDERATION of Ferina Construction Limited (the "Lender") dealing with 3310 Kingston Development Inc. (the "Borrower"), the undersigned and each of them, if more than one, hereby jointly and severally guarantee payment to the Lender of all debts and liabilities, present or future, direct or indirect, absolute or contingent, matured or not, at any time owing by the Borrower to the Lender or remaining unpaid by the Borrower to the Lender, whether arising from dealings between the Borrower and the Lender or from any other dealings by which the Borrower may become in any manner whatever liable to the Lender either alone or jointly with any other corporation, person or persons or otherwise including all costs and disbursements incurred by the Lender with a view to recovering or attempting to recover said debts and liabilities (such debts and liabilities being herein called the "Guaranteed Liabilities") provided that the liability of the undersigned and of each of them, if more than one, is limited to \$2,000,000.00 of the loan amounts together with all costs, charges, expenses and interest accruing from date of demand for payment at the Prime Lending Rate plus 8.25% per annum. The Prime Lending Rate means the annual rate of interest which the Lender establishes and quotes from time to time as the reference rate of interest to determine interest rates it will charge at such time for variable rate commercial loans in Canadian dollars to its Borrowers in Canada and to which it may refer as its "prime rate" or "prime lending rate"; upon any change in the Prime Lending Rate, the rate of interest hereunder shall be adjusted automatically and without the necessity of any notice to the undersigned.

AND THE UNDERSIGNED and each of them, if more than one, hereby, jointly and severally agrees with the Lender as follows:

1. In this guarantee the word "Guarantor" shall mean the undersigned and, if there is more than one guarantor, it shall mean each of them. For purposes of this Guarantee, Mike Wang is one and the same person as Yuan Hua Wang
2. This guarantee shall be a continuing guarantee of one hundred percent (100%) of the Guaranteed Liabilities and shall apply to and secure any ultimate balance due or remaining unpaid to the Lender and this guarantee shall not be considered as wholly or partially satisfied by the payment or liquidation at any time of any sum of money for the time being due or remaining unpaid to the Lender.
3. The Lender shall not be bound to exhaust its recourse against the Borrower or others or any security or other guarantees before being entitled to payment from the Guarantor of the Guaranteed Liabilities and it shall not be obliged to deliver its security before its whole claim has been paid.
4. The Guarantor's liability to make payment under this guarantee shall arise forthwith after demand for payment has been made in writing on the undersigned or any one of them, if more than one, and such demand shall be deemed to have been duly made when delivered to or served at the address of the undersigned or such one of them last known to the Lender, on the third business day following posting if sent by regular mail, postage prepaid, to such address, or on the business day next following if sent by facsimile transmission.
5. In addition to the Lender's right to demand payment at any time, upon default in payment of any sum owing by the Borrower to the Lender at any time, the Lender may treat all Guaranteed Liabilities as due and payable and may forthwith collect from the Guarantor the total amount hereby guaranteed and may apply the sum so collected upon the Guaranteed Liabilities or may place it to the credit of a special account. A written

statement of the Lender as to the amount remaining unpaid to the Lender at any time by the Borrower shall, if agreed to by the Borrower, be conclusive evidence and shall, in any event, be prima facie evidence against the Guarantor as to the amount remaining unpaid to the Lender at such time by the Borrower.


6. This guarantee shall be in addition to and not in substitution for any other guarantees or other security which the Lender may now or hereafter hold in respect of the Guaranteed Liabilities and the Lender shall be under no obligation to marshal in favour of the Guarantor any other guarantees or other security or any moneys or other assets which the Lender may be entitled to receive or may have a claim upon and no loss of or in respect of or unenforceability of any other guarantees or other security which the Lender may now or hereafter hold in respect of the Guaranteed Liabilities, whether occasioned by the fault of the Lender or otherwise, shall in any way limit or lessen the Guarantor's liability.
7. Without prejudice to or in any way limiting or lessening the Guarantor's liability and without obtaining the consent of or giving notice to the Guarantor, the Lender may discontinue, reduce, increase or otherwise vary the credit of the Borrower, may grant time, renewals, extensions, indulgences, releases and discharges to and accept compositions from or otherwise deal with the Borrower and others, including the Guarantor and any other guarantor as the Lender may see fit, and the Lender may apply all money received from the Borrower or others or from security or guarantees upon such parts of the Guaranteed Liabilities as the Lender may see fit and change any such application in whole or in part from time to time.
8. Until repayment in full of all the Guaranteed Liabilities, all dividends, compositions, proceeds of security, security valued or payments received by the Lender from the Borrower or others or from estates in respect of the Guaranteed Liabilities shall be regarded for all purposes as payments in gross without any right on the part of the Guarantor to claim the benefit thereof in reduction of the liability under this guarantee, and the Guarantor shall not claim any set-off or counterclaim against the Borrower in respect of any liability of the Borrower to the Guarantor, claim or prove in the Bankruptcy or insolvency of the Borrower in competition with the Lender or have any right to be subrogated to the Lender.
9. This guarantee shall not be discharged or otherwise affected by the death or loss of capacity of the Borrower, by any change in the name of the Borrower, or in the membership of the Borrower, if a partnership, or in the objects, capital structure or constitution of the Borrower, if a corporation, or by the sale of the Borrower's business or any part thereof or by the Borrower amalgamating with a corporation, but shall, notwithstanding any such event, continue to apply to all Guaranteed Liabilities whether theretofore or thereafter incurred and in the case of a change in the membership of a Borrower which is a partnership or in the case of liabilities of the resulting partnership or corporation, the term "Borrower" shall include each such resulting partnership and corporation.
10. The Guarantor represents and warrants to the Lender that it is fully aware of the financial condition of the Borrower and agrees to monitor changes in the financial condition of the Borrower. The Guarantor acknowledges that the Lender has made no representations or warranties regarding the financial condition of the Borrower, that the Lender expressly disclaims any obligation to advise the Guarantor of any changes in the financial condition of the Borrower and hereby releases the Lender from any liability arising therefrom.
11. All advances, renewals and credits made or granted by the Lender to or for the Borrower after the death, loss of capacity, Bankruptcy or insolvency of the Borrower, but before the Lender has received notice thereof shall be deemed to form part of the Guaranteed Liabilities and all advances, renewals and credits obtained from the Lender by or on behalf of the Borrower shall be deemed to form part of the Guaranteed Liabilities notwithstanding any lack or limitation of power, incapacity or disability of the Borrower or of the directors, partners or agents thereof, or that the Borrower may not be a legal or suable entity, or any irregularity, defect or informality in the obtaining of such advances, renewals or credits, whether or not the Lender had knowledge thereof; and any such advance, renewal or credit which may not be recoverable from the undersigned as guarantor(s) shall be recoverable from the undersigned and each of them, if more than one, jointly and severally as principal debtor(s) in respect thereof and shall be paid to the Lender on demand.
12. All debts and liabilities, present and future, of the Borrower to the Guarantor are hereby assigned to the Lender and postponed to the Guaranteed Liabilities and all money

received by the Guarantor in respect thereof shall be received in trust for the Lender and forthwith upon receipt shall be paid over to the Lender, the whole without in any way lessening or limiting the liability of the Guarantor under this guarantee; and this assignment and postponement is independent of the guarantee and shall remain in full force and effect until repayment in full to the Lender of all the Guaranteed Liabilities, notwithstanding that the liability of the undersigned or any of them under this guarantee may have been discharged or terminated.

13. This guarantee embodies all the agreements between the parties hereto relative to the guarantee, assignment and postponement and none of the parties shall be bound by any representation or promise made by any person relative thereto which is not embodied herein and it is specifically agreed that the Lender shall not be bound by any representations or promises made by the Borrower to the Guarantor. Possession of this instrument by the Lender shall be conclusive evidence against the Guarantor that the instrument was not delivered in escrow or pursuant to any agreement that it should not be effective until any condition precedent or subsequent has been fulfilled.
14. This guarantee shall be binding upon every signatory hereof notwithstanding the non-execution hereof or of a similar guarantee by any other proposed signatory or signatories.
15. This guarantee shall not be discharged or affected by the death of the undersigned or any of them, if more than one, and shall enure to the benefit of and be binding upon the Lender, its successors and assigns, and the Guarantor, its heirs, executors, administrators, successors and assigns.
16. This guarantee shall be governed in all respects by the laws of the Province of Ontario and the laws of Canada applicable therein.
17. The undersigned is domiciled at 65 Ingram Road, Markham, Ontario L3S 4J9 (insert complete address) and will not change such domicile without providing the Lender with prior written notice setting forth its new domicile and the effective date of the change.
18. The Guarantor acknowledges having read this guarantee before signing it and declares that he/she/it understands the terms, conditions and undertakings contained herein. The Guarantor acknowledges receipt of a fully executed copy of this guarantee hereby waives any right to receive a copy of any financing statement, financing change statement or verification statement filed at any time in connection with this guarantee.

SIGNED by the Guarantor at Markham, this 20 day of July, 2016.

  
Witness:

  
Yuan Hua Wang



# **EXHIBIT “C”**

This is Exhibit 104 referred to in the affidavit of Gloria Kalkounis sworn before me, this 26th day of June 2019

A COMMISSIONER FOR TAKING AFFIDAVITS

**Gloria Kalkounis**

**From:** D. J. Miller  
**Sent:** June-26-19 9:14 PM  
**To:** Sean Zweig  
**Cc:** Alexander Soutter; Aiden Nelms; Robert D. Kofman (bkofman@ksvadvisory.com); David Sieradzki (dsieradzki@ksvadvisory.com)  
**Subject:** Re: Ferina Second Mortgage / Wang guarantee

Roxana Gabriela Manea, a Commissioner of the Province of Ontario, for Thornton Grout Finnigan LLP, Barristers and Solicitors. Expires June 5, 2021.

Thanks, Sean.

D.J.

D.J. Miller | [djmillier@tgf.ca](mailto:djmillier@tgf.ca) | Direct Line: 416-304-0559 | Thornton Grout Finnigan LLP | [www.tgf.ca](http://www.tgf.ca)



D. J. Miller | Direct Line: +1 416 304-0559 | Thornton Grout Finnigan LLP | [www.tgf.ca](http://www.tgf.ca)

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On Jun 26, 2019, at 8:30 PM, Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)> wrote:

D.J.,

We have reviewed the guarantee provided, and we have no issue with it. It appears to be valid and enforceable, subject to its terms (including the cap of \$2M, plus interest).

As we discussed, Mr. Wang will still be entitled to assert defences with respect to the guarantee if he so chooses, but based solely on the document provided, it appears to the Monitor that your client has a valid and enforceable guarantee.

<image001.png> **Sean Zweig**  
*Partner, Bennett Jones LLP*

3400 One First Canadian Place, P.O. Box 130, Toronto, ON, M5X 1A4  
T. 416 777 6254 | F. 416 863 1716  
E. [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com)

**From:** D. J. Miller <[DJMiller@tgf.ca](mailto:DJMiller@tgf.ca)>  
**Sent:** 26 June 2019 1:27 PM  
**To:** Sean Zweig <[ZweigS@bennettjones.com](mailto:ZweigS@bennettjones.com)>  
**Cc:** Alexander Soutter <[ASoutter@tgf.ca](mailto:ASoutter@tgf.ca)>  
**Subject:** Fwd: Ferina Second Mortgage / Wang guarantee

Sean: As discussed, attached please find the personal guarantee delivered by Mike Wang in favour of our client Ferina.

Could you please advise as to the Monitor's view on the validity and enforceability of the attached as against Mike Wang. Please advise if you require anything further in order to do so.

Thank you,

*D.J.*

**D.J. Miller** | [djmiller@tgf.ca](mailto:djmiller@tgf.ca) | Direct Line: 416-304-0559 | **Thornton Grout Finnigan LLP** | [www.tgf.ca](http://www.tgf.ca)



D. J. Miller | [DJMiller@tgf.ca](mailto:DJMiller@tgf.ca) | Direct Line: +1 416 304-0559 | Thornton Grout Finnigan LLP | Suite 3200, TD West Tower, 100 Wellington Street West, P.O. Box 329, Toronto-Dominion Centre, Toronto, Ontario M5K 1K7 | 416-304-1616 | Fax: 416-304-1313 | [www.tgf.ca](http://www.tgf.ca)

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APPLICATION UNDER 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. et  
al

Court File No.: CV-18-608313-00CL

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

Proceedings commenced at Toronto

**AFFIDAVIT OF GLORIA KALKOUNIS  
(Sworn June 28, 2019)**

**Thornton Grout Finnigan LLP**

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Lawyers for Ferina Construction Limited

APPLICATION UNDER 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

Court File No.: CV-18-608313-00CL

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

Proceedings commenced at Toronto

**RESPONDING MOTION RECORD OF FERINA  
CONSTRUCTION LIMITED**  
**(Motion returnable on July 2, 2019)**

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Fax: (416) 304-1313

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Lawyers for Ferina Construction Limited