



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

April 8, 2019

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

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

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

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

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

**FOURTH REPORT OF KSV KOFMAN INC. AS MONITOR**

**April 8, 2019**

## **1.0 Introduction**

1. Pursuant to an order of the Ontario Superior Court of Justice (Commercial List) (the "Court") made on November 30, 2018, as amended and restated on December 6, 2018 (the "Initial Order"), Forme Development Group Inc. and the affiliated entities listed on Appendix "A" (the "Applicants") were granted protection under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), and KSV Kofman Inc. ("KSV") was appointed monitor (in such capacity, the "Monitor"). A copy of the Initial Order is attached as Appendix "B".
2. The principal purpose of these proceedings is to create a stabilized environment to conduct a Court-approved sale process (the "Sale Process") for the Applicants' real property. The Initial Order approved the Sale Process, including a listing agreement between the Applicants and TD Cornerstone Commercial Realty Inc. ("TD"). The bid deadline for all properties included in the Sale Process was March 27, 2019.
3. KSV is filing this report (the "Report") in its capacity as Monitor.

## 1.1 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about these proceedings;
  - b) summarize the results of the Sale Process for the Purchased Assets (as defined in Section 5.0(1)(b)), including the real property located at 4427, 4407, 4413 and 4439 John Street (the "John Street Properties") and 5471, 5491 and 5507 River Road (the "River Road Properties") in Niagara Falls, Ontario (collectively, the "Real Property") owned by two of the Applicants, being 5507 River Development Inc. and 4439 John Development Inc. (jointly, the "NF Applicants");
  - c) summarize a transaction (the "Transaction") with 2486489 Ontario Inc., in trust (the "Purchaser"), for the Purchased Assets pursuant to an Agreement of Purchase and Sale dated March 27, 2019 between the Monitor and the Purchaser (the "APS");
  - d) set out the basis on which the Monitor is recommending Court approval of the Transaction and that the Confidential Appendices to this Report be sealed pending further order of the Court;
  - e) provide the recommended distribution of the sale proceeds following the closing of the Transaction, assuming the Transaction is approved by the Court;
  - f) summarize the status of the Sale Process for the real property owned by the balance of the Applicants;
  - g) summarize the Monitor's anticipated next steps in these proceedings; and
  - h) recommend that the Court issue an order:
    - approving the APS and the Transaction;
    - authorizing and directing the Monitor to complete the Transaction and convey to the Purchaser the Purchased Assets and vesting the Purchased Assets in the Purchaser on closing, free and clear of claims and encumbrances other than the Permitted Encumbrances (as defined in the APS), upon execution and delivery of a certificate by the Monitor confirming completion of the Transaction;
    - approving the proposed distributions of the sale proceeds; and
    - sealing the Confidential Appendices to this Report pending further order of the Court.

## 1.2 Restrictions

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

## 2.0 Background

1. The Applicants are part of a commercial and residential real estate group which develops low-rise, high-rise, mixed-use and hospitality projects. The Applicants' properties are primarily located in the Greater Toronto Area, with a few located in Southwestern Ontario, including the Real Property.
2. KSV filed a report to Court dated November 6, 2018 in its capacity as proposed CCAA monitor (the "Proposed Monitor's Report"). KSV also filed three supplements to the Proposed Monitor's Report (the "Supplemental Reports"). Detailed information about the Applicants and these proceedings is set out in the Proposed Monitor's Report and the Supplemental Reports and, accordingly, that information is not repeated in this Report.
3. Copies of all Court materials filed in these proceedings, including the Proposed Monitor's Report and the Supplemental Reports, are available on the Monitor's website at <https://www.ksvadvisory.com/insolvency-cases/case/forme-development-group-inc>.

## 3.0 The Real Property

1. The Real Property is an assembly comprised of several properties located on the corner of River Road and John Street in Niagara Falls, Ontario. The total size of the site is 1.96 acres. There are four residential homes on separate lots on the Real Property. Each home is presently occupied pursuant to a month-to-month lease between an NF Applicant and the relevant tenant.
2. The NF Applicants intended to develop two residential towers on the property. The Real Property is in the pre-development stage - applications were submitted prior to the commencement of these proceedings. The next conference before the Local Planning Appeal Tribunal is scheduled for April 18, 2019.

3. The mortgagees of the Real Property are reflected in the table below. The mortgage obligations are based on the NF Applicants' books and records as at November, 2018, before interest and costs, which continue to accrue.

Property	Mortgagee	Priority <sup>1</sup>	Amount (\$000s)
4439/4400/4401/4402 John St.	Home Trust Company ("Home Trust")	First	1,266
4439/4400/4401/4402 John St.	Sentrix Financial Corporation ("Sentrix")	Second	211
4439/4400/4401/4402 John St.	Home Trust	Third	Collateral mortgage for River Road first mortgage
5471/5491/5507 River Rd.	Home Trust	First	1,860
5471/5491/5507 River Rd.	Niagara Falls Pointe General Partners Inc. ("NF Pointe")	Second	1,000
5471/5491/5507 River Rd.	Home Trust	Third	Collateral mortgage for John Street first mortgage
Total Mortgage Debt, before interest and costs			4,337

4. The Monitor has been provided with property tax statements dated May 30, 2018 for the John Street Properties and August 1, 2018 for the River Road Properties. The property tax arrears for those periods total approximately \$100,000. Property taxes have not been paid since the commencement of these proceedings. All outstanding property taxes will be paid as part of the closing process.

## 4.0 Sale Process

### 4.1 Overview

1. The Initial Order approved the retention of TD to carry out the Sale Process under the Monitor's supervision.
2. Immediately following the granting of the Initial Order, TD began preparing for the Sale Process in accordance with the Initial Order. The Sale Process overview and timelines are provided in the following table.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 1 – Underwriting</i>		
Finalize marketing materials	<ul style="list-style-type: none"> <li>➤ TD and the Monitor to:               <ul style="list-style-type: none"> <li>○ prepare an offering summary;</li> <li>○ populate an online data room; and</li> <li>○ prepare a confidentiality agreement ("CA").</li> </ul> </li> </ul>	November 30, 2018 to February 5, 2019
Prospect Identification	<ul style="list-style-type: none"> <li>➤ TD to develop a master prospect list.</li> <li>➤ TD will qualify and prioritize prospects.</li> <li>➤ TD will have pre-marketing discussions with targeted prospects.</li> </ul>	

<sup>1</sup> The priority is based on the order in which the charges were registered on title. The Monitor is not aware of anything that would impact that priority, but the Monitor's counsel has not opined on the relative priorities of the mortgages.

Summary of Sale Process		
Milestone	Description of Activities	Timeline
<i>Phase 2 – Marketing</i>		
Stage 1	<ul style="list-style-type: none"> <li>➤ Mass market introduction, including: <ul style="list-style-type: none"> <li>○ Offering summary and marketing materials printed;</li> <li>○ publication of the acquisition opportunity in The Globe and Mail (National Edition) and other community or industry targeted publications, as applicable;</li> <li>○ telephone and email canvass of leading prospects, both from a sale and refinancing perspective; and</li> <li>○ meet with and interview prospective bidders.</li> </ul> </li> <li>➤ TD to assist the Monitor and its legal counsel in the preparation of a Vendor's form of Purchase and Sale Agreement.</li> <li>➤ TD to provide detailed information to qualified prospects which execute the CA including an offering summary and access to the data room.</li> <li>➤ TD to facilitate all diligence by interested parties.</li> </ul>	February 6, 2019  to March 26, 2019
Stage 3	<ul style="list-style-type: none"> <li>➤ Deadline for prospective purchasers to submit offers.</li> </ul>	March 27, 2019
<i>Phase 3 – Offer Review and Negotiations</i>		
Short-listing of Offers	<ul style="list-style-type: none"> <li>➤ Short listing bidders.</li> <li>➤ Further bidding - Interested bidders may be asked to improve their offers in as many rounds of bidding as is required to maximize the consideration.</li> </ul>	April 3, 2019
Selection of Successful Bid	<ul style="list-style-type: none"> <li>➤ Select successful bidder and finalize definitive documents.</li> </ul>	April 10, 2019
Sale Approval Motion and Closing	<ul style="list-style-type: none"> <li>➤ Motion for transaction approval and close transaction.</li> </ul>	April 17, 2019 to April 24, 2019

3. On April 2, 2019, TD provided the Monitor with a letter summarizing the procedures it performed carrying out the Sale Process and feedback received from the market during that process (the "Sale Process Letter"). The Sale Process Letter details that:
- a) the offering summary and CA were distributed to TD's subscriber list of approximately 2,000 market participants;
  - b) the Real Property was listed on the Toronto Multiple Listing Service ("MLS") system and the Niagara Region's MLS system;

- c) print advertisements were placed in *The Globe and Mail* on two occasions;
  - d) advertisements were placed in two online development focused publications - *Novae Res Urbis* (GTA and Toronto editions), as well as *Urban Toronto*; and
  - e) the offering summary and CA were placed on the Monitor's Website.
4. TD also discussed this opportunity with numerous developers and other parties that that it believed would have an interest in the property and engaged in discussions with those parties to facilitate diligence and to maximize value.
  5. A redacted version of the Sale Process Letter is attached as Appendix "C". An unredacted version is attached as Confidential Appendix "2". The basis for the sealing request is provided below in Section 5.1 of this Report.

## 4.2 Sale Process Results

1. A summary of the results of the Sale Process is as follows:
  - a) approximately 120 parties executed the CA<sup>2</sup>, were provided the Confidential Information Memorandum and given access to the data room;
  - b) on February 8, 2019, an unsolicited offer was submitted for the Real Property by a prospective purchaser (the "Bidder"). This party recently acquired three properties from certain affiliates of the Applicants in the context of insolvency proceedings where KSV is the proposal trustee under the *Bankruptcy and Insolvency Act*<sup>3</sup>. The Monitor attempted to negotiate with that Bidder; however, the party did not engage with the Monitor and did not submit a further offer in the Sale Process;
  - c) on the bid deadline, March 27, 2019, four offers were received for the Purchased Assets;
  - d) the Purchaser's offer was substantially submitted in the form of the Monitor's template agreement of purchase and sale and was the highest offer received. The offer is unconditional (except for Court approval) and its value is sufficient to pay in full all of the mortgages on the Real Property; and
  - e) the APS was fully executed and accepted by the Monitor on March 29, 2019.
2. TD prepared a summary of the offers submitted for the Purchased Assets (the "Offer Summary"), a copy of which is attached as Confidential Appendix "1". For the reasons detailed in Section 5.1 of this Report, the Monitor is seeking to have the Offer Summary sealed pending further order of the Court.

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<sup>2</sup> This represents the total number of CAs signed in the process. Interested parties were not required to identify the sites of interest to them when executing the CA.

<sup>3</sup> Being 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc. and 82 Old Kennedy Development Inc.



## 5.0 Transaction<sup>4</sup>

1. A summary of the Transaction is as follows:
  - a) **Purchaser:** An arm's length party incorporated by Times Group Corp<sup>5</sup>, a Markham, Ontario based real estate developer with experience in the Niagara Falls area.
  - b) **Purchased Assets:**
    - (i) the Real Property;
    - (ii) all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
    - (iii) the Plans;
    - (iv) the Leases;
    - (v) the Permits and Contracts, to the extent transferable; and
    - (vi) all intellectual property, if any, owned by the NF Applicants with respect to the Real Property.
  - c) **Purchase Price:** For the reasons detailed in Section 5.1 of this Report, the Monitor is seeking to have the purchase price sealed pending further order of the Court. The Purchaser did not allocate the purchase price across the properties comprising the Real Property.
  - d) **Deposit:** The Purchaser has paid a deposit equal to 15% of the purchase price. The deposit is being held in a trust account of Bennett Jones LLP ("Bennett Jones"), the Monitor's counsel.
  - e) **Leases:** The Purchaser has agreed to assume the existing leases in respect of the four residential homes on the Real Property.
  - f) **Excluded Assets:** The right, title and interest of the NF Applicants in any of their assets, other than the Purchased Assets, including: (i) books and records that do not exclusively or primarily relate to the Purchased Assets; and (ii) tax refunds relating to the period prior to the Closing Date.
  - g) **Representations and Warranties:** Consistent with the standard terms of an insolvency transaction, i.e. on an "as is, where is" basis, with limited representations and warranties.
  - h) **Closing:** Earlier of April 30, 2019 and the first Business Day which is two Business Days following the granting of the Approval and Vesting Order.
  - i) **Material Conditions:** The only material condition precedent to the Transaction is Court approval.

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<sup>4</sup> Capitalized terms in this section have the meaning provided to them in the APS unless otherwise defined herein.

<sup>5</sup> One or more of the Applicants formerly operated as Time Development Group Inc. Despite having a similar name to the Applicants' former name, the Purchaser and the Applicants are unrelated.

2. A copy of the redacted version of the APS is attached as Appendix “D”. An unredacted copy of the APS is attached as Confidential Appendix “3”.

## **5.1 Sealing**

1. The Monitor recommends that the unredacted copy of the APS, the Offer Summary and the unredacted Sale Process Letter each be filed with the Court on a confidential basis and remain sealed pending further order of the Court as the availability of such information to other parties may negatively impact any future sale process for the Real Property if the Transaction does not close. In addition, the offer summary contains sensitive information including the identity of bidders and the value of competing bids.
2. The Monitor does not believe that any stakeholder will be prejudiced if the information is sealed or redacted. Keeping this information sealed pending further order of the Court is beneficial to maximizing value in these circumstances.

## **5.2 Recommendation re Transaction**

1. For the following reasons, the Monitor recommends that the Court issue an order approving the Transaction:
  - a) the Sale Process was conducted in accordance with the terms approved under the Initial Order;
  - b) a reputable and experienced realtor, TD, was retained to conduct the Sale Process under the Monitor’s supervision. TD is of the view that the Transaction is the best one available in the circumstances;
  - c) the market was canvassed by TD using several strategies commonly used to sell real property including, but not limited to, direct solicitation of investors and developers. As evidenced by the summary of its marketing campaign (provided in Confidential Appendix “2”), TD undertook a thorough canvassing of the market for the Real Property;
  - d) the Transaction provides for the greatest recovery available in the circumstances and is projected to fully repay all of the mortgagees;
  - e) in the Monitor’s and TD’s view, further time marketing the Purchased Assets is unlikely to enhance recoveries and would result in increased professional fees; and
  - f) the Transaction contemplates a closing date two Business Days following Court approval and, accordingly, can be completed expeditiously. This will avoid further costs, including property taxes, insurance and professional fees.
2. Pursuant to the Initial Order, the Monitor is authorized to execute and complete the Transaction on behalf of the Applicants. The Monitor has kept the Applicants apprised of the status of the Transaction and its intention to seek Court approval thereof.

## 6.0 Proposed Distribution of Sale Proceeds

1. Subject to Court approval, the Monitor intends to distribute the sale proceeds as follows:
  - a) TD's commission, being 1.75% of the sale price;
  - b) payment in full of all property tax arrears;
  - c) the NF Applicants' first mortgage obligations owing to Home Trust on each property comprising the Real Property;
  - d) professional fees incurred in connection with the administration of the CCAA proceedings for the Real Property, which largely relate to the Sale Process, as contemplated under paragraphs 32 and 33 of the Initial Order; and<sup>6</sup>
  - e) mortgage obligations owing to each of Sentrix and NF Pointe on their respective second mortgages.
2. To the extent there is a surplus after repayment of all mortgage debt owing on the Real Property, the funds will remain on deposit in the Monitor's trust account until the completion of a claims process.
3. The Monitor believes the proposed distributions are appropriate as:
  - a) it is consistent with the terms of the APS and the priorities of the Court-ordered charges created under the Initial Order; and
  - b) Bennett Jones provided an opinion to the Monitor dated April 3, 2019 which, subject to standard assumptions and qualifications contained therein, concludes that the security granted by the NF Applicants to Home Trust, Sentrix and NF Pointe (as applicable), as registered on title to the applicable Real Property by way of a mortgage, creates a valid and perfected security interest in the NF Applicants' applicable real property that comprises the Real Property.

## 7.0 Status of Sale Process for the Applicants' Other Properties

1. As noted, bids were received on March 27, 2019 for all of the Applicants' real property. Since that time, TD has been working with the bidders to clarify issues related to the offers and to try to improve their terms. TD requested that certain bidders participate in a second round of bidding by submitting improved or final offers by 3:00 pm on April 3, 2019. (Subsequent rounds of bidding were contemplated in the Sale Process approved by the Court).

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<sup>6</sup> In accordance with agreements reached with the principal of the Applicants, the fees of the professionals covered by the Administration Charge have been paid from the proceeds of sales completed in Notice of Intention to Make a Proposal proceedings involving 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc. and 82 Old Kennedy Development Inc. (the "NOI Companies"). Any fees to-date paid by the NOI Companies on behalf of the NF Applicants will be reimbursed from the sale proceeds resulting from the Transaction, to the extent possible. All mortgagees of the NOI Companies have been paid in full and there is expected to be a significant surplus available to the shareholder of the NOI Companies after satisfying the unsecured creditor claims of the NOI Companies.

2. Based on the preliminary results of the Sale Process, one or more mortgagees may incur a loss on each of the non-Niagara Falls properties. The Monitor and Bennett Jones have advised the relevant mortgagees of this. Under paragraph 45 of the Initial Order, each mortgagee is entitled to credit bid its mortgage if it is not being repaid in full, subject to it paying or otherwise satisfying any prior ranking indebtedness in full.
3. As at the date of this Report, TD and the Monitor are continuing to advance in parallel the Sale Process and discussions with various mortgagees. The Monitor anticipates returning to Court in the near term to seek Court approval of additional transactions. The Monitor has advised impaired or partially impaired mortgagees (the "Impaired Mortgagees") of the urgency to prepare and submit a credit bid, particularly in light of the several weeks they have had to do so during the Sale Process. The Monitor has advised the Impaired Mortgagees that it is concerned that it not lose strong offers which are supported by mortgagees who are not impaired or who are the fulcrum creditors that support the proposed transaction.

## 8.0 Anticipated Next Steps

1. The Monitor's anticipated next steps in these proceedings include:
  - a) working with the Purchaser to complete the Transaction, subject to Court approval;
  - b) making the distributions contemplated by Section 6.0 above, subject to Court approval;
  - c) working with TD to sell the balance of the Applicants' properties; and
  - d) working with legal counsel to draft a claims process to be administered by the Monitor for the Applicants and certain affiliated entities.

## 9.0 Conclusion and Recommendation

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

\* \* \*

All of which is respectfully submitted,



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

## **Appendix “A”**

2358825 Ontario Ltd.

27 Anglin Development Inc.

29 Anglin Development Inc.

250 Danforth Development Inc.

3310 Kingston Development Inc.

1296 Kennedy Development Inc.

1326 Wilson Development Inc.

189 Carrville Development Inc.

169 Carrville Development Inc.

159 Carrville Development Inc.

5507 River Development Inc.

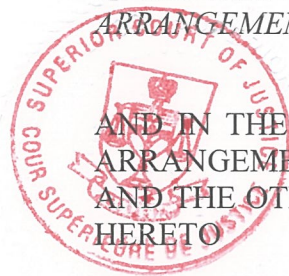
4439 John Development Inc.

## **Appendix “B”**

ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST

THE HONOURABLE MR. ) FRIDAY, THE 30TH  
JUSTICE HAINEY ) DAY OF NOVEMBER, 2018

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

**AMENDED AND RESTATED INITIAL ORDER**

**THIS APPLICATION**, made by Forme Development Group Inc. and those other parties listed on Schedule "A" (collectively, the "**Applicants**"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**") was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the affidavit of Yuan Hua Wang sworn November 5, 2018 and the Exhibits thereto (the "**Wang Affidavit**"), the affidavit of Katie Parent sworn November 6, 2018 and the Exhibit thereto (the "**Parent Affidavit**"), and on reading the consent of KSV Kofman Inc. ("**KSV**") to act as the Monitor (in such capacity, the "**Monitor**"), and upon reading the pre-filing report of KSV dated November 6, 2018 (the "**Report**"), in its capacity as Proposal Trustee and the proposed Monitor, the supplemental report of KSV dated November 7, 2018 (the "**Supplemental Report**"), the second supplemental report of KSV dated November 7, 2018 (the



“**Second Supplemental Report**”), and the third supplemental report of KSV dated November 29, 2018 (the “**Third Supplemental Report**”), and on hearing the submissions of counsel for the Applicants, the proposed Monitor and those other parties present, no one appearing for any other party although duly served as appears from the affidavits of service of Katie Parent sworn November 6, 2018, November 7, 2018 and November 29, 2018.

## **SERVICE**

1. **THIS COURT ORDERS** that the time for service of each of the Notice of Application, the Application Record, the Parent Affidavit, the Report, the Supplemental Report, the Second Supplemental Report and the Third Supplemental Report is hereby abridged and validated so that this Application is properly returnable today and hereby dispenses with further service thereof.

## **APPLICATION**

2. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies.

3. **THIS COURT ORDERS AND DECLARES** that the proposal proceedings (the “**Proposal Proceedings**”) of each of 9500 Dufferin Development Inc. (Estate No. 31-2438977), 250 Danforth Development Inc. (Estate No. 31-2439433), 3310 Kingston Development Inc. (Estate No. 31-2439448), 1296 Kennedy Development Inc. (Estate No. 31-2439440), <sup>159</sup> and Carrville Development Inc. (Estate No. 31-2440234) ~~and 58 Old Kennedy Development Inc. (Estate No. 31-2436538)~~ (collectively the “**NOI Entities**”) commenced under Part III of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”), be taken up and continued under the CCAA and that the provisions of Part III of the BIA shall have no further application to the NOI Entities.

## **TITLE OF PROCEEDINGS**

4. **THIS COURT ORDERS** that the title of proceedings in this matter be amended as follows:

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

### **PLAN OF ARRANGEMENT**

5. **THIS COURT ORDERS** that, subject to paragraph 24 of this Order, the Applicants shall have the authority to file and may, subject to further order of this Court, file with this Court a plan or plans of compromise or arrangement (hereinafter referred to as the "**Plan**" or "**Plans**").

### **POSSESSION OF PROPERTY AND OPERATIONS**

6. **THIS COURT ORDERS** that the Applicants shall remain in possession and control of their current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (including, without limitation, those properties listed on Schedule "B" hereto, which together with the Elm Avenue Properties (defined below) are hereinafter referred to as the "**Property**"). Subject to further Order of this Court, the Applicants shall continue to carry on business in a manner consistent with the preservation of their business (the "**Business**") and Property. The Applicants are authorized and empowered to continue to retain and employ the employees, consultants, agents, experts, accountants, counsel and such other persons (collectively "**Assistants**") currently retained or employed by them, with liberty to retain such further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order. For greater certainty, the retention of TD Cornerstone Commercial Realty Inc. ("**TD**") is hereby approved substantially on the terms of the listing agreement appended to the Third Supplemental Report.

7. **THIS COURT ORDERS** that the Applicants shall be entitled but not required to pay the following expenses whether incurred prior to or after this Order:

- (a) all outstanding and future wages, salaries, employee and pension benefits, vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing compensation policies and arrangements; provided that no such amounts shall be paid to Mr. Wang (as defined below) or any known relative of Mr. Wang without further Order of this Court; and
- (b) subject to paragraph 30 below, the fees and disbursements of any Assistants retained or employed by the Applicants in respect of these proceedings, at their standard rates and charges.

8. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Applicants shall be entitled but not required to pay all reasonable expenses incurred by the Applicants in carrying on the Business in the ordinary course after this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance, maintenance and security services; and
- (b) payment for goods or services actually supplied to the Applicants following the date of this Order.

9. **THIS COURT ORDERS** that the Applicants shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from employees' wages, including, without limitation, amounts in respect of
  - (i) employment insurance, (ii) Canada Pension Plan and (iii) income taxes;

- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Applicants in connection with the sale of goods and services by the Applicants, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order, and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Applicants.

10. **THIS COURT ORDERS** that until a real property lease is disclaimed in accordance with the CCAA, the Applicants shall pay all amounts constituting rent or payable as rent under real property leases (including, for greater certainty, common area maintenance charges, utilities and realty taxes and any other amounts payable to the landlord under the lease) or as otherwise may be negotiated between the Applicants and the landlord from time to time (“**Rent**”), for the period commencing from and including the date of this Order, twice-monthly in equal payments on the first and fifteenth day of each month, in advance (but not in arrears). On the date of the first of such payments, any Rent relating to the period commencing from and including the date of this Order shall also be paid.

11. **THIS COURT ORDERS** that, except as specifically permitted herein, the Applicants are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Applicants to any of its creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of its Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Business.

## RESTRUCTURING

12. **THIS COURT ORDERS** that, subject to paragraph 24 of this Order, the Applicants shall, subject to such requirements as are imposed by the CCAA, have the right to:

- (a) permanently or temporarily cease, downsize or shut down any of its business or operations, and to dispose of redundant or non-material assets not exceeding, in the aggregate \$200,000, in any one or more transactions; and
- (b) terminate the employment of such of its employees or temporarily lay off such of its employees as it deems appropriate,

provided however, and without limiting the provisions of paragraphs 24 and 25, all disbursements shall require the advance consent of the Monitor, and all of the foregoing to permit the Applicants to proceed with an orderly restructuring of the Business (the “**Restructuring**”).

13. **THIS COURT ORDERS** that the Applicants shall provide each of the relevant landlords with notice of the Applicants’ intention to remove any fixtures from any leased premises at least seven (7) days prior to the date of the intended removal. The relevant landlord shall be entitled to have a representative present in the leased premises to observe such removal and, if the landlord disputes the Applicants’ entitlement to remove any such fixture under the provisions of the lease, such fixture shall remain on the premises and shall be dealt with as agreed between any applicable secured creditors, such landlord and the Applicants, or by further Order of this Court upon application by the Applicants on at least two (2) days notice to such landlord and any such secured creditors. If the Applicants disclaim the lease governing such leased premises in accordance with Section 32 of the CCAA, it shall not be required to pay Rent under such lease pending resolution of any such dispute (other than Rent payable for the notice period provided for in Section 32(5) of the CCAA), and the disclaimer of the lease shall be without prejudice to the Applicants’ claim to the fixtures in dispute.

14. **THIS COURT ORDERS** that if a notice of disclaimer is delivered pursuant to Section 32 of the CCAA, then (a) during the notice period prior to the effective time of the disclaimer, the landlord may show the affected leased premises to prospective tenants during normal business hours, on giving the Applicants and the Monitor 24 hours’ prior written notice, and (b)

at the effective time of the disclaimer, the relevant landlord shall be entitled to take possession of any such leased premises without waiver of or prejudice to any claims or rights such landlord may have against the Applicants in respect of such lease or leased premises, provided that nothing herein shall relieve such landlord of its obligation to mitigate any damages claimed in connection therewith.

#### **NO PROCEEDINGS AGAINST THE APPLICANTS OR THE PROPERTY**

15. **THIS COURT ORDERS** that until and including December 28, 2018 or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, except with the written consent of the Applicants and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Applicants or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court. Notwithstanding the foregoing, no stay shall apply to Forme Development Group Inc. with respect to the enforcement of mortgages on properties not included in these CCAA proceedings.

16. **THIS COURT ORDERS** that during the Stay Period, except with the written consent of the Applicants and the Monitor, or with leave of this Court, no Proceedings shall be commenced or continued against or in respect of Yuan Hua Wang (“**Mr. Wang**”) or any of his current and future assets, businesses, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (collectively, the “**Wang Property**”), arising upon or as a result of any default under the terms of any document entered into in connection with any of Mr. Wang’s guarantees of any of the commitments or loans of any of the Applicants or default by Mr. Wang or Hua Zhang (collectively, the “**Wangs**”) on the mortgage obligations on the Elm Avenue Properties (collectively, the “**Wang Default Events**”). Without limitation, the operation of any provision of a contract or agreement between Mr. Wang and any other Person (as hereinafter defined) that purports to effect or cause a termination or cessation of any rights of Mr. Wang, or to accelerate, terminate, discontinue, alter, interfere with, repudiate, cancel, suspend, amend or modify such contract or agreement, in each case as a result of one or more Wang Default Events, is hereby stayed and restrained during the Stay Period.

**16A. THIS COURT ORDERS** that during the Stay Period, except with the written consent of the Wangs and the Monitor, no Proceedings shall be commenced or continued against or in respect of Mr. Wang or Hua Zhang in connection with the properties known as 59 Elm Avenue and 63 Elm Avenue (the “**Elm Avenue Properties**”).

#### **NO EXERCISE OF RIGHTS OR REMEDIES**

17. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of the Applicants or the Monitor, or affecting the Business or the Property, are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Applicants to carry on any business which the Applicants are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

18. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person against or in respect of the Wangs, or affecting the Elm Avenue Properties or Wang Property, as a result of a Wang Default Event are hereby stayed and suspended except with the written consent of the Applicants and the Monitor, or leave of this Court, provided that nothing in this Order shall (i) empower the Wangs to carry on any business which the Wangs are not lawfully entitled to carry on, (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA, (iii) prevent the filing of any registration to preserve or perfect a security interest, or (iv) prevent the registration of a claim for lien.

#### **NO INTERFERENCE WITH RIGHTS**

19. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with, repudiate, terminate or cease to perform any right, renewal right,

contract, agreement, licence or permit in favour of or held by the Applicants, except with the written consent of the Applicants and the Monitor, or leave of this Court.

20. **THIS COURT ORDERS** that during the Stay Period, no Person shall discontinue, fail to honour, alter, interfere with repudiate, terminate or cease to perform any right, renewal right, contract, agreement, licence or permit in favour of or held by any other party as a result of a Wang Default Event, except with the written consent of the Applicants and the Monitor, or leave of this Court.

### **CONTINUATION OF SERVICES**

21. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with the Applicants or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to the Business or the Applicants, are hereby restrained until further Order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by the Applicants, and that the Applicants shall be entitled to the continued use of its current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Applicants in accordance with normal payment practices of the Applicants or such other practices as may be agreed upon by the supplier or service provider and each of the Applicants and the Monitor, or as may be ordered by this Court.

### **NON-DEROGATION OF RIGHTS**

22. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of lease or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to the Applicants. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.



## **PROCEEDINGS AGAINST DIRECTORS AND OFFICERS**

23. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors or officers of the Applicants with respect to any claim against the directors or officers that arose before the date hereof and that relates to any obligations of the Applicants whereby the directors or officers are alleged under any law to be liable in their capacity as directors or officers for the payment or performance of such obligations, until a compromise or arrangement in respect of the Applicants, if one is filed, is sanctioned by this Court or is refused by the creditors of the Applicants or this Court.

## **APPOINTMENT OF MONITOR**

24. **THIS COURT ORDERS** that KSV Kofman Inc. is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Applicants with the powers and obligations set out in the CCAA or set forth herein and that the Applicants and its shareholders, officers, directors, and Assistants shall not take any steps with respect to the Applicants, the Business or the Property save and except at the direction of the Monitor pursuant to paragraph 25 of this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

25. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) cause the Applicants, or any one or more of them, to exercise rights under and observe its obligations under this Order;
- (b) cause the Applicants 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;

- (c) monitor the Applicants' receipts and disbursements, and if necessary or convenient, in the Monitor's sole discretion, take control of the Applicants' receipts and disbursements;
- (d) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (e) if applicable, reporting to the DIP Lender (as defined below) on a basis to be agreed with the DIP Lender;
- (f) report to and advise mortgagees and other stakeholders of the Applicants as to the status of the sale process and, to the extent requested by mortgagees, convene a bi-weekly conference call with mortgagees, to report on the status of the Property;
- (g) advise the Applicants in its preparation of the Applicants' cash flow statements;
- (h) borrow funds in accordance with the terms of this Order;
- (i) conduct and carry out a sale process or sales processes for all of the Applicants' Property in accordance with the sale process described in the Third Supplemental Report provided that, in the case of the Elm Avenue Properties, the listing agent shall be chosen in consultation with the first mortgagee on those Properties, and retain or consult with the agents, consultants or other parties;
- (j) propose or cause the Applicants to propose one or more Plans in respect of the Applicants or any one or more of them;
- (k) provide any consents that are contemplated by this Order;
- (l) assist the Applicants, to the extent required by the Applicants, with the holding and administering of creditors' or shareholders' meetings for voting on the Plan;
- (m) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the

Applicants, to the extent that is necessary to adequately assess the Applicants' business and financial affairs or to perform its duties arising under this Order;

- (n) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (o) perform such other duties as are required by this Order or by this Court from time to time.

26. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or the Property, or any part thereof and that nothing in this Order, or anything done in pursuance of the Monitor's duties and powers under his Order, shall deem the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, "**Possession**") of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the Ontario *Environmental Protection Act*, the *Ontario Water Resources Act*, or the Ontario *Occupational Health and Safety Act* and regulations thereunder (the "**Environmental Legislation**"), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor's duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that without limiting the provisions herein, each employee of an Applicant shall remain an employee of that Applicant until such time as the applicable Applicant may terminate the employment of such employee. Nothing in this Order shall, in and of itself, cause the Monitor to be liable for any employee-related liabilities or duties, including,

without limitation, wages, severance pay, termination pay, vacation pay and pension or benefit amounts, as applicable.

28. **THIS COURT ORDERS** that that the Monitor shall provide any creditor of the Applicants and the DIP Lender (if applicable) with information provided by the Applicants in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Applicants is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Applicants may agree.

29. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, the Monitor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

30. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor and counsel to the Applicants shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, by the Applicants as part of the costs of these proceedings. The Applicants' counsel, the Monitor and the Monitor's counsel shall be entitled to invoice on a monthly or other periodic basis in their discretion provided that such fees and disbursements shall be paid out of sale proceeds of the Property in accordance with the priority set out below.

31. **THIS COURT ORDERS** that the Monitor and its legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

32. **THIS COURT ORDERS** that as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings ("**Administration Fees**"), the Monitor, counsel to the Monitor and

the Applicants' counsel shall be entitled to the benefit of and are hereby granted a charge (the "**Administration Charge**") on all of the Property on the following terms:

- (a) the maximum amount of the Administration Charge per Property shall only be for security of the applicable Administration Fees that constitute Property Specific Costs (as defined below) for that particular Property and any pro rata portion of General Costs (as defined below) attributable to such Property in accordance with paragraph 34(b) below; and
- (b) the Administration Charge shall automatically attach to any Property that is unencumbered or not fully secured.

33. **THIS COURT ORDERS** that the Administration Charge shall rank in priority to all security interests, trusts, deemed trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, "**Encumbrances**") in favour of any Person, other than (a) any first mortgagee on a Property (in respect of the first mortgage registered on the Property only); (b) the DIP Lender's Charge (as defined below, and to the extent applicable); and (c) the second mortgagee on the Property owned by 2358825 Ontario Ltd. (1483 Birchmount Road).

## **FUNDING**

34. **THIS COURT ORDERS** that these CCAA Proceedings shall be funded in the following manner:

- (a) With respect to costs related to a specific Property (a "**Property Specific Cost**"),
  - (i) the first mortgagee on such Property will have the right (but not the obligation) to fund such amount as an advance under its mortgage at an interest rate accruing at a rate that is the higher of (i) the applicable rate under its mortgage; and (ii) 9.5% per annum, calculated in arrears;
  - (ii) if the first mortgagee does not fund such amount, the second mortgagee will have the right (but not the obligation) to fund such amount as an advance under its mortgage at an interest rate accruing at a rate that is the of the higher of (i) the applicable rate under its mortgage; and (ii) 9.5% per annum, calculated in arrears. The amount advanced will have a first-ranking super-priority charge over the applicable Property only. If necessary, this process

will continue until all mortgagees on a Property have been given the opportunity to fund;

- (iii) where no mortgagee funds such amount, the Monitor shall draw such amount on the Standby DIP (defined below);
- (b) with respect to costs not specific to a particular Property (“**General Costs**”) in an amount up to \$400,000 in the aggregate, if there is not sufficient funding through the Applicant’s cash on hand or cash immediately available generated by the sale of any Properties (after repayment of all known debts):
- (i) each first mortgagee shall have the right (but not the obligation) to fund its pro-rated estimated share of such funding based on the principal amount of its first mortgage as an advance under its mortgage at an interest rate accruing at a rate that is the of the higher of (i) the applicable rate under its mortgage; and (ii) 9.5% per annum, calculated in arrears;
  - (ii) if the first mortgagee does not fund such amount, the second mortgagee will have the right (but not the obligation) to fund such amount as an advance under its mortgage at an interest rate accruing at a rate that is the of the higher of (i) the applicable rate under its mortgage; and (ii) 9.5% per annum, calculated in arrears. The amount advanced will have a first-ranking super-priority charge over the applicable Property only. If necessary, this process will continue until all mortgagees on a Property have been given the opportunity to fund;
  - (iii) where no mortgagee funds such amount, the Monitor shall draw such amount on the Standby DIP.

35. **THIS COURT ORDERS** that the Monitor shall be at liberty and it is hereby empowered to cause any Applicant to borrow by way of a revolving credit or otherwise (the “**Standby DIP**”) from such lender as it may arrange in accordance with paragraph 34 (whether an existing mortgagee or otherwise, a “**DIP Lender**”), such monies from time to time as it may consider necessary or desirable to fund Project Specific Costs and General Costs in accordance with paragraph 34.

36. **THIS COURT ORDERS** that the Monitor is at liberty and authorized to issue certificates substantially in the form annexed as Schedule “C” hereto (the “**DIP Certificates**”) for any amount borrowed pursuant to paragraph 35 and, for greater certainty, each DIP

Certificate shall indicate the Property to be charged and the amount to be charged pursuant to the DIP Certificate.

37. **THIS COURT ORDERS** that any DIP Lender shall be entitled to the benefit of and is hereby granted a fixed and specific charge on the Property identified in a DIP Certificate (the “**DIP Lender's Charge**”) as security for the payment of the principal amount set out in any DIP Certificate, together with interest and charges thereon, in priority to all security interests, trusts, liens, charges and encumbrances, statutory or otherwise, in favour of any Person, including, without limitation, the Administration Charge, provided however, that the amount of any DIP Lender’s Charge shall attach only to the Property identified in a DIP Certificate with respect to that borrowing.

38. **THIS COURT ORDERS** that the monies from time to time borrowed pursuant to paragraph 35 and any and all DIP Certificates evidencing the same or any part thereof shall rank on a *pari passu* basis per Property, unless otherwise agreed to by the holders of any prior issued DIP Certificates.

#### **VALIDITY OF CHARGES CREATED BY THIS ORDER**

39. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge and DIP Lender’s Charge (collectively, the “**Charges**”) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

40. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Applicants shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Applicants also obtain the prior written consent of the beneficiaries of the applicable Charges or further Order of this Court.

41. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) thereunder shall not otherwise be limited or impaired in any way

by (a) the pendency of these proceedings and the declarations of insolvency made herein or by the Proposal Proceedings and the declarations of insolvency made therein; (b) any application(s) for bankruptcy order(s) issued pursuant to BIA, or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds the Applicants, and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance in connection thereof shall create or be deemed to constitute a breach by the Applicants of any Agreement to which it is a party;
- (b) the payments made by the Applicants pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

42. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the Applicants’ interest in such real property leases.

#### **SALE PROCESS**

43. **THIS COURT ORDERS** that the sale process (the “**Sale Process**”), as described in Section 3.0 of the Third Supplemental Report be and is hereby approved.

44. **THIS COURT ORDERS** that the Monitor and TD be and are hereby authorized and directed to perform their obligations under and in accordance with the Sale Process, and to take such further steps as they consider necessary or desirable in carrying out the Sale Process as described in the Third Supplemental Report, subject to prior approval of this Court being obtained before completion of any transactions under the Sale Process.



45. **THIS COURT ORDERS** that without limiting the terms of the Sale Process as set out in the Third Supplemental Report, to the extent that a mortgagee will not be paid in cash in full through bids received through the Sale Process, such mortgagee will be entitled to credit bid its indebtedness and purchase the Property over which it has a mortgage provided that such mortgagee pays any prior ranking indebtedness in full in cash (or such other arrangement to which a prior ranking creditor may in its sole discretion agree).

46. **THIS COURT ORDERS** that the Monitor, and its affiliates, partners, directors, employees, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liabilities, of any nature or kind, to any person in connection with or as a result of performing its obligations under the Sale Process, except to the extent such losses, claims, damages or liabilities result from the gross negligence or willful misconduct of the Monitor in performing its obligations under the Sale Process (as determined by this Court).

47. **THIS COURT ORDERS** that in connection with the Sale Process and pursuant to clause 7(3)(c) of the *Personal Information and Electronic Documents Act (Canada)*, the Monitor, the Applicants and TD are authorized and permitted to disclose personal information of identifiable individuals to prospective purchasers or offerors and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more transactions (each, a "**Transaction**"). Each prospective purchaser or offeror to whom such information is disclosed shall maintain and protect the privacy of such information and shall limit the use of such information to its evaluation of the Transaction, and if it does not complete a Transaction, shall: (i) return all such information to the Monitor, the Applicants or TD, as applicable; (ii) destroy all such information; or (iii) in the case of such information that is electronically stored, destroy all such information to the extent it is reasonably practical to do so. The transacting party with respect to any Property shall be entitled to continue to use the Personal Information provided to it, and related to the Property purchased, in a manner which is in all material respects identical to the prior use of such information by the Applicants, and shall return all other personal information to the Monitor, the Applicants, or TD, as applicable, or ensure that all other personal information is destroyed.

48. **THIS COURT ORDERS** that to the extent there is equity available in any project of the Applicants (each of the projects is set out in Section 3.0(3) of the Report) or either or both of the Elm Avenue Properties after payment of all debts, fees and costs owing or incurred in respect of that project or either or both of the Elm Avenue Properties (in each case, the “**Project Equity**”), each mortgagee of that project will be entitled to receive in cash an amount equal to 10% of the principal amount of its mortgage prior to any payment to the project's or either or both of the Elm Avenue Properties' shareholder (the “**Equity Kicker**”); provided that to the extent there is insufficient Project Equity to pay the Equity Kicker in full, each such mortgagee shall be entitled to its *pro-rata* share of the Equity Kicker based on the principal amount of its mortgage; and further provided that any mortgagee with a collateral mortgage will be entitled to collect its Equity Kicker in respect of any Property where it has a mortgage, provided that (i) in no event will such mortgagee receive in the aggregate an Equity Kicker that is greater than 10% of the principal amount of its mortgage owed by the primary mortgagor, and (ii) the advances it provided were used either for the property subject to the mortgage or for another property in the same project.

#### **SERVICE AND NOTICE**

49. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in the Globe and Mail (National Edition) a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, in the prescribed manner, a notice to every known creditor who has a claim against the Applicants of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made thereunder.

50. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/e-service-protocol/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to

Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a Case Website shall be established in accordance with the Protocol with the following URL '<http://www.ksvadvisory.com/insolvency-cases/forme-development-group/>'.

51. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable, the Applicants and the Monitor are at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery or facsimile transmission to the Applicants' creditors or other interested parties at their respective addresses as last shown on the records of the Applicants and that any such service or distribution by courier, personal delivery or facsimile transmission shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

#### **GENERAL**

52. **THIS COURT ORDERS** that the Applicants or the Monitor may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.

53. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

54. **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 Applicants, 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 the Applicants and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicants and the Monitor and their respective agents in carrying out the terms of this Order.

55. **THIS COURT ORDERS** that each of the Applicants and the Monitor be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that the Monitor is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

56. **THIS COURT ORDERS** that any interested party (including the Applicants and the Monitor) may apply to this Court to vary or amend this Order on not less than seven (7) days notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order.

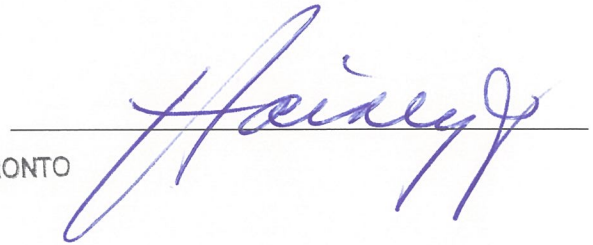
57. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order.

ENTERED AT / INSCRIT À TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO:

DEC 06 2018

PER / PAR:

UM



**Schedule "A" – List of Applicants**

3310 Kingston Development Inc.

1296 Kennedy Development Inc.

1326 Wilson Development Inc.

376 Derry Development Inc.

5507 River Development Inc.

4439 John Development Inc.

9500 Dufferin 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.

~~58 Old Kennedy Development Inc.~~



**SCHEDULE "B" – LIST OF PROPERTIES**

250 Danforth Rd. E Block 55 - Dairy Dr., Toronto, ON (PIN 06449-0741) Block 53 - Bamblett Dr., Toronto, ON (PIN 06449-0739) Block 54 - Bamblett Dr., Toronto, ON (PIN 06449-0740)
3314 Kingston Rd., Toronto, ON
1296 Kennedy Rd., Toronto, ON
1326 Wilson Ave, Toronto, ON
1328 Wilson Ave, Toronto, ON
376 Derry Rd. W., Mississauga, ON
4439 John St., Niagara Falls, ON
4407 John St., Niagara Falls, ON
4413 John St., Niagara Falls, ON
4427 John St., Niagara Falls, ON
5507 River Rd. Niagara Falls, ON
5471 River Rd., Niagara Falls, ON
5491 River Rd., Niagara Falls, ON
9500 Dufferin St., Maple, ON
1483 Birchmount Rd., Toronto, ON
159 Carrville Road, Richmond Hill, ON
169 Carville Road, Richmond Hill, ON
177 Carrville Road, Richmond Hill, ON
181 Carrville Road, Richmond Hill, ON

189 Carrville Road, Richmond Hill, ON
27 Anglin Drive, Richmond Hill, ON
29 & 31 Anglin Drive, Richmond Hill, ON
<del>58 Old Kennedy Road and 20 Thelma Ave., Markham, ON</del>



**SCHEDULE "C" – FORM OF DIP CERTIFICATE**

CERTIFICATE NO. \_\_\_\_\_

AMOUNT \$ \_\_\_\_\_

AFFECTED PROPERTY \_\_\_\_\_ (the "**Charged Property**")

1. THIS IS TO CERTIFY that KSV Kofman Inc., the monitor (the "**Monitor**") in the CCAA proceedings of Forme Development Group Inc. and certain of its affiliates (the "**Applicants**") appointed by Order of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated the \_\_\_ day of \_\_\_\_\_, 2018 (the "**Initial Order**") made in an action having Court file number CV-18-608313-00CL, has received as such Monitor from the holder of this certificate (the "**DIP Lender**") the principal sum of \$ \_\_\_\_\_.

2. The principal sum evidenced by this certificate is payable on demand by the Lender with interest thereon calculated and compounded monthly not in advance on the first day of each month after the date hereof at a notional rate of \_\_\_\_\_ per annum equal.

3. Such principal sum with interest thereon is, by the terms of the Order, together with the principal sums and interest thereon of all other certificates issued by the Monitor pursuant to the Initial Order or to any further order of the Court, a charge upon the Charged Property which charge shall have the priority set out in the Initial Order.

4. All sums payable in respect of principal and interest under this certificate are payable at the main office of the Lender at Toronto, Ontario.

5. Until all liability in respect of this certificate has been terminated, no certificates creating charges ranking or purporting to rank in priority to this certificate on the Charge Property shall be issued by the Monitor to any person other than the holder of this certificate without the prior written consent of the holder of this certificate.

6. The charge securing this certificate shall operate so as to permit the Monitor to deal with the Charged Property as authorized by the Initial Order and as authorized by any further or other order of the Court.



7. The Monitor does not undertake, and it is not under any personal liability, to pay any sum in respect of which it may issue certificates under the terms of the Order.

DATED the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

KSV KOFMAN INC., solely in its capacity  
as Monitor in the CCAA proceedings of Forme  
Development Group Inc. and the other parties  
therein, and not in its personal capacity

Per: \_\_\_\_\_  
Name:  
Title:

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

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

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

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
(Commercial List)

Proceeding commenced at Toronto

**AMENDED AND RESTATED INITIAL ORDER**

**GOLDMAN SLOAN NASH & HABER LLP**  
480 University Avenue, Suite 1600  
Toronto, Ontario M5G 1V2  
Fax: 416-597-6477

**Mario Forte (LSUC#: 27293F)**  
Tel: 416.597.6477  
Email: forte@gsnh.com

**Jennifer Stam (LSUC#: 46735J)**  
Tel: 416.597.5017  
Email: stam@gsnh.com

Lawyers for the Applicants

## **Appendix “C”**



**TD Securities**  
TD Securities Inc  
TD Tower  
66 Wellington Street West, 9<sup>th</sup> Floor  
Toronto, Ontario M5K 1A2

April 2, 2019

Attn: Bobby Kofman (MD) / David Sieradzki (MD)

KSV Advisors  
150 King St. W. (2308),  
Toronto, ON, M5H 1J9

**RE: PROCESS OVERVIEW AND MARKET FEEDBACK**

---

All –

As requested, please find below an overview of the FORME Development CCA process for your reference:

The marketing program was launched on February 6<sup>th</sup>, 2019, with the marketing Teaser and Confidentiality Agreement ("CA") being distributed by email to TD's subscriber list of approximately 2,000 market participants. In addition, to ensure that the offering received the highest visibility to the market, TD completed the following: 1) each project was listed on the Toronto Multiple Listing Service ("MLS") system (Niagara Falls was also posted to the Niagara Region's MLS system); 2) print advertisements were placed in the Globe and Mail, and, 3) advertisements were placed in two online development focused publications - Novae Res Urbis GTA and Toronto editions as well as Urban Toronto. We also understand that KSV posted the Teaser on its web site for those accessing the insolvency case materials.

In advance of the process launch, TD prepared a comprehensive marketing package, providing an in-depth description of each site, the proposed development and where each project stood within its respective re-entitlement process, which was made available to potential purchasers who signed a CA. TD also compiled an online Data Room with all available information on the sites, which was made available to prospective purchasers to assist them with their diligence.

The launch was well received with approximately 120 potential purchasers submitting CAs. The interested parties comprised a broad spectrum of buyer profiles including local developers, private investors, large scale regional developers, investment conglomerates and purchaser representatives. TD followed up with personal calls or emails to all interested parties and provided additional support to assist with their respective pre-bid due diligence.

Initial feedback was generally positive, however, as the process progressed, the reoccurring commentary received was that the offering comprised a mix of good locations, along with "B" / "C" class locations. Additional soundbites from purchasers were focused on market softening in the GTA residential sector and the resulting shift in purchasers' appetite for addition risk on sites without solid fundamentals. Nevertheless, TD responded to numerous inquiries from interested parties regarding the site specific diligence information, which was made available in the online Data Room for the process.

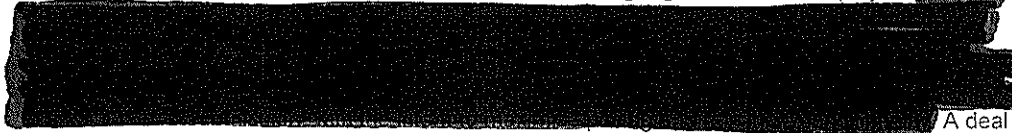
Interested parties conducted in-depth diligence on the properties, reviewing the documentation provided in the Data Room, reaching out to city planners, and in some cases, commissioning their own third party consultants to verify the viability of the proposed projects. Upon further diligence, several parties identified functional deficiencies with two of the development site plans [REDACTED] which, in their view, may require amendments to the development plans and could result in a decrease in total units for both projects. Additionally, parties spent considerable effort understanding the impact of contamination at several of the sites, which added an additional layer



## TD Securities

of complexity to the process. Other general comments related to the appropriateness of some of the proposed built-forms and status with respect to the re-entitlement process.

Bids were received for all properties with multiple offers being registered for each project.



A deal has been negotiated with the top bidder for Niagara who submitted a strong firm offer.

If you have any questions regarding the above or would like to discuss in further detail, please let us know.

Sincerely,

TD Securities

## **Appendix “D”**

**AGREEMENT OF PURCHASE AND SALE**

**BETWEEN**

**KSV KOFMAN INC.**

solely in its capacity as court-appointed monitor of  
5507 River Development Inc. and 4439 John Development Inc., and not in its personal capacity  
or in any other capacity

- and -

**2486489 ONTARIO INC., IN TRUST**

Dated: March 27, 2019

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## AGREEMENT OF PURCHASE AND SALE

**THIS AGREEMENT** made this 27<sup>th</sup> day of March, 2019.

**BETWEEN:**

**KSV KOFMAN INC. ("KSV")**, solely in its capacity as court-appointed monitor of 5507 River Development Inc. and 4439 John Development Inc., and not in its personal capacity or in any other capacity

(in such capacity, the "**Monitor**")

- and -

**2486489 ONTARIO INC., IN TRUST**, a corporation existing under the laws of the Province of Ontario

(the "**Purchaser**")

### RECITALS

- A. **WHEREAS** on November 30, 2018, Forme Development Group Inc., 5507 River Development Inc. and 4439 John Development Inc., (collectively the "**Owner Applicant**") and the other companies on Schedule "A" hereto (collectively, the "**Applicants**"), were granted creditor protection pursuant to an Initial Order granted by the Honorable Mr. Justice Hainey (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, RSC 1985, c. C-36 (the "**CCAA**");
- B. **AND WHEREAS** pursuant to the Initial Order, KSV Kofman Inc. ("**KSV**") was appointed as monitor (the "**Monitor**") of the Applicants;
- C. **AND WHEREAS** pursuant to the Initial Order, the Monitor was authorized to, among other things, market the Purchased Assets (as defined hereafter) and apply for an order of the Court approving the sale of the Purchased Assets and vesting in and to a purchaser all the Owner Applicant's right, title and interest in and to the Purchased Assets;
- D. **AND WHEREAS** pursuant to the Initial Order, a sales process was approved by the Court and implemented by the Monitor;
- E. **AND WHEREAS** the Purchaser wishes to purchase and the Monitor wishes to sell the Purchased Assets upon the terms and subject to the conditions set out herein.

**NOW THEREFORE**, in consideration of the promises, mutual covenants and agreements contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are each hereby acknowledged by the Parties (as defined hereafter), the Parties agree as follows:

**ARTICLE 1**  
**DEFINED TERMS**

**1.1 Definitions**

In this Agreement:

**"Acceptance Date"** means the date that this Agreement is executed by and delivered to all Parties hereunder;

**"Accounts Payable"** means all amounts relating to the Business owing to any Person which are incurred in connection with the purchase of goods or services in the ordinary course of business;

**"Agreement"** means this agreement of purchase and sale, including all schedules and all amendments or restatements, as permitted, and references to **"article"**, **"section"** or **"schedule"** mean the specified article, section of, or schedule to this Agreement and the expressions **"hereof"**, **"herein"**, **"hereto"**, **"hereunder"**, **"hereby"** and similar expressions refer to this Agreement and not to any particular section or other portion of this Agreement;

**"Applicable Law"** means, with respect to any Person, property, transaction, event or other matter, all applicable laws, statutes, regulations, rules, by-laws, ordinances, protocols, regulatory policies, codes, guidelines, official directives, orders, rulings, judgments and decrees of any Governmental Authority;

**"Applicants"** has the meaning set out in the recitals hereof;

**"Approval and Vesting Order"** means the approval and vesting order issued by the Court approving this Agreement and the transactions contemplated by this Agreement, and authorizing and directing the Monitor to complete the Transaction and conveying to the Purchaser all of the Owner Applicant's right, title and interest, if any, in and to the Purchased Assets free and clear of all Encumbrances other than the Permitted Encumbrances, and which order shall be in a form and substance substantively similar to the draft order attached as Schedule "B" hereto;

**"Books and Records"** means the files, documents, instruments, surveys, papers, books and records (whether stored or maintained in hard copy, digital or electronic format or otherwise) pertaining to the Purchased Assets in the possession or control of the Owner Applicant and that have been or will be delivered by the Monitor to the Purchaser at or before Closing; provided, however, that **"Books and Records"** shall not include any bank or accounting records;

**"Business"** means the business' carried on by the Owner Applicant with respect to the Real Property;

**"Business Day"** means a day on which banks are open for business in the City of Toronto but does not include a Saturday, Sunday or statutory holiday in the Province of Ontario;

**"Claims"** means any and all claims, demands, complaints, grievances, actions, applications, suits, causes of action, orders, charges, indictments, prosecutions or other similar processes, assessments or reassessments, judgments, debts, liabilities, expenses, costs, damages or losses, contingent or

otherwise, whether liquidated or unliquidated, matured or unmatured, disputed or undisputed, contractual, legal or equitable, including loss of value, professional fees, including solicitor and client costs and disbursements, and all costs incurred in investigating or pursuing any of the foregoing or any proceeding relating to any of the foregoing, related to the Owner Applicant or the Real Property, and "**Claim**" means any one of them;

"**Closing**" means the successful completion of the Transaction;

"**Closing Date**" means the earlier of April 30, 2019 and the first Business Day which is Two (2) Business Days after receipt of the Approval and Vesting Order;

"**Closing Time**" means 4:00 p.m. (Toronto time) on the Closing Date or such other time as agreed in writing by the Parties;

"**Confidential Information**" has the meaning given in Section 6.1 herein;

"**Contracts**" means all of the contracts, licences, leases, agreements, obligations, promises, undertakings, understandings, arrangements, documents, commitments, entitlements and engagements to which the Owner Applicant is a party and which relate to the Business;

"**Court**" has the meaning set out in the recitals hereof;

"**Deposit**" has the meaning given in Section 4.2 herein;

"**Encumbrances**" means all liens, charges, security interests (whether contractual, statutory or otherwise), pledges, leases, offers to lease, title retention agreements, mortgages, restrictions on use, development or similar agreements, easements, rights-of-way, title defects, options or adverse claims or encumbrances of any kind or character whatsoever;

"**ETA**" means the *Excise Tax Act*, R.S.C. 1985, c. E-15, as amended;

"**Excluded Assets**" means the Owner Applicant's right, title and interest in and to any asset of the Owner Applicant other than the Purchased Assets, which Excluded Assets include the Owner Applicant's right, title and interest in and to the following:

- (a) original tax records and books and records pertaining thereto, minute books, corporate seals, taxpayer and other identification numbers and other documents relating to the organization, maintenance and existence of the Owner Applicant that do not relate exclusively or primarily to any of the Purchased Assets; and
- (b) the benefit of any refundable Taxes payable or paid by the Owner Applicant in respect of the Purchased Assets and applicable to the period prior to the Closing Date net of any amounts withheld by any taxing authority, and any claim or right of the Owner Applicant to any refund, rebate, or credit of Taxes for the period prior to the Closing Date.

"**Excluded Liabilities**" has the meaning given in Section 3.3 herein;

**"Governmental Authority"** means governments, regulatory authorities, governmental departments, agencies, commissions, bureaus, officials, ministers, Crown corporations, courts, bodies, boards, tribunals or dispute settlement panels or other law or regulation-making organizations or entities: (a) having or purporting to have jurisdiction on behalf of any nation, province, republic, territory, state or other geographic or political subdivision thereof; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power, and **"Governmental Authority"** means any one of them;

**"HST"** means harmonized sales tax imposed under Part IX of the ETA;

**"Initial Order"** has the meaning set out in the recitals hereof;

**"ITA"** means the *Income Tax Act*, R.S.C. 1985, c.1, as amended;

**"Lands"** means, those certain parcels or tracts of land and premises situate, lying and being in the City of Toronto in the Province of Ontario, as legally described in Schedule "D" hereto, and includes all rights and benefits appurtenant thereto;

**"Leases"** means those leases set out in Schedule "E" attached hereto;

**"LRO"** means the Land Registry Office for the Land Titles Division of Niagara South (No. 59);

**"Monitor's Certificate"** means the certificate referred to in the Approval and Vesting Order, which, when delivered to the Purchaser, has the effect of invoking the foreclosure and vesting out provisions contained in the Approval and Vesting Order;

**"Monitor's Solicitors"** means Bennett Jones LLP;

**"Notice"** has the meaning given in Section 16.3 herein;

**"Owner Applicant"** has the meaning set out in the recitals hereof;

**"Parties"** means the Monitor and the Purchaser;

**"Permits"** means all the authorizations, registrations, permits, certificates of approval, approvals, consents, commitments, rights or privileges issued, granted or required by any Governmental Authority in respect of the Real Property;

**"Permitted Encumbrances"** means all those Encumbrances described in Schedule "C" hereto;

**"Person"** means any individual, partnership, limited partnership, limited liability company, joint venture, syndicate, sole proprietorship, company or corporation with or without share capital, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, Governmental Authority or other entity however designated or constituted;

**"Plans"** means all plans, designs and specification in connection with the Real Property which are in the possession or control of the Monitor (it being acknowledged that the Monitor is under no obligation to incur additional expense to obtain such plans, designs and specifications);

**"Purchase Price"** has the meaning set out in Section 4.1 herein;

**"Purchased Assets"** means all of the Owner Applicant's right, title and interest in and to the following:

- (a) the full benefit of all prepaid expenses and all deposits with any Person, public utility or Governmental Authority relating to the Real Property;
- (b) the Real Property;
- (c) the Plans;
- (d) the Leases;
- (e) the Permits and Contracts, but only to the extent transferable to the Purchaser or the Purchaser's permitted assignees; and
- (f) all intellectual property, if any, owned by the Owner Applicant with respect to the development to be completed on the Lands,

provided, however, that the Purchased Assets shall not include the Excluded Assets or the Excluded Liabilities;

**"Purchaser"** means 2486489 Ontario Inc.;

**"Purchaser Representatives"** has the meaning given in Section 6.1 herein;

**"Real Property"** means the Lands, together with all buildings, improvements and structures thereon) and the fixtures affixed thereto;

**"Rights"** has the meaning given in Section 3.1(c) herein, but only has such meaning in such Section;

**"Taxes"** means all taxes, HST, land transfer taxes, charges, fees, levies, imposts and other assessments, including all income, sales, use, goods and services, harmonized, value added, capital, capital gains, alternative, net worth, transfer, profits, withholding, excise, real property and personal property taxes, and any related interest, fines and penalties, imposed by any Governmental Authority, and whether disputed or not;

**"Tenants"** means all persons having a right to occupy any rentable area of the Real Property pursuant to the Leases and **"Tenant"** means any one of them; and

**"Transaction"** means the transaction of purchase and sale of the Purchased Assets as contemplated by this Agreement.

**ARTICLE 2**  
**SCHEDULES**

**2.1 Schedules**

The following schedules are incorporated in and form part of this Agreement:

<b><u>Schedule</u></b>	<b><u>Description</u></b>
Schedule "A"	List of Applicants
Schedule "B"	Approval and Vesting Order
Schedule "C"	Permitted Encumbrances
Schedule "D"	Legal Description of Lands
Schedule "E"	List of Existing Leases

**ARTICLE 3**  
**AGREEMENT TO PURCHASE**

**3.1 Purchase and Sale of Purchased Assets**

- (a) Relying on the representations and warranties herein, the Monitor hereby agrees to sell, assign, convey and transfer to the Purchaser, and the Purchaser hereby agrees to purchase, all right, title and interest of the Owner Applicant in and to the Purchased Assets free and clear of all Encumbrances, other than the Permitted Encumbrances.
- (b) Subject to the Closing, the Monitor hereby remises, releases and forever discharges to, and in favour of, the Purchaser, all of its rights, claims and demands whatsoever in the Purchased Assets.
- (c) This Agreement or any document delivered in connection with this Agreement shall not constitute an assignment of any rights, benefits or remedies (in this Section 3.1(c), collectively, the "**Rights**") under any Contracts or Permits that form part of the Purchased Assets and which are not assignable by the Monitor to the Purchaser without the required consent of the other party or parties thereto (collectively, the "**Third Party**"). To the extent any such consent is required and not obtained by the Monitor prior to the Closing Date, then, to the extent permitted by Applicable Law:
  - (i) the Monitor will, at the request, direction and cost of the Purchaser, acting reasonably, assist the Purchaser, in a timely manner and using commercially reasonable efforts, in applying for and obtaining all consents or approvals required under the applicable Contracts and/or Permits in a form satisfactory to the Monitor and the Purchaser, acting reasonably;
  - (ii) the Monitor will only deal with or make use of such Rights in accordance with the directions of the Purchaser;

- (iii) at the Purchaser's cost, the Monitor will use its commercially reasonable efforts to take such actions and do such things as may be reasonably and lawfully designed to provide the benefits of the Contracts and/or the Permits to the Purchaser, including holding those Contracts and/or Permits in trust for the benefit of the Purchaser or acting as agent for the Purchaser pending such assignment; and
- (iv) in the event that the Monitor receives funds with respect to those Contracts and/or Permits, the Monitor will promptly pay over to the Purchaser all such funds collected by the Monitor, net of any outstanding costs directly related to the assignment in respect of such Contracts and/or Permits.

The provisions of this Section 3.1 shall not merge but shall survive the completion of the Transaction. Notwithstanding the forgoing, nothing herein shall prohibit the Monitor, in its sole, absolute and unfettered discretion, from seeking to be discharged as monitor of the Owner Applicant at any time after Closing. The parties hereto hereby acknowledge and agree that the covenants of the Monitor contained in this Section 3.1 shall terminate concurrently with the discharge of the Monitor as monitor of the Owner Applicant.

### **3.2 Excluded Assets**

Notwithstanding anything else in this Agreement, the Purchased Assets shall not include the Excluded Assets.

### **3.3 Excluded Liabilities**

The Purchaser is not assuming, and shall not be deemed to have assumed any liabilities, obligations or commitments of the Owner Applicant or of any other Person, whether known or unknown, fixed or contingent or otherwise, including any debts, obligations, sureties, positive or negative covenants or other liabilities directly or indirectly arising out of or resulting from the conduct or operation of the Business or the Owner Applicant's ownership or interest therein, whether pursuant to this Agreement or as a result of the Transaction (collectively, the "**Excluded Liabilities**"). For greater certainty, the Excluded Liabilities shall include, but not be limited to, the following:

- (a) except as otherwise agreed in this Agreement, all Taxes payable by the Owner Applicant arising with respect to any period prior to the Closing Date and all Taxes payable relating to any matters or assets other than the Purchased Assets arising with respect to the period from and after the Closing Date;
- (b) any liability, obligation or commitment associated with: (i) the Accounts Payable and incurred prior to Closing; or (ii) any employees of the Owner Applicant;
- (c) any liability, obligation or commitment resulting from an Encumbrance that is not a Permitted Encumbrance;
- (d) any liability, obligation or commitment associated with any of the Excluded Assets; and



- (e) any liability, obligation or commitment in respect to Claims arising from or in relation to any facts, circumstances, events or occurrences existing or arising prior to the Closing Date.

**ARTICLE 4**  
**PURCHASE PRICE AND SATISFACTION OF PURCHASE PRICE**

**4.1 Purchase Price**

The purchase price for the Purchased Assets shall be the aggregate of [REDACTED] dollars (the "Purchase Price"), plus all applicable Taxes payable in respect of the Transaction.

**4.2 Deposit**

Within two (2) Business Days after the Acceptance Date, the Purchaser shall pay to the Monitor's Solicitors, in trust, a deposit by wire or certified cheque of [REDACTED] dollars (the "Deposit"), which Deposit shall be held by the Monitor's Solicitors in accordance with the provisions of this Agreement pending completion or other termination of this Agreement and shall be applied against and towards the Purchase Price due on completion of the Transaction on the Closing Date.

**4.3 Satisfaction of Purchase Price**

The Purchaser shall indefeasibly pay and satisfy the Purchase Price as follows:

- (a) the Deposit shall be applied against the Purchase Price; and
- (b) the balance of the Purchase Price, subject to adjustments contained in this Agreement, shall be paid by wire or certified cheque on Closing by the Purchaser to the Monitor's Solicitors or as the Monitor's Solicitors may otherwise direct in writing.

**4.4 Allocation of Purchase Price**

The Parties, acting reasonably and in good faith, covenant to use commercially reasonable efforts to agree to allocate the Purchase Price among the Purchased Assets in a mutually agreeable manner on or prior to the Closing Time, provided that failure of the Parties to agree upon an allocation shall not result in the termination of this Agreement but rather shall result in the nullity of the application of this Section 4.4 of the Agreement such that each of the Parties shall be free to make its own reasonable allocation.

**4.5 Adjustment of Purchase Price**

The Purchase Price shall be adjusted as of the Closing Time for any realty taxes and local improvement rates and charges (including interest thereon), utilities and any other items which are usually adjusted in purchase transactions involving assets similar to the Purchased Assets as contemplated by this Agreement. The Monitor shall prepare a statement of adjustments and deliver

same with all supporting documentation to the Purchaser for its approval no later than five (5) Business Days prior to the Closing Date. If the amount of any adjustments required to be made pursuant to this Agreement cannot be reasonably determined as of the Closing Date, an estimate shall be agreed upon by the Parties as of the Closing Date based upon the best information available to the Parties at such time, each Party acting reasonably, and such estimate shall serve as a final determination. Notwithstanding any other term in this Agreement, in no event shall the Purchaser be responsible for any charges, fees, Taxes, costs or other adjustments in any way relating to the period prior to the Closing Date or relating to the Excluded Liabilities or to any matters or assets other than the Purchased Assets for the period from and after the Closing Date. Other than as provided for in this Section 4.5, there shall be no adjustments to the Purchase Price.

## **ARTICLE 5** **TAXES**

### **5.1 Taxes**

In addition to the Purchase Price, the Purchaser shall be responsible for all federal and provincial sales taxes, land transfer tax, goods and services, HST and other similar taxes and duties and all registration fees payable upon or in connection with the conveyance or transfer of the Purchased Assets to the Purchaser. If the sale of the Purchased Assets is subject to HST, then such tax shall be in addition to the Purchase Price. The Monitor will not collect HST if the Purchaser provides to the Monitor a warranty that it is registered under the ETA, together with a copy of the required ETA registration at least five (5) Business Days prior to Closing, a warranty that the Purchaser shall self-assess and remit the HST payable and file the prescribed form and shall indemnify the Monitor in respect of any HST payable. The foregoing warranties shall not merge but shall survive the completion of the Transaction.

## **ARTICLE 6** **ACCESS AND CONFIDENTIALITY**

### **6.1 Confidentiality**

Prior to Closing, the Purchaser shall maintain in confidence and not disclose to any Person this Agreement or the terms thereof or any information or documentation obtained, prepared or summarized by the Purchaser or its representatives (collectively, the "**Confidential Information**"), except, on a need to know basis, to those individuals employed by the Purchaser, its professional consultants, including the Purchaser's legal counsel, and to those Persons who have agreed in writing in favour of the Monitor and Purchaser not to disclose any Confidential Information (collectively, the "**Purchaser Representatives**"). The Purchaser will ensure that each Purchaser Representative treats the Confidential Information as confidential and any failure of a Purchaser Representative to do so will be a breach of this Agreement by the Purchaser.

### **6.2 Authorizations**

Upon request, the Monitor shall provide the Purchaser with authorizations executed by the Monitor and addressed to the appropriate municipal building department, zoning department and fire department and to any other Governmental Authority, authorizing the release of any and all

information on file in respect of the Purchased Assets, but such authorization shall not authorize any inspections by any Governmental Authority.

## ARTICLE 7

### CLOSING ARRANGEMENTS

#### **7.1 Closing**

Closing shall take place at the Closing Time at the offices of the Monitor's Solicitors, located in Toronto or at such other time or at such other place as the Parties may agree in writing.

#### **7.2 Tender**

Any tender of documents or money under this Agreement may be made upon the Parties or their respective lawyers, and money shall be tendered by wire transfer of immediately available funds to the account specified by the receiving Party. The Monitor and the Purchaser acknowledge and agree that insofar as the tender of any documents to be electronically registered is concerned, the tender of same will be deemed to be effective and proper when the solicitor for the party tendering has completed all steps required by Teraview in order to complete the Transaction that can be performed or undertaken by the tendering party's solicitor without the cooperation or participation of the other party's solicitor, and specifically when the tendering party's solicitor has electronically "signed" the transfer/deed and any other Closing document, if any, to be electronically registered for completeness and granted access to the other party's solicitor to same, but without the necessity of the tendering party's solicitor actually releasing such document(s) to the other party's solicitor for registration.

#### **7.3 Monitor's Closing Deliverables**

The Monitor covenants to execute, where applicable, and deliver the following to the Purchaser at Closing or on such other date as expressly provided herein:

- (a) a copy of the issued and entered Approval and Vesting Order and the attached Monitor's Certificate;
- (b) a statement of adjustments prepared in accordance with Section 4.5 hereof, to be delivered not less than five (5) Business Days prior to Closing;
- (c) to the extent applicable, an assignment and assumption agreement with respect to all Permits and Contracts and to the extent not assignable, an agreement that the Monitor will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);
- (d) an assignment and assumption agreement with respect to all Leases;
- (e) a certificate signed by the Monitor confirming that, to the best of the Monitor's knowledge, the Owner Applicant is not a non-resident of Canada within the meaning of the said section 116;

- (f) a certificate from the Monitor, dated as of the Closing Date, certifying that all representations, warranties and covenants of the Monitor contained in this Agreement are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (g) an acknowledgement, dated as of the Closing Date, that each of the conditions in Section 8.1 hereof have been fulfilled, performed or waived as of the Closing Time; and
- (h) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Purchaser, acting reasonably, or by Applicable Law or any Governmental Authority.

#### **7.4 Purchaser's Closing Deliverables**

The Purchaser covenants to execute, where applicable, and deliver the following to the Monitor at Closing or on such other date as expressly provided herein:

- (a) the indefeasible payment and satisfaction in full of the Purchase Price according to Section 4.3 hereof;
- (b) an assignment and assumption agreement with respect to all Permits and Contracts pertaining to the Real Property (to the extent assignable) and to the extent not assignable, an agreement that the Monitor will hold same in trust for the Purchaser in accordance with the provisions of Section 3.1(c);
- (c) an assignment and assumption agreement with respect to all Leases;
- (d) a certificate from the Purchaser, dated as of the Closing Date, certifying that all representations, warranties and covenants of the Purchaser contained in Article 10 are true as of the Closing Time, with the same effect as though made on and as of the Closing Time;
- (e) if necessary, payment or evidence of payment of HST applicable to the Purchased Assets or, if applicable, appropriate tax exemption certificates with respect to HST in accordance with Article 5 hereof;
- (f) if desired, a direction directing the Monitor to convey title to any of the Purchased Assets to an entity other than the Purchaser; and
- (g) such further documentation relating to the completion of the Transaction as shall be otherwise referred to herein or required by the Monitor, acting reasonably, or by Applicable Law or any Governmental Authority.

#### **7.5 Monitor's Certificate**

Upon receipt of written confirmation from the Purchaser that all of the conditions contained in Section 8.3 have been satisfied or waived by the Purchaser, and upon satisfaction or waiver by the

Monitor of all of the conditions contained in Section 8.1, the Monitor shall forthwith deliver to the Purchaser the Monitor's Certificate comprising Schedule "A" of the Approval and Vesting Order, and shall file same with the Court.

**ARTICLE 8**  
**CONDITIONS PRECEDENT TO CLOSING**

**8.1 Conditions in Favour of the Monitor**

The obligation of the Monitor to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date:

- (a) all the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Purchaser contained in Article 10 to be performed on or before the Closing Date shall have been duly performed by the Purchaser;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction; and
- (d) the Court shall have issued the Approval and Vesting Order.

**8.2 Conditions in Favour of Monitor Not Fulfilled**

If any of the conditions contained in Section 8.1 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Monitor, then the Monitor may, at its sole discretion (other than as stipulated below) and without limiting any rights or remedies available to it at law or in equity:

- (a) terminate this Agreement by notice to the Purchaser, in which event the Monitor shall be released from its obligations under this Agreement to complete the Transaction, provided that if this Agreement is so terminated because of the conditions set out in Section 8.1(a) or Section 8.1(b) not being satisfied or waived, the Purchaser shall forfeit the Deposit to the Owner Applicants; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

**8.3 Conditions in Favour of the Purchaser**

The obligation of the Purchaser to complete the Transaction is subject and conditional to the satisfaction of the following conditions on or before the Closing Date, which conditions are inserted for the sole benefit of the Purchaser and may be waived in whole or in part at the Purchaser's sole option:

- (a) all the representations and warranties of the Monitor contained in this Agreement shall be true and correct in all material respects on the Closing Date;
- (b) all the covenants of the Monitor under this Agreement to be performed on or before the Closing Date shall have been duly performed by the Monitor;
- (c) there shall be no order issued by a Governmental Authority against either of the Parties, or involving any of the Purchased Assets enjoining, preventing or restraining the completion of the Transaction;
- (d) from the Acceptance Date to Closing, there shall have been no new work orders, deficiency notices, notices of violation or non-compliance or similar orders, and no new Encumbrances registered on title to the Lands or matters affecting the title to the Lands arising or registered after the Acceptance Date, in each case which are not otherwise vested-out pursuant to the Approval and Vesting Order; and
- (e) the Court shall have issued the Approval and Vesting Order.

#### **8.4 Conditions in Favour of Purchaser Not Fulfilled**

If any of the conditions contained in Section 8.3 hereof is not fulfilled on or prior to the Closing Date and such non-fulfillment is not directly or indirectly as a result of any action or omission of the Purchaser, then the Purchaser may, in its sole discretion and without limiting its rights or remedies available at law or in equity:

- (a) terminate this Agreement by notice to the Monitor, in which event the Purchaser and the Monitor shall be released from their obligations under this Agreement to complete the Transaction and the Deposit and all interest accrued thereon shall be immediately returned to the Purchaser without deduction; or
- (b) waive compliance with any such condition without prejudice to the right of termination in respect of the non-fulfillment of any other condition.

### **ARTICLE 9** **REPRESENTATIONS & WARRANTIES OF THE MONITOR**

The Monitor represents and warrants to the Purchaser as follows, with the knowledge and expectation that the Purchaser is placing complete reliance thereon and, but for such representations and warranties, the Purchaser would not have entered into this Agreement:

- (a) the Monitor has all necessary power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary action on the part of the Monitor, subject to the Approval and Vesting Order. This Agreement is a valid and binding obligation of the Monitor enforceable in accordance with its terms;

- (b) the Monitor has been duly appointed as the monitor of the Applicants by the Initial Order and such Initial Order is in full force and effect and has not been stayed, and, subject to obtaining the Approval and Vesting Order, the Monitor has the full right, power and authority to enter into this Agreement, perform its obligations hereunder and convey all right, title and interest of the Owner Applicant in and to the Purchased Assets;
- (c) to the best of the Monitor's knowledge, the Owner Applicant is not a non-resident of Canada for the purposes of the ITA; and
- (d) subject to any charges created by the Initial Order, the Monitor has done no act itself to encumber or dispose of the Purchased Assets and is not aware of any action or process pending or threatened against the Owner Applicant that may affect its ability to convey any of the Purchased Assets as contemplated herein.

**ARTICLE 10**  
**REPRESENTATIONS & WARRANTIES OF THE PURCHASER**

The Purchaser represents and warrants to the Monitor as follows, with the knowledge and expectation that the Monitor is placing complete reliance thereon and, but for such representations and warranties, the Monitor would not have entered into this Agreement:

- (a) the Purchaser is a corporation duly formed and validly subsisting under the laws of the Province of Ontario;
- (b) the Purchaser has all necessary corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. Neither the execution of this Agreement nor the performance by the Purchaser of the Transaction will violate the Purchaser's constating documents, any agreement to which the Purchaser is bound, any judgment or order of a court of competent jurisdiction or any Governmental Authority, or any Applicable Law. The execution and delivery of this Agreement and the consummation of the Transaction have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement is a valid and binding obligation of the Purchaser enforceable in accordance with its terms;
- (c) the Purchaser is or will be a registrant under Part IX of the ETA on the Closing Date; and
- (d) the Purchaser has not committed an act of bankruptcy, is not insolvent, has not proposed a compromise or arrangement to its creditors generally, has not had any application for a bankruptcy order filed against it, has not taken any proceeding and no proceeding has been taken to have a receiver appointed over any of its assets, has not had an encumbrancer take possession of any of its property and has not had any execution or distress become enforceable or levied against any of its property.

**ARTICLE 11**  
**COVENANTS**

**11.1 Mutual Covenants**

Each of the Monitor and the Purchaser hereby covenants and agrees that, from the date hereof until Closing, each shall take all such actions as are necessary to have the Transaction approved in the Approval and Vesting Order on substantially the same terms and conditions as are contained in this Agreement, and to take all commercially reasonable actions as are within its power to control, and to use its commercially reasonable efforts to cause other actions to be taken which are not within its power to control, so as to ensure compliance with each of the conditions set forth in Article 8 hereof.

**11.2 Monitor Covenants**

The Monitor hereby covenants and agrees that, from the date hereof until Closing, it shall use commercially reasonable efforts to provide to the Purchaser all necessary information in respect of the Owner Applicant and the Purchased Assets reasonably required to complete the applicable tax elections in accordance with Article 5 hereof and to execute all necessary forms related thereto.

**ARTICLE 12**  
**POSSESSION AND ACCESS PRIOR TO CLOSING**

**12.1 Possession of Purchased Assets**

The Monitor shall remain in possession of the Purchased Assets until the Closing Time, at which time the Purchaser shall take possession of the Purchased Assets where situated. In no event shall the Purchased Assets be sold, assigned, conveyed or transferred to the Purchaser until all the conditions set out in this Agreement and the Approval and Vesting Order have been satisfied or waived and the Purchaser has satisfied or the Monitor has waived all the delivery requirements outlined in Section 8.1 hereof.

**12.2 Risk**

- (a) The Purchased Assets shall be and remain at the risk of the Monitor until Closing and at the risk of the Purchaser from and after Closing.
- (b) If, prior to the Closing Date, all or a material part of any of the Real Property is expropriated or a notice of expropriation or intent to expropriate all or a material part of any of the Real Property is issued by any Governmental Authority, the Monitor shall immediately advise the Purchaser thereof by Notice in writing. The Purchaser shall, by Notice in writing given within three (3) Business Days after the Purchaser receives Notice in writing from the Monitor of such expropriation, elect to either (i) complete the Transaction contemplated herein in accordance with the terms hereof without reduction of the Purchase Price, and all compensation for expropriation of any of the Real Property shall be payable to the Purchaser and all right, title and interest of the Owner Applicant to such amounts, if any, shall be assigned to the Purchaser on a without recourse basis, or (ii) terminate this



Agreement as it relates solely to the Purchased Assets with respect to such Real Property and not complete the Transaction, in which case all rights and obligations of the Monitor and the Purchaser (except for those obligations which are expressly stated to survive the termination of this Agreement) shall terminate, and the Deposit shall be returned to the Purchaser forthwith, provided that where the Purchased Assets include Real Property other than the Real Property subject to the expropriation for which the Purchaser has elected to terminate this Agreement, this Agreement may only be terminated with respect to the Purchased Assets with respect to the expropriated Real Property, this Agreement shall remain in full force and effect with respect to the Purchased Assets with respect to all other Real Property.

- (c) If, prior to Closing, the Purchased Assets are substantially damaged or destroyed by fire, casualty or otherwise, then, at its option, the Purchaser may decline to complete the Transaction. Such option shall be exercised within fifteen (15) calendar days after notification to the Purchaser by the Monitor of the occurrence of such damage or destruction (or prior to the Closing Date if such occurrence takes place within fifteen (15) calendar days of the Closing Date), in which event this Agreement shall be terminated automatically. If the Purchaser does not exercise such option, it shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. Where any damage or destruction is not substantial, the Purchaser shall complete the Transaction and shall be entitled to an assignment of any proceeds of insurance referable to such damage or destruction. For the purposes of this Section 12.2(c), substantial damage or destruction shall be deemed to have occurred if the loss or damage to the Purchased Assets exceeds fifteen percent (15%) of the total Purchase Price.

### **ARTICLE 13** **AS IS, WHERE IS**

#### **13.1 Condition of the Purchased Assets**

The Purchaser acknowledges that the Monitor is selling and the Purchaser is purchasing the Purchased Assets on an "*as is, where is*" and "*without recourse*" basis as the Purchased Assets shall exist on the Closing Date, including, without limitation, whatever defects, conditions, impediments, hazardous materials or deficiencies exist on the Closing Date, whether patent or latent. The Purchaser further acknowledges and agrees that it has entered into this Agreement on the basis that neither the Monitor nor the Owner Applicant has guaranteed or will guarantee title to or marketability, use or quality of the Purchased Assets, that the Purchaser will conduct such inspections of the condition and title to the Purchased Assets as it deems appropriate and will satisfy itself with regard to these matters. No representation, warranty or condition is expressed or can be implied as to title, encumbrance, description, fitness for purpose, environmental compliance, merchantability, condition or quality, or in respect of any other matter or thing whatsoever concerning the Purchased Assets, or the right of the Monitor to sell, assign, convey or transfer same, save and except as expressly provided in this Agreement. Without limiting the generality of the foregoing, any and all conditions, warranties or representations expressed or

implied pursuant to the *Sale of Goods Act*, R.S.O. 1990, c. S.1, do not apply hereto and/or have been waived by the Purchaser. The description of the Purchased Assets contained in this Agreement is for the purpose of identification only and no representation, warranty or condition has or will be given by the Monitor concerning the accuracy of such description.

## **ARTICLE 14** **POST-CLOSING MATTERS**

### **14.1 Books and Records**

The Purchaser shall keep and maintain the Books and Records for a period of two (2) years from the Closing Date, or for any longer period as may be required by Applicable Law or Governmental Authority or as requested by the Monitor, the Owner Applicant or the Owner Applicant's trustee in bankruptcy (the "**Retention Period**"). Upon reasonable advance notice, during such two (2) year period after the Closing Date, the Purchaser will grant the Monitor and the Owner Applicant and, in the event the Owner Applicant is adjudged bankrupt, any trustee of the estate of the Owner Applicant and their respective representatives, reasonable access during normal business hours to use and copy the Books and Records at the sole cost of the Monitor, Owner Applicant or bankruptcy trustee of the estate of the Owner Applicant, as the case may be, and at no cost to the Purchaser. After the Retention Period, the Purchaser shall give the Monitor, the Owner Applicant or bankruptcy trustee of the estate of the Owner Applicant, as the case may be, thirty (30) days' prior written notice of its intent to destroy the Books and Records. The Parties agree that the covenants of the Purchaser in this Section 14.1 shall survive the closing of the Transaction.

## **ARTICLE 15** **TERMINATION**

### **15.1 Termination of this Agreement**

This Agreement may be validly terminated:

- (a) upon the mutual written agreement of the Parties;
- (b) pursuant to Section 8.2 hereof by the Monitor;
- (c) pursuant to Section 8.4 hereof by the Purchaser; or
- (d) pursuant to Section 12.2 hereof.

### **15.2 Remedies for Breach of Agreement**

Notwithstanding any other term or condition of this Agreement, if this Agreement is terminated as a result of any breach of a representation, warranty, covenant or obligation of the Monitor, the Purchaser shall be entitled to the return of the Deposit without deduction, which shall be returned to the Purchaser forthwith, and this shall be the Purchaser's sole right and remedy pursuant to this Agreement or at law as a result of the Monitor's breach. If this Agreement is terminated as a result of a breach of a representation, warranty, covenant or obligation of the Purchaser, the Deposit shall be forfeited to the Monitor as liquidated damages and not as a penalty, which Deposit the Parties

agree is a genuine estimate of the liquidated damages that the Monitor would suffer in such circumstances, and this shall be the Monitor's sole right and remedy pursuant to this Agreement or at law as a result of the Purchaser's breach.

### **15.3 Termination If No Breach of Agreement**

If this Agreement is terminated other than as a result of a breach of a representation, warranty, covenant or obligation of a Party, then the parties hereto shall be released from all obligations and liabilities hereunder, other than their obligations under Article 6, and the Deposit shall be forthwith returned to the Purchaser without deduction.

## **ARTICLE 16** **GENERAL CONTRACT PROVISIONS**

### **16.1 Further Assurances**

From time to time after Closing, each of the Parties shall execute and deliver such further documents and instruments and do such further acts and things as may be required or useful to carry out the intent and purpose of this Agreement and which are not inconsistent with the terms hereof, including, at the Purchaser's request and expense, the Monitor shall execute and deliver such additional conveyances, transfers and other assurances as may, in the opinion of the Parties or their counsel, acting reasonably, be reasonably required to effectually carry out the intent of this Agreement and transfer the Purchased Assets to the Purchaser.

### **16.2 Survival Following Completion**

Notwithstanding any other provision of this Agreement, Article 9, Article 10, Section 15.2 and Section 15.3 shall survive the termination of this Agreement and the completion of the Transaction, provided, however, that upon the discharge of the Monitor, the Parties' respective obligations by reason of this Agreement shall end completely and they shall have no further or continuing obligations by reason thereof.

### **16.3 Notice**

All notices, requests, demands, waivers, consents, agreements, approvals, communications or other writings required or permitted to be given hereunder or for the purposes hereof (each, a "Notice") shall be in writing and be sufficiently given if personally delivered, sent by prepaid registered mail or transmitted by email, addressed to the Party to whom it is given, as follows:

- (a) to the Monitor:

KSV Kofman Inc.  
150 King Street West, Suite 2308  
Toronto, ON M5H 1J9

Attention: Robert Kofman and David Sieradzki  
Tel: (416) 932-6228 / (416) 932-6030  
Email: [bkofman@ksvadvisory.com](mailto:bkofman@ksvadvisory.com) / [dsieradzki@ksvadvisory.com](mailto:dsieradzki@ksvadvisory.com)

and a copy to the Monitor's counsel to:

Bennett Jones LLP  
3400 One First Canadian Place  
Toronto, ON M5X 1A5

Attention: Sean Zweig and John van Gent  
Tel: (416) 777-6254 / (416) 777-6522  
Email: [zweigs@bennettjones.com](mailto:zweigs@bennettjones.com) / [vangentj@bennettjones.com](mailto:vangentj@bennettjones.com)

(b) to the Applicants

c/o Goldman Sloan Nash & Haber LLP  
480 University Avenue, Suite 1600  
Toronto, ON M5G 1V2

Attention: Mario Forte/Jennifer Stam  
Tel: (416) 597-6477/(416) 597-5017  
Email: [forte@gsnh.com](mailto:forte@gsnh.com)/[stam@gsnh.com](mailto:stam@gsnh.com)

(c) to the Purchaser:

c/o Saeid Aghaei  
3985 Highway 7 east  
Suite 202  
Markham, ON L3R 2A2

Attention: Saeid Aghaei  
Tel: (905) 940-6286  
Email: [saeid@timesgroupcorp.com](mailto:saeid@timesgroupcorp.com)

and a copy to the Purchaser's counsel to:

Joseph Virgilio Professional Corporation  
1 West Pearce Street  
Suite 500  
Richmond Hill, ON L4B 3K3

Attention: Joseph Virgilio  
Tel: (905) 882-8666 Ext. 222  
Email: [jvirgilio@virgiliolaw.com](mailto:jvirgilio@virgiliolaw.com)

or such other address of which Notice has been given. Any Notice mailed as aforesaid will be deemed to have been given and received on the third (3<sup>rd</sup>) Business Day following the date of its mailing. Any Notice personally delivered will be deemed to have been given and received on the day it is personally delivered, provided that if such day is not a Business Day, the Notice will be deemed to have been given and received on the Business Day next following such day. Any Notice transmitted by email will be deemed given and received on the first (1<sup>st</sup>) Business Day after its transmission.

If a Notice is mailed and regular mail service is interrupted by strike or other irregularity on or before the fourth (4<sup>th</sup>) Business Day after the mailing thereof, such Notice will be deemed to have not been received unless otherwise personally delivered or transmitted by email.

#### **16.4 Waiver**

No Party will be deemed or taken to have waived any provision of this Agreement unless such waiver is in writing and such waiver will be limited to the circumstance set forth in such written waiver.

#### **16.5 Consent**

Whenever a provision of this Agreement requires an approval or consent and such approval or consent is not delivered within the applicable time limit or the requirement for such consent is not required pursuant to the terms of the Approval and Vesting Order, then, unless otherwise specified, the Party whose consent or approval is required shall be conclusively deemed to have withheld its approval or consent.

#### **16.6 Governing Law**

This Agreement will be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. The Parties irrevocably attorn to the jurisdiction of the courts of the Province of Ontario sitting in Toronto. The Parties consent to the exclusive jurisdiction and venue of the Court for the resolution of any disputes among them, regardless of whether or not such disputes arose under this Agreement.

#### **16.7 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements and understandings between the Parties. There are not and will not be any verbal statements, representations, warranties, undertakings or agreements between the Parties. This Agreement may not be amended or modified in any respect except by written instrument signed by the Parties. The recitals herein are true and accurate, both in substance and in fact.

#### **16.8 Time of the Essence**

Time will be of the essence, provided that if the Parties establish a new time for the performance of an obligation, time will again be of the essence of the new time established.

### **16.9 Time Periods**

Unless otherwise specified, time periods within or following which any payment is to be made or act is to be done shall be calculated by excluding the day on which the period commences and including the day on which the period ends and by extending the period to the next Business Day following if the last day of the period is not a Business Day.

### **16.10 Assignment**

This Agreement will enure to the benefit of and be binding on the Parties and their respective heirs, executors, legal and personal administrators, successors and permitted assigns. The Purchaser may not assign this Agreement without the Monitor's prior written approval, which approval shall be in the Monitor's sole, absolute and unfettered discretion. Notwithstanding the foregoing, up until Closing, the Purchaser shall have the right to direct that title to the Lands be taken in the name of another person, entity, joint venture, partnership or corporation (presently in existence or to be incorporated) that is an affiliate of the Purchaser, provided that the Purchaser shall not be released from any and all obligations and liabilities hereunder until after the Closing of the transaction. The foregoing right may only be exercised once by the Purchaser. Any other requested direction of title shall require the Monitor's prior written approval, which approval shall be in the Monitor's sole, absolute and unfettered discretion.

### **16.11 Expenses**

Except as otherwise set out in this Agreement, all costs and expenses (including, without limitation, the fees and disbursements of legal counsel) incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the Party incurring such costs and expenses.

### **16.12 Severability**

If any portion of this Agreement is prohibited in whole or in part in any jurisdiction, such portion shall, as to such jurisdiction, be ineffective to the extent of such prohibition without invalidating the remaining portions of this Agreement and shall, as to such jurisdiction, be deemed to be severed from this Agreement to the extent of such prohibition.

### **16.13 No Strict Construction**

The language used in this Agreement is the language chosen by the Parties to express their mutual intent, and no rule of strict construction shall be applied against any Party.

### **16.14 Cumulative Remedies**

Unless otherwise expressly stated in this Agreement, no remedy conferred upon or reserved to one or both of the Parties is intended to be exclusive of any other remedy, but each remedy shall be cumulative and in addition to every other remedy conferred upon or reserved hereunder, whether such remedy shall be existing or hereafter existing, and whether such remedy shall become available under common law, equity or statute.

**16.15 Currency**

All references to dollar amounts contained in this Agreement shall be deemed to refer to lawful currency of Canada.

**16.16 Monitor's Capacity**

It is acknowledged by the Purchaser that the Monitor is entering into this Agreement solely in its capacity as Court-appointed monitor and that the Monitor shall have absolutely no personal or corporate liability under or as a result of this Agreement in any respect.

**16.17 No Third Party Beneficiaries**

This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns. No other person or entity shall be regarded as a third party beneficiary of this Agreement.

**16.18 Number and Gender**

Unless the context requires otherwise, words importing the singular include the plural and vice versa and words importing gender include all genders. Where the word "including" or "includes" is used in this Agreement, it means "including (or includes) without limitation".

**16.19 Counterparts**

This Agreement may be executed in counterparts and by facsimile or PDF, each of which when so executed shall be deemed to be an original and such counterparts together shall constitute one and the same instrument.

***[SIGNATURE PAGE FOLLOWS.]***

**IN WITNESS WHEREOF** the Monitor has duly executed this Agreement as of the date first above written.

**KSV KOFMAN INC.**, solely in its capacity as court appointed monitor of 5507 River Development Inc. and 4439 John Development Inc., and not in its personal capacity or in any other capacity

Per: \_\_\_\_\_

Name: Robert Kofman

Title: President and Managing Director

**ACCEPTED** by the Purchaser this 27<sup>th</sup> day of March, 2019

**2486489 ONTARIO INC.**

Per: \_\_\_\_\_

Name: Saeid Aghaei

Title: Authorized Signing Officer



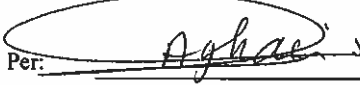
**IN WITNESS WHEREOF** the Monitor has duly executed this Agreement as of the date first above written.

**KSV KOFMAN INC.**, solely in its capacity as court appointed monitor of 5507 River Development Inc. and 4439 John Development Inc., and not in its personal capacity or in any other capacity

Per: \_\_\_\_\_  
Name: Robert Kofman  
Title: President and Managing Director

**ACCEPTED** by the Purchaser this 27<sup>th</sup> day of March, 2019

**2486489 ONTARIO INC., IN TRUST**

Per:  \_\_\_\_\_  
Name: Saeid Aghaei  
Title: Authorized Signing Officer

**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.



agreement of purchase and sale between the Monitor, as vendor, and [REDACTED] (the "**Purchaser**"), as purchaser, dated [REDACTED], 2019 (the "**Sale Agreement**"), a copy of which is attached as Confidential Appendix "[REDACTED]" to the [REDACTED] Report of the Monitor dated [REDACTED], 2019 (the "[REDACTED] **Report**"), and vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, all of the Owner Applicant's right, title and interest in and to the property described as the "Purchased Assets" in the Sale Agreement (the "**Purchased Assets**"), was heard this day at 330 University Avenue, Toronto, Ontario.

**ON READING** the [REDACTED] Report and appendices thereto, and on hearing the submissions of counsel for the Monitor and such other counsel as were present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of [REDACTED] sworn [REDACTED], 2019, filed,

1. **THIS COURT ORDERS AND DECLARES** that the Transaction is hereby approved, and the execution of the Sale Agreement by the Monitor is hereby authorized and approved, with such minor amendments as the Monitor may deem necessary. The Monitor is hereby authorized to take such additional steps and execute such additional documents as may be necessary or desirable for the completion of the Transaction and for the conveyance of the Purchased Assets to the Purchaser, or as it may direct.

2. **THIS COURT ORDERS AND DECLARES** that upon the delivery of a Monitor's certificate to the Purchaser substantially in the form attached as **Schedule "B"** hereto (the "**Monitor's Certificate**"), all of the Owner Applicant's right, title and interest in and to the Purchased Assets, including without limitation the subject real property identified in **Schedule "C"** hereto (the "**Real Property**"), shall vest absolutely in the Purchaser, or as it may direct, 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, leases, notices of lease, subleases, licences, restrictions, contractual rights, options, judgments, liabilities (direct, indirect, absolute or contingent), obligations, levies, charges, or other financial or monetary claims, whether or not they have attached or been perfected, registered or filed and whether secured, unsecured or otherwise (collectively, the "**Claims**"), including, without limiting the generality of the foregoing: (i) any encumbrances or charges created by the Amended and Restated Order of the Honorable Justice Hailey dated November 30, 2018; (ii) all charges, security interests or claims evidenced by registrations pursuant to the *Personal Property Security Act* (Ontario) or any other personal property registry system; and (iii) those Claims listed on **Schedule "D"** hereto (all of which are collectively referred to as the "**Encumbrances**", which term shall not include the permitted encumbrances, easements and restrictive covenants listed on **Schedule "E"**) and, for greater certainty, this Court orders and declares that all of the Encumbrances affecting or relating to the Purchased Assets are hereby expunged and discharged as against the Purchased Assets and are non-enforceable and non-binding as against the Purchaser.

3. **THIS COURT ORDERS** that upon the registration in the Land Registry Office for the Land Titles Division of Niagara South (No. 59) of an Application for Vesting Order in the form prescribed by the *Land Titles Act* and/or the *Land Registration Reform Act*, the Land Registrar is hereby directed to enter the Purchaser, or as it may direct, as the owner of the subject real property identified in **Schedule "C"** hereto (the "**Real Property**") in fee simple, and is hereby directed to delete and expunge from title to the Real Property all of the Claims listed in **Schedule "D"** hereto.

4. **THIS COURT ORDERS** that for the purposes of determining the nature and priority of Claims, the net proceeds from the sale of the Purchased Assets shall stand in the place and stead

of the Purchased Assets, and that from and after the delivery of the Monitor's Certificate, all Claims and Encumbrances shall attach to the net proceeds from the sale of the Purchased Assets with the same priority as they had with respect to the Purchased Assets immediately prior to the sale, as if the Purchased Assets had not been sold and remained in the possession or control of the person having that possession or control immediately prior to the sale.

5. **THIS COURT ORDERS AND DIRECTS** the Monitor to file with the Court a copy of the Monitor's Certificate, forthwith after delivery thereof.

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

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

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

7. **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 and its agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to assist the Monitor and its agents in carrying out the terms of this Order.

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**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"**  
**FORM OF MONITOR'S CERTIFICATE**

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

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

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR  
ARRANGEMENT OF FORME DEVELOPMENT GROUP INC.  
AND THE OTHER COMPANIES LISTED ON SCHEDULE "A"  
HERETO

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

**MONITOR'S CERTIFICATE**

**RECITALS**

I. Pursuant to an Order of the Honourable Mr. Justice Hainey of the Ontario Superior Court of Justice (Commercial List) (the "**Court**") dated November 30, 2018 (as amended, the "**Initial Order**"), KSV Kofman Inc. was appointed as monitor (in such capacity, the "**Monitor**") of 5507 River Development Inc. and 4439 John Development Inc. Pursuant to the Initial Order the Monitor was granted certain expanded powers.

II. Pursuant to an Order of the Court dated [REDACTED], 2019, the Court approved the agreement of purchase and sale between the Monitor, as vendor, and [REDACTED] (the "**Purchaser**"), as purchaser, dated [REDACTED], 2019 (the "**Sale Agreement**"), and provided for the vesting in the Purchaser, or as it may direct in accordance with the Sale Agreement, of all of 5507 River Development Inc.'s and 4439 John Development Inc.'s (collectively, the "**Owner Applicant**") right, title and interest in and to

the Purchased Assets (as defined in the Sale Agreement), which vesting is to be effective with respect to the Purchased Assets upon the delivery by the Monitor to the Purchaser of a certificate confirming: (i) the payment by the Purchaser of the purchase price for the Purchased Assets; (ii) that the conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Monitor and the Purchaser; and (iii) the transaction has been completed to the satisfaction of the Monitor.

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

THE MONITOR CERTIFIES the following:

1. The Purchaser has paid and the Monitor has received, the purchase price for the Purchased Assets payable on the closing date pursuant to the Sale Agreement;
2. The conditions to closing as set out in the Sale Agreement have been satisfied or waived by the Monitor and the Purchaser in accordance with their terms;
3. The transaction has been completed to the satisfaction of the Monitor; and

4. This Certificate was delivered by the Monitor at \_\_\_\_\_ [TIME] on  
\_\_\_\_\_ [DATE].

**KSV KOFMAN INC.**, solely in its capacity as court appointed monitor of 5507 River Development Inc. and 4439 John Development Inc., and not in its personal capacity or in any other capacity

Per: \_\_\_\_\_  
Name:  
Title:

**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 "C"**  
**LEGAL DESCRIPTION OF THE REAL PROPERTY**

Registered Owner: 5507 River Development Inc.

**5507 River Road, Niagara Falls, Ontario**

Firstly: PIN 64342-0376 (LT): PT LT 13 PL 294 TOWN OF NIAGARA FALLS; PT LT 14 PL 294 TOWN OF NIAGARA FALLS; PT LT 15 PL 294 TOWN OF NIAGARA FALLS AS IN RO519575 (SECONDLY & THIRDLY) ; NIAGARA FALLS

Secondly: PIN 64342-0383 (LT): PT LT 83 PL 294 TOWN OF NIAGARA FALLS AS IN RO519575 (FOURTHLY); NIAGARA FALLS

**[Address not assigned – adjoins PIN 64342-0376 (LT) to the south]**

PIN 64342-0377 (LT): PT LT 12 PL 294 TOWN OF NIAGARA FALLS; PT LT 13 PL 294 TOWN OF NIAGARA FALLS PT 1, 59R6175 ; NIAGARA FALLS

**5471 River Road, Niagara Falls, Ontario**

PIN 64342-0374 (LT): PT LT 18 PL 294 TOWN OF NIAGARA FALLS; PT LT 17 PL 294 TOWN OF NIAGARA FALLS AS IN RO546510 ; NIAGARA FALLS

**5491 River Road, Niagara Falls, Ontario**

Firstly: PIN 64342-0375 (LT): PT LT 15 PL 294 TOWN OF NIAGARA FALLS; PT LT 16 PL 294 TOWN OF NIAGARA FALLS; PT LT 17 PL 294 TOWN OF NIAGARA FALLS AS IN RO474752 ; NIAGARA FALLS

Secondly: PIN 64342-0382 (LT): PT LT 83 PL 294 TOWN OF NIAGARA FALLS AS IN RO474752; NIAGARA FALLS

**Part of River Lane (closed)**

PIN 64342-0446 (LT): PART LANE PL 294 TOWN OF NIAGARA FALLS LYING BTN PHILIP ST & JOHN ST , CLOSED BY BY-LAW SN500919, DESIGNATED AS PART 1, 59R15770; SUBJECT TO AN EASEMENT AS IN SN509035; CITY OF NIAGARA FALLS

Registered Owner: 4439 John Development Inc.

**4427 John Street, Niagara Falls, Ontario**

PIN 64342-0333 (LT): LT 86 PL 294 TOWN OF NIAGARA FALLS ; NIAGARA FALLS

**4407 John Street, Niagara Falls, Ontario**

PIN 64342-0334 (LT): PT LT 84 PL 294 TOWN OF NIAGARA FALLS AS IN RO692050 ; S/T RO692050 ; T/W RO692050 ; NIAGARA FALLS

**4413 John Street, Niagara Falls, Ontario**

PIN 64342-0335 (LT): LT 85 PL 294 TOWN OF NIAGARA FALLS ; S/T RO249643 ; NIAGARA FALLS

**4399 John Street, Niagara Falls, Ontario**

PIN 64342-0336 (LT): PT LT 84 PL 294 TOWN OF NIAGARA FALLS AS IN RO699907 ; NIAGARA FALLS

**SCHEDULE "D"**  
**INSTRUMENTS TO BE DELETED FROM PIN NOS. 64342-0376 (LT), 64342-0383 (LT), 64342-0376 (LT), 64342-0374 (LT),**  
**64342-0375 (LT) AND 64342-0382 (LT),**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
SN499026	2017/02/01	Charge	\$1,790,000	5507 River Development Inc.	Home Trust Company
SN499027	2017/02/01	Charge	\$1,000,000	5507 River Development Inc.	Niagara Falls Pointe General Partner, Inc.
ST499028	2017/02/01	Charge	\$1,265,940	5507 River Development Inc.	Home Trust Company

**INSTRUMENTS TO BE DELETED FROM PIN NO. 64342-0333 (LT), 64342-0334 (LT), 64342-0335 (LT) AND**  
**64342-0336 (LT),**

Reg. No.	Date	Instrument Type	Amount	Parties From	Parties To
SN499001	2017/01/31	Charge	\$1,265,940	4439 John Development Inc.	Home Trust Company
SN499002	2017/01/31	Charge	\$210,990	4439 John Development Inc.	Sentrix Financial Corporation
SN499003	2017/01/31	Charge	\$1,790,000	4439 John Development Inc.	Home Trust Company

**SCHEDULE "E"**  
**PERMITTED ENCUMBRANCES FROM PIN NO. 64342-0446 (LT)**

<b>Reg. No.</b>	<b>Date</b>	<b>Instrument Type</b>	<b>Amount</b>	<b>Parties From</b>	<b>Parties To</b>
RO399243	1982/01/25	Agreement (Encroachment)	N/A		The Corporation of the City of Niagara Falls
SN500919	2017/02/17	Bylaw	N/A	The Corporation of the City of Niagara Falls	
SN509035	2017/05/01	Transfer Easement	N/A	The Corporation of the City of Niagara Falls	Enbridge Gas Distribution Inc.



**SCHEDULE "C"**  
**PERMITTED ENCUMBRANCES**

**PART I: GENERAL PERMITTED ENCUMBRANCES**

1. Any inchoate lien accrued but not yet due and payable for provincial taxes, municipal taxes, charges, rates or assessments, school rates or water rates to the extent adjusted for under this Agreement;
2. Any municipal by-laws or regulations affecting the Land or its use and any other municipal land use instruments including without limitation, official plans and zoning and building by-laws, as well as decisions of the Committee of Adjustment or any other competent authority permitting variances therefrom, and all applicable building codes;
3. Registered agreements with any municipal, provincial or federal governments or authorities and any public utilities or private suppliers of services, including without limitation, subdivision agreements, development agreements, engineering, grading or landscaping agreements and similar agreements; provided same have been complied with or security has been posted to ensure compliance and completion as evidenced by a letter from the relevant Authority or regulated utility;
4. Any unregistered easement, right-of-way, agreements or other unregistered interest of claims not disclosed by registered title provided same does not materially impact the Purchaser's intended use of the Real Property;
5. Any encroachments or other discrepancies that might be revealed by an up-to-date plan of survey of the Real Property;
6. Such other minor encumbrances or defects in title which do not, individually or in the aggregate, materially affect the use, enjoyment or value of the Real Property or any part thereof, or materially impair the value thereof;
7. Any reservations, limitations, provisos and conditions expressed in the original grant from the Crown as the same may be varied by statute; and
8. The following exceptions and qualifications contained in Section 44(1) of the Land Titles Act: paragraphs 7, 8, 9, 10, 12 and 14.

**PART II: SPECIFIC PERMITTED ENCUMBRANCES**

**PIN NO. 64342-0446 (LT)**

1. Instrument No. RO399243 registered December 3, 1982 being an Agreement (Encroachment) with The Corporation of the City of Niagara Falls;
2. Instrument No. SN500919 registered February 17, 2017 being a Bylaw from The

Corporation of the City of Niagara Falls; and

3. Instrument No. SN509035 registered May 1, 2017 being a Transfer Easement from The Corporation of the City of Niagara Falls to and in favour of Enbridge Gas Distribution Inc.

**SCHEDULE "D"**  
**LEGAL DESCRIPTION OF LANDS**

Registered Owner: 5507 River Development Inc.

**5507 River Road, Niagara Falls, Ontario**

Firstly: PIN 64342-0376 (LT): PT LT 13 PL 294 TOWN OF NIAGARA FALLS; PT LT 14 PL 294 TOWN OF NIAGARA FALLS; PT LT 15 PL 294 TOWN OF NIAGARA FALLS AS IN RO519575 (SECONDLY & THIRDLY) ; NIAGARA FALLS

Secondly: PIN 64342-0383 (LT): PT LT 83 PL 294 TOWN OF NIAGARA FALLS AS IN RO519575 (FOURTHLY); NIAGARA FALLS

**[Address not assigned – adjoins PIN 64342-0376 (LT) to the south]**

PIN 64342-0377 (LT): PT LT 12 PL 294 TOWN OF NIAGARA FALLS; PT LT 13 PL 294 TOWN OF NIAGARA FALLS PT 1, 59R6175 ; NIAGARA FALLS

**5471 River Road, Niagara Falls, Ontario**

PIN 64342-0374 (LT): PT LT 18 PL 294 TOWN OF NIAGARA FALLS; PT LT 17 PL 294 TOWN OF NIAGARA FALLS AS IN RO546510 ; NIAGARA FALLS

**5491 River Road, Niagara Falls, Ontario**

Firstly: PIN 64342-0375 (LT): PT LT 15 PL 294 TOWN OF NIAGARA FALLS; PT LT 16 PL 294 TOWN OF NIAGARA FALLS; PT LT 17 PL 294 TOWN OF NIAGARA FALLS AS IN RO474752 ; NIAGARA FALLS

Secondly: PIN 64342-0382 (LT): PT LT 83 PL 294 TOWN OF NIAGARA FALLS AS IN RO474752; NIAGARA FALLS

**Part of River Lane (closed)**

PIN 64342-0446 (LT): PART LANE PL 294 TOWN OF NIAGARA FALLS LYING BTN PHILIP ST & JOHN ST , CLOSED BY BY-LAW SN500919, DESIGNATED AS PART 1, 59R15770; SUBJECT TO AN EASEMENT AS IN SN509035; CITY OF NIAGARA FALLS

Registered Owner: 4439 John Development Inc.

**4427 John Street, Niagara Falls, Ontario**

PIN 64342-0333 (LT): LT 86 PL 294 TOWN OF NIAGARA FALLS ; NIAGARA FALLS

**4407 John Street, Niagara Falls, Ontario**

PIN 64342-0334 (LT): PT LT 84 PL 294 TOWN OF NIAGARA FALLS AS IN RO692050 ; S/T RO692050 ; T/W RO692050 ; NIAGARA FALLS

**4413 John Street, Niagara Falls, Ontario**

PIN 64342-0335 (LT): LT 85 PL 294 TOWN OF NIAGARA FALLS ; S/T RO249643 ; NIAGARA FALLS

**4399 John Street, Niagara Falls, Ontario**

PIN 64342-0336 (LT): PT LT 84 PL 294 TOWN OF NIAGARA FALLS AS IN RO699907 ; NIAGARA FALLS

**SCHEDULE "E"**  
**LIST OF EXISTING LEASES**

1. Lease dated July 15, 2017 between Time Developments Inc. (and 4413 John St Dev Co.) and 1907782 Ontario Inc. for the property municipally described as 4413 John Street, Niagara Falls, Ontario.
2. Lease dated January 31, 2017 between Time Development Group Inc., In Trust and Lorenzo Siciliano for the property located at 4427 John Street, Niagara Falls, Ontario.
3. Lease dated January 31, 2017 between Time Development Group Inc., In Trust and Theresa and John Prentice for the property municipally described as 4413 John Street, Niagara Falls, Ontario.
4. Lease dated January 31, 2017 between Time Development Group Inc., In Trust and Kathy Philips and Robert (Bob) Philips for the property municipally described as 4407 John Street, Niagara Falls, Ontario.
5. Lease dated January 31, 2017 between Time Development Group Inc., In Trust and Miranda Ingribelli for the property municipally described as 4399 John Street, Niagara Falls, Ontario.