



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

February 26, 2019

<b>Contents</b>		<b>Page</b>
1.0	Introduction.....	1
2.0	Purposes of this Report .....	2
3.0	Currency.....	2
4.0	Background .....	2
5.0	Monitor's Concerns.....	5
6.0	Good Faith and Due Diligence.....	8
7.0	Recommendation.....	8
8.0	Conclusion and Recommendation .....	9

## **Appendices**

<b>Appendix</b>	<b>Tab</b>
List of Applicants.....	A
Initial Order .....	B
List of Non-Applicants .....	C
Emails from Birchmount purchasers.....	D
Affidavit of Yuan Hua Wang sworn November 5, 2018 (without exhibits) .....	E
Monitor's Email correspondence of February 21, 2019 (redacted) .....	F
Monitor's Email correspondence of February 22, 2019.....	G
Email response from Wang dated February 24, 2019 (redacted) .....	H
Monitor's email response to Wang dated February 25, 2019.....	I

<b>Confidential Appendix</b>	<b>Tab</b>
Email response (unredacted) from Wang dated February 24, 2019.....	1



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**

**THIRD REPORT OF KSV KOFMAN INC. AS MONITOR  
February 26, 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 (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 ("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. The bid deadline for all properties included in the Sale Process is March 27, 2019.
3. Several real estate development companies related to the Applicants initially applied for but were not granted protection in these CCAA proceedings (the "Non-Applicants", and together with the Applicants, the "Forme Group") due to opposition from one or more mortgagees on each of the Non-Applicants' real property. The Non-Applicants are listed on Appendix "C".

4. The Monitor understands that Yuan (Mike) Hua Wang (“Wang”) is the sole shareholder of each of the Applicants and the Non-Applicants. Wang has guaranteed millions of dollars of mortgages on the majority of the Applicants’ and Non-Applicants’ real property; however, the amount of those guarantees has not yet been quantified by the Monitor. The Monitor believes that it will be necessary to do so through a Court-approved claims process. Pursuant to the terms of the Initial Order, Wang has the benefit of a broad stay of proceedings relating to his guarantees of the commitments or loans of any of the Applicants and certain other mortgage obligations. The stay of proceedings in favour of Wang does not include his guarantees of the commitments or loans of the Non-Applicants.
5. KSV is filing this report (“Report”) in its capacity as Monitor.

## 2.0 Purposes of this Report

1. The purposes of this Report are to:
  - a) provide background information about these proceedings;
  - b) report on the Monitor’s concerns regarding Wang, including concerns that arose during the week of February 18, 2019 in respect of the potential sale of certain of the Non-Applicants’ real property;
  - c) set out the basis on which the Monitor believes that the sale proceeds from the Non-Applicants’ real property should be paid to the Monitor net of all *bona fide* mortgage obligations and transaction costs, and, in light of Wang’s guarantee obligations to certain of the Applicants’ creditors, only be distributed subject to further order of the Court after completion of a claims process; and
  - d) recommend that the Court issue an order directing the Non-Applicants, any mortgagee of the Non-Applicants (if real property is sold through a mortgagee enforcement process) or any other person to remit the net proceeds of any transaction to the Monitor. In the event that the Court does not make this order, the Monitor is of the view that the stay of proceedings granted to Wang under the Initial Order should be terminated.

## 3.0 Currency

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

## 4.0 Background

1. The Forme Group is comprised of several commercial and residential real estate development companies, each of which is believed to be owned by Wang. Wang is also the sole director of each entity. The Forme Group’s properties are primarily located in the Greater Toronto Area, with a few located in Southwestern Ontario.

2. Except for one project, known as Birchmount Gardens, the Forme Group's projects have not advanced beyond the planning stage. Birchmount Gardens is a condominium project located in Scarborough, Ontario. All of the condominiums in this project have been sold and the Monitor believes that all purchasers are occupying their units; however, the transactions have not closed. Closings were to have occurred approximately three years ago. The Monitor is working to close these transactions. Construction and other issues need to be resolved before closings can take place. The level of frustration with Wang and the Forme Group's management by Birchmount purchasers is illustrated by the emails provided in Appendix "D"<sup>1</sup>.
3. According to Wang's affidavit sworn November 5, 2018 filed as part of the Forme Group's initial CCAA application (the "Wang Affidavit"), the causes of the Forme Group's financial difficulties include:
  - a) the Forme Group has approximately \$220 million of mortgage debt, which it is unable to service<sup>2</sup>; and
  - b) the Forme Group's liquidity issues resulted in delays in the planning and development of several of its projects. Wang states that the delays were caused by the following factors:
    - delays from municipalities which required the Forme Group to incur substantial legal and consulting fees for resubmission;
    - appeals filed in respect of zoning, planning and development applications;
    - a slowdown in the real estate market in the Greater Toronto Area; and
    - rising interest rates.
4. It was initially contemplated that the CCAA proceedings would include the entire Forme Group. Several mortgagees of the Non-Applicants opposed the CCAA application. The Initial Order was the result of multiple Court attendances and extensive negotiation between the Monitor and mortgagees. Several mortgagees have commenced power of sale proceedings.
5. When Wang first met with KSV, he explained that some of his projects have millions of dollars of equity (the "Positive Equity Projects") while others likely do not have sufficient value to repay in full their mortgage debt (the "Negative Equity Projects"). Wang explained to KSV that he had personally guaranteed millions of dollars of mortgage debt and that his objective was to use the surplus from the Positive Equity Projects to satisfy his guarantee obligations on the Negative Equity Projects. Wang also explained that he had no other means to satisfy his obligations under his personal guarantees. This was a principal reason that KSV supported the Forme Group's application for CCAA protection and the extension of the stay of proceedings to Wang in connection with his personal guarantees.

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<sup>1</sup> The senders' names have been redacted for privacy reasons.

<sup>2</sup> KSV has a mortgage on certain of the Forme Group's real property in respect of its and its counsel's fees and disbursements. Goldman Sloan Nash & Haber LLP, counsel to the Forme Group, also has a mortgage on certain of the Non-Applicants' real property. These mortgages are junior to all other mortgages on the relevant property and were provided prior to the commencement of these proceedings as protection for the unpaid fees and costs of the professionals.

6. Paragraph 39 of the Wang Affidavit states:

*“A stay of proceedings is required to provide protective relief during this process. In addition to the stay of proceedings for the Forme Group, the Applicants are also requesting a limited third party stay for my benefit given my personal guarantees on many of the mortgages. Allowing enforcement on personal guarantees during the pendency of the CCAA proceedings will only result in an end run around the primary purpose of the main stay of proceedings, which is to maximize recoveries for all creditors. **As most of my net worth is tied up in the equity in these projects, and my intention is to use the equity realized in the CCAA proceedings to repay my creditors, I require the benefit of a stay while an orderly restructuring process is conducted. I do not believe that any creditor will be prejudiced by the stay as I do not have the financial means to satisfy my guarantees until I can realize on my equity in certain of the Projects in any event.**” [emphasis added]*

A copy of the Wang Affidavit is provided in Appendix “E”, without exhibits.

7. Paragraph 16 of the Initial Order provides, among other things, a stay of proceedings against Wang or any of Wang’s current and future assets, businesses, undertakings and properties arising upon or as a result of any default under the terms of any document entered into in connection with any of Wang’s guarantees of any of the commitments or loans of any of the Applicants or default by Wang in respect thereof.
8. The Initial Order provides the Monitor with powers beyond those contemplated by the model Initial Order. KSV is the “super” Monitor. It is controlling the Applicants’ receipts and disbursements, the Sale Process and overseeing the Applicants’ operations generally. Paragraph 24 of the Initial Order provides:

**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.

9. Copies of Court materials filed in these proceedings, including the Monitor’s Reports to Court, are available on the Monitor’s website at <https://www.ksvadvisory.com/insolvency-cases/case/forme-development-group-inc.>

## 5.0 Monitor's Concerns

1. It is now apparent to the Monitor that the majority of the Forme Group's stakeholders have lost confidence in Wang and the Forme Group's management team.
2. Throughout these proceedings, the Monitor has advised Wang of the need for transparency in light of, *inter alia*, the stay of proceedings afforded to him under the Initial Order, including in respect of the Non-Applicants' real property and the stated purpose of these proceedings, which is to maximize the proceeds available to repay Wang's creditors, including his obligations under his personal guarantees. The Monitor has expressed concerns to Wang and his management team about a lack of transparency, communication and respect for the CCAA process. The most recent issues arose during the weeks of February 18, 2019 and February 25, 2019 and are described below.
  - a) KSV is the Proposal Trustee in proceedings involving three development companies that comprise one assembly on Old Kennedy Road (the "NOI Companies"). Each of the three NOI Companies filed Notices of Intention to Make a Proposal on October 26, 2018. A transaction was completed for the sale of the real estate owned by the NOI Companies (the "Old Kennedy Transaction") and these companies have each since filed a proposal. KSV, as Proposal Trustee, is statutorily required to perform a review of transactions for the year preceding the filing of the notice of intention to make a proposal. KSV identified \$2.8 million of disbursements from the NOI Companies during that period, for which it sought an explanation from the Forme Group's management<sup>3</sup>;
  - b) On February 21, 2019, in response to KSV's inquiry, the Applicants inadvertently sent KSV copies of four cheques payable to the Forme Group's real estate lawyer, Yi Zhou, as summarized in the table below.

Date on Cheque	Payor	Non-Applicant Real Property Referenced on Cheque
December 11, 2018	Canada Feng Tai International Inc.	22 Old Kennedy Road
December 11, 2018	Cheng Yi Wei	4550 Steeles Ave.
February 4, 2019	5008830 Ontario Inc. and 5008831 Ontario Inc.	22 Old Kennedy Road
February 4, 2019	5008830 Ontario Inc. and 5008832 Ontario Inc.	Unknown

- c) As a result of the names of the payors (5008830 Ontario Inc. is the purchaser in the Old Kennedy Road Transaction and Cheng Yi Wei is its counsel), and the Non-Applicants' real property referenced on the cheques, it appeared to the Monitor that Wang is attempting to complete transactions for the real property owned by Non-Applicants referenced on the cheques.

<sup>3</sup> As of the date of this Report, no explanation or support has been provided for these transactions.

- d) It is noteworthy that Wang never disclosed these transactions to the Monitor notwithstanding that:
- i. two of the cheques are dated December 11, 2018, which is more than two months ago and only 11 days after the Initial Order was granted; and
  - ii. on many occasions after the Initial Order was granted, KSV suggested that an orderly process should be conducted for the Non-Applicants' real property in order to maximize its value. Wang refused to do so and never once suggested to KSV that he was in discussions for the sale of the properties nor that he had received deposits for 22 Old Kennedy Road and 4550 Steeles Avenue.
- e) The Monitor believes that if the cheques were not inadvertently disclosed to it, it would not have found out about the proposed transactions of the Non-Applicants until after they had closed.
- f) On learning of these cheques, the Monitor sent an email on February 21, 2019 to Wang and his management team asking for an explanation. A further email was sent the following morning. Copies of these emails are attached as Appendices "F" and "G" (Appendix "F" has been redacted for the reasons noted in the following paragraph).
- g) Wang did not respond to the Monitor's email until February 24, 2019, at which time he sent an email to the Monitor (the "February 24<sup>th</sup> Email"). His response provided the value of the transaction and other information; however, it did not provide the name of the purchaser, copies of the agreements with the purchaser nor the contemplated closing date/dates. A redacted copy of Wang's response is provided in Appendix "H". The unredacted email is provided in Confidential Appendix "I". The Monitor respectfully requests that the redacted email, copies of the cheques and a preliminary calculation of net proceeds available to the Non-Applicants be filed with the Court on a confidential basis and be sealed as they contain confidential information. If the redacted terms are not sealed, the information may negatively impact realizations. The Monitor is not aware of any party that will be prejudiced if the information is sealed.
- h) On February 25, 2019, the Monitor responded to the February 24<sup>th</sup> Email. A copy of the Monitor's response is provided in Appendix "I". An excerpt from the Monitor's email is provided below:

*"In light of your representations to the court and your creditors in your affidavit at the application for the Initial Order ... which is the stated purpose of the CCAA proceedings, KSV will be finalizing a report to court by no later than tomorrow morning that provides the following:*

*1. For as long as you have the benefit of a stay of proceedings in the CCAA:*

*a. The proceeds generated from the sale (or any other transaction) involving any real property owned by Non-Applicants are to be paid to the Monitor, net of all amounts owing on bond [sic] fide mortgages;*



*b. The sale proceeds will be held pending a further order of the court;*

*c. The distribution of any of the sale proceeds is subject to a claims process that will include all creditors for whom you provided a personal guarantee.”*

- i) In addition to concerns regarding the potential transactions for the Non-Applicants' real property and a lack of transparency, the Monitor has frequently conveyed to Wang its concerns about its lack of communication and respect for the CCAA process, as well as concerns regarding the timeliness of its responses to the Monitor's questions.
- j) On the morning of February 26, 2019, the Monitor received an email from Cassels Brock & Blackwell LLP ("Cassels Brock") advising that it has been approached to represent the Applicants. Cassels Brock provided a follow-up email later on the same day advising it had been retained. The Applicants are presently and have been represented by Goldman Sloan Nash & Haber LLP ("GSNH") throughout these proceedings and GSNH has extensive knowledge about the Forme Group as a result. The Monitor knows of no reason to replace GSNH as the Applicants' counsel and no reason has been provided to the Monitor by Wang or the Forme Group's other management representatives. The Monitor is aware, however, that GSNH has advised Wang of his requirement to act transparently and to make full disclosure of his activities as it relates to the Forme Group's real property. It is the Monitor's respectful submission that as a result of paragraph 24 of the Initial Order (which was reproduced above), neither the Applicants nor Wang have the authority to replace GSNH and/or engage Cassels Brock without the Monitor's consent. The Monitor is concerned that changing counsel, or having Cassels Brock act as co-counsel to GSNH, will result in unnecessary cost and potentially adversely affect these proceedings.
- k) During the week of February 18, 2019, the Monitor learned that Wang's personal counsel in the CCAA proceedings resigned for reasons that it was not prepared to disclose to the Monitor. The Monitor understands that its resignation was not related to fees.
- l) As a result of the foregoing events, the Monitor is concerned about the possibility that Wang may seek to put any funds received by him as shareholder of the Non-Applicants beyond the reach of his creditors, including those with guarantee claims against Wang in respect of the Applicants' mortgages. The Monitor is also concerned that there be a process to deal with Wang's guarantee obligations under the supervision of the Court and not under the control and direction of Wang. This process should be conducted at the conclusion of the Sale Process.

## 6.0 Good Faith and Due Diligence

1. Pursuant to section 11.02(3)(b) of the CCAA, a debtor company is required to act in good faith and with due diligence to be afforded the benefit of a stay of proceedings.
2. It is the Monitor's view that in CCAA proceedings where the Court finds it appropriate to grant the monitor powers beyond those contemplated by the model Initial Order, the good faith and due diligence standard should focus on the Monitor's conduct. In this case, the Monitor is exercising control and oversight over the Applicants' business and affairs, as well as over the Sale Process. The Monitor exercises these powers under the Court's supervision.
3. The Monitor is also of the view that terminating the stay of proceedings against the Applicants would disrupt the Sale Process and that the significant time and cost incurred to-date in the Sale Process will have been wasted. Completion of the Sale Process is likely to result in more timely transactions for the Applicants' real property than would separate mortgagee enforcements. Additionally, terminating the stay of proceedings against the Applicants would adversely impact the Monitor's efforts to close the condominium sales on the Birchmount Project.

## 7.0 Recommendation

1. The Monitor believes that if Wang is to continue to have the benefit of the stay of proceedings with respect to his guarantees, it is appropriate for the Court to direct that any surplus proceeds generated from the sale of the Applicants' and the Non-Applicants' real property, after payment of *bona fide* mortgage debt and transaction expenses, be paid to the Monitor for the following reasons:
  - a) the stated purpose of the CCAA proceedings is to allow for an orderly sale process of the Forme Group's real property so that Wang could maximize recoveries for the benefit of the Forme Group's creditors, including his obligations under his personal guarantees. This was a primary reason that KSV supported these proceedings;
  - b) the Monitor has concerns about the level of communication, transparency and respect for the CCAA process from the Forme Group's management;
  - c) there is a risk that Wang could move the proceeds of sale out of the reach of his creditors;
  - d) a process is required to deal with Wang's guarantee claims – such a process should be conducted under the supervision of the Court at the conclusion of the Sale Process; and
  - e) it is apparent to the Monitor that most of the stakeholders in these proceedings have lost confidence in Wang.
2. It is also KSV's intention in its capacity as Proposal Trustee not to distribute any funds to Wang as shareholder of the NOI Companies until the guarantee claims are quantified and addressed. A process will be established in this regard in due course.

## 8.0 Conclusion and Recommendation

1. Based on the foregoing, the Monitor respectfully recommends that this Honourable Court make an order granting the relief detailed in this Report.

\* \* \*

All of which is respectfully submitted,

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

**KSV KOFMAN INC.  
SOLELY IN ITS CAPACITY AS 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.

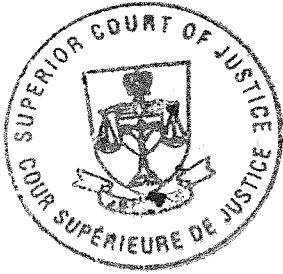
5507 River Development Inc.

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

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) and 1296 Kennedy Development Inc. (Estate No. 31-2439440) (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., 3310 KINGSTON DEVELOPMENT INC., 1296 KENNEDY DEVELOPMENT INC., 1326 WILSON DEVELOPMENT INC., 376 DERRY DEVELOPMENT INC., 9500 DUFFERIN DEVELOPMENT INC., 4439 JOHN DEVELOPMENT INC., 5507 RIVER DEVELOPMENT INC. and 2358825 ONTARIO LTD.

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, 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 (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.

#### **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 Mr. Wang, or affecting the 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 Mr. Wang to carry on any business which Mr. Wang is 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 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 Applicants' 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 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) after payment of all debts, fees and costs owing or incurred in respect of that project (in each case, the "**Project Equity**"), each mortgagee of that project will be entitled to receive in cash an amount equal to 10% of the principal amount of its mortgage prior to any payment to the project's shareholder (the "**Equity Kicker**"); provided that to the extent there is insufficient Project Equity to pay the Equity Kicker in full, each such mortgagee shall be entitled to its *pro-rata* share of the Equity Kicker based on the principal amount of its mortgage; 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.

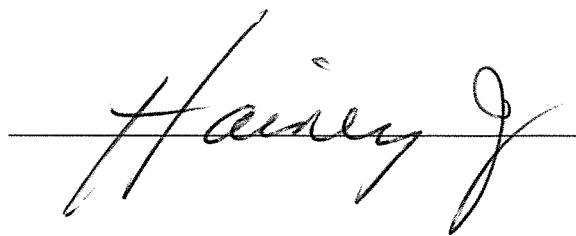
53. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of the Applicants, the Business or the Property.

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.

A handwritten signature in cursive script, appearing to read "Hainey J.", is written over a horizontal line.

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

NOV 30 2018

PER / PAR: RW

**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.

## SCHEDULE "B" – LIST OF PROPERTIES

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

**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

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

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

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

Proceeding commenced at Toronto

**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”**

4 Don Hillock Development Inc.  
7397 Islington Development Inc.  
101 Columbia Development Inc.  
4208 Kingston Development Inc.  
376 Derry Development Inc.  
3 90 Derry Development Inc.  
186 Old Kennedy Development Inc.  
31 Victory Development Inc.  
58 Old Kennedy Development Inc.  
76 Old Kennedy Development Inc.  
82 Old Kennedy Development Inc.  
22 Old Kennedy Development Inc.  
35 Thelma Development Inc.  
19 Turff Development Inc.  
4550 Steeles Development Inc.  
9500 Dufferin Development Inc.

## **Appendix “D”**

## David Sieradzki

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**From:** [REDACTED]  
**Sent:** January 16, 2019 12:38 AM  
**To:** David Sieradzki  
**Cc:** Bobby Kofman; Jonathan Joffe; [REDACTED]  
**Subject:** Re: Birchmount Gardens

Hi David,

Thank you for your email. We were actually expecting an update from Forme with regards to our final closing as per their email last week. And to our surprise, we didn't expect that what we will be receiving will be more about our developer's insolvency case or application for creditor's protection. To be honest, it's been a rough ride, for a first time home buyer like us, and in the most unimaginable way. Seemingly, and hopefully not, this won't turn out to be the same case as what happened just a few years ago with Urbancorp.

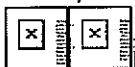
For the record, our plight against the developer were already shared with our Councillor and with Tarion. And now, we also have KSV monitoring our developer - just how more serious can our plight be?! We, residents/purchasers, had been hoping to close ever since we had our interim closing in 2016, and again, after the units were all finally registered last November 15, 2018. But with lack of transparency and competency, I believe, our developer has failed us countless times to inform as to when will our final closing be, or, as to what ARE ALL THE CAUSES for it to be delayed over and over again. And now, at the home-stretch of our journey, you mentioned in your email about an "outstanding work order from the city" needs to be addressed as well as "various construction deficiencies." The last email Forme Development sent us via the Property Management Office was about the SAMPLING PORT IMPROVEMENT WORK which will be done today and tomorrow (January 16 and 17th). is this the same work order you mentioned in your email or was it for another one? Secondly, are the "various construction deficiencies" serious as to impact the building's integrity or not? 'Coz we had been flooded last April 2018 during the wee hours of the night where water came off our light fixtures at our bedrooms as well as water dripping from our walls and receptacles (just so nightmarish !#?#).

Lastly, will our builder still have the authority/capacity to close our APS even if they, just in case, become bankrupt or declare bankruptcy?

Who will take over then, again, just in case, they can't any longer?

Regards,  
[REDACTED]

On Tue, Jan 15, 2019, 17:41 David Sieradzki <[dsieradzki@ksvadvisory.com](mailto:dsieradzki@ksvadvisory.com)> wrote:



David Sieradzki ([dsieradzki@ksvadvisory.com](mailto:dsieradzki@ksvadvisory.com)) is on your Guest List | Delete this guest

Please see attached status update regarding the Birchmount Gardens project.

Thank you,  
David

## David Sieradzki

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**From:** [REDACTED]  
**Sent:** January 25, 2019 9:34 AM  
**To:** David Sieradzki; Bobby Kofman; [REDACTED]  
**Subject:** Forme Development Group - Development at 1483-85 Birchmount Road - Mike Wang  
Purposely not addressing Boiler System Issues

**Importance:** High

David and Bobby

As the firm retained to address the creditor protection litigation commenced by Mike Wang for the \$220 million in mortgages he on properties, I am writing to you so that you are aware that Mike Wang has not been truthful regarding the boiler issues with this development. I have asked Tarion to get involved because it is obvious that Wang is unwilling and unable to address the very serious problem at play here.

I have been informed that in January 2018 when residents had no hot water or heat for nearly a month, Forme Development engaged a contractor who informed Mike Wang and employees of Forme Development that there is a design flaw in the boiler heating system. They were told this issue is serious and requires significant revision to fully and finally address the problem. Instead of fixing the issue at that time, Mike Wang made the decision to engage a different (cheap) contractor to ONLY install a mixing valve. **It was known to them that this would not resolve the problem because there is a design flaw. Since then there have been multiple incidents of the hot water and heat not working. They have only hired a contractor once in a while to turn up the heat setting NOT fix the problem because they know it will likely be expensive.**

I am sure you are both aware (or at least I hope you are) that the City of Toronto was engaged with respect to this issue given the utter lack of responsiveness and incompetence of Mike Wang to address this problem. It was only under the threat of being fined by the City that they even did the one revision with the cheap contractor.

Its unclear to me just how forthcoming these people have been to you. However, the ongoing delays and the structural design problems are all known to this Wang family and Forme Development. They have not lived up to the agreement of purchase and sale with me or others. What I agreed to pay for has not been delivered. Are they willing to amend my agreement of purchase and sale to reflect the actual value of what these units are worth? I would kindly like a response to that. I should be paying significantly less given just how poorly this development was done. Not to mention the significant problems all purchasers will now have selling when closing finally happens because the Globe and Mail has now reported on the problems with this company and Mike Wang

I would like to know when this issue is going to be fixed for good. This was known to Forme Development for years and they were too cheap to fix it. This has compromised every purchaser's

investment. They have lied to Tarion and purchasers. This needs to be addressed. The City of Toronto has issued a cold weather alert for this weekend. This must be addressed for good immediately.

Also can you please advise what law firm is handling my complaint at the Human Rights Tribunal of Ontario with Forme Development. I notice that there is no reference to any outstanding litigation in the creditor protection proceedings documents filed by your firm. I have no idea whether they even put you on notice regarding that claim.

Gentlemen, I hope you can appreciate the level of frustration that this situation has now come now that I am aware that Forme Development has known all along that there was a design flaw but they were too cheap to fix it. To have gone to the levels this Wang family has gone is beyond reproach. I will be following the creditor protection proceedings and will do anything permissible to inform the courts that Mike Wang and everyone associated with him should not be permitted to develop any of the 18 properties including the Old Kennedy Road project or any future project. If he was unable to properly complete a SMALL 34 unit development how could he possible develop a larger scale development.

Regards

[REDACTED]

## **Appendix “E”**

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

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

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

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

**AFFIDAVIT OF YUAN HUA WANG  
(sworn November 5, 2018)**

I, Yuan Hua Wang, of the City of Markham, in the Province of Ontario, MAKE OATH  
AND SAY:

1. This Affidavit is made in support of an Application by Forme Development Group Inc. ("**Forme Development**") and those other entities listed on Schedule "A" hereto (collectively and together with Forme Development, the "**Forme Group**") for relief under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**").
  
2. I am the founder, sole shareholder and director of all of the members of the Forme Group. As such, I have personal knowledge of the matters deposed to in this Affidavit. Where I have relied on other sources of information, I have specifically referred to such sources and verily believe them to be true. In preparing this Affidavit, I have consulted with legal, financial and other advisers of the Applicants and other members of the management team of the Applicants.



## I. OVERVIEW

3. The Forme Group is a commercial and residential real estate development group specializing in low-rise, high-rise, mixed-use and hospitality developments. The development projects are primarily located in the Greater Toronto Area with a few in Southwestern Ontario and one in Western Canada.
4. My experience in real estate started in China where I worked in the real estate development business for many years. In 2009, I expanded my business to Canada with the acquisition of property in Saskatchewan. In 2013, the Forme Group further expanded into the Ontario market with the acquisition and subsequent development of the property known as Birchmount Gardens. Given my training and experience in real estate development, as well as favourable market conditions, since 2013 the Forme Group has continued its expansion, acquiring several properties. Currently, the Forme Group owns properties (the “**Properties**”) in respect of 18 projects (the “**Projects**”), most of which are in the development phase with one Project (Birchmount Gardens) completed but not closed. All of the Projects have been heavily financed with single or multiple mortgages and I have also personally guaranteed most of the first and second mortgages on the Properties and certain of the further subordinated mortgages on the Properties.
5. For at least the last year, the Forme Group has been experiencing increased stress on its cash flow and its ability to service its debts – this has led to delayed and missed payments from time to time although it was largely able to service its mortgage interest payments. However, in recent months the Forme Group has been experiencing serious liquidity issues and, as a result, it can no longer advance its Projects because it does not have the liquidity to pay development costs (such as consulting and legal fees) nor to service its debt obligations. The Forme Group’s liquidity issues have largely been as a result of delays in the planning and development of several of its projects resulting from, in large part, delays from the municipalities which have required the Forme Group to incur substantial legal and consulting costs for re-submission and appeals of applications, a slowdown in the real estate market in Greater Toronto Area (particularly in the areas outside of the “416” area code) and rising interest rates. In recent weeks, we have received a number of demand letters and other legal documents as a result of outstanding defaults on various mortgage

obligations. Additionally, on November 1, 2018, we missed scheduled interest payments on all of our mortgages. Since October 26, 2018, we have commenced NOI Proceedings (as defined and discussed below) for several of the Forme Group companies.

6. If the CCAA is granted, the Forme Group intends to commence a sale process to be led by KSV Kofman Inc. (“KSV”) (if appointed as Monitor) and TD Cornerstone Commercial Realty Inc. (“TD”) for the listing of the majority of the Properties and intend to ask the Court to approve a sale process, with TD as listing agent, as quickly as possible, possibly within days of the initial hearing. The objective is that no time be wasted and that the sale process commence immediately following Court approval.
  
7. The Properties we do not plan to list right away are the 186 Old Kennedy/Victory Properties (defined below) and 1483 Birchmount Road (the Birchmount Gardens Project) and possibly certain properties that comprise the Niagara Falls Project (the “**Niagara Falls Project**”).<sup>1</sup> My intention is to continue to develop the 186 Old Kennedy/Victory Properties; however, if the sale process for the other properties is less successful than anticipated, I am prepared to sell the 186 Old Kennedy/Victory Properties. That decision will be made as the process progresses. Similarly, the decision to sell or develop the Niagara Falls Project will be made once we have had the opportunity to further discuss this project with KSV, TD and the mortgagees on that project. I believe that the Niagara Falls Project may have significant equity if we can obtain development approval. Until decisions are made regarding 186 Old Kennedy/Victory Properties and the Niagara Falls Project, and following the comeback motion in these proceedings and subject to Court approval of the proposed DIP facility, I intend to cause the applicable mortgagees to service the debt costs on those retained projects. The development activity that I intend to have performed on these projects should continue to add value to them. All such steps and any material costs incurred will be taken with the approval of the Monitor, who I understand will consult generally with the relevant mortgagees.

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<sup>1</sup> The Properties that form the Niagara Falls Project are 4399 John Street, 4407 John Street, 4413 John Street, 4427 John Street, 5472 River Road, 5491 River Road, 5507 River Road and River Lane (all in Niagara Falls, Ontario).

8. I have confidence in this course of action. My confidence is in large part due to my belief in the value of the Properties, which is supported in most instances by appraisals that we obtained from Cushman & Wakefield Ltd. (“C&W”), generally in connection with the land acquisitions. All but a few of the appraisals were prepared on a “development” basis and show that in substantially all instances the value of the Property exceeds the value of the mortgages. Further, we have also recently been working with and intend to retain TD to act as listing brokerage for certain of the Projects as further detailed herein. TD has reviewed certain of the C&W appraisals and has provided a preliminary indication of value of certain of the Forme Group’s more significant real property.
  
9. Of particular note, the values of the Pacific Projects (defined and discussed below) as appraised by C&W and reviewed by TD significantly exceed the mortgage obligations on those projects, even on an “as is” basis, as considered by TD. The equity in the Pacific Projects will be used to fund these proceedings through a DIP facility (discussed in further detail below) and to repay creditors on other projects, including projects where I have provided a personal guarantee.
  
10. TD has already started reviewing the appraisals we obtained from C&W with a focus on the Properties that form the Pacific Gardens projects (the “**Pacific Projects**”).<sup>2</sup> Based on the preliminary valuation work performed by TD, I was advised by Ashley Martis, a Managing Director of TD, that TD is of the view that there is significant equity in the Pacific Projects, including 186 Old Kennedy Road, 31 Victory Road and 51 Victory Road (the “**186 Old Kennedy/Victory Properties**”), even on an “as is” basis.<sup>3</sup> Maximizing the equity in the Pacific Projects will be beneficial to my personal creditors, including those mortgages that I have personally guaranteed if they are not paid out on the sale of the respective Properties. The equity in the Pacific Projects is estimated to range from

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<sup>2</sup> The Properties that form the Pacific Gardens projects are 186 Old Kennedy Road, 51 Victory Road, 31 Victory Road, 22 Old Kennedy Road, 16 Old Kennedy Road, 19 Turff Avenue, 35 Thelma Avenue, 20 Thelma Avenue, 58/76/82 Old Kennedy, 4550 Steeles Avenue and 31 Old Kennedy Road (collectively, the “**Pacific Gardens Properties**”).

<sup>3</sup> TD’s review of the value in the Pacific Projects consisted of reviewing the reasonableness of the assumptions in the C&W appraisals (which TD found to be generally reasonable), reviewing correspondence from, and having discussions with, the Forme Group’s third party planners working on the Pacific Projects and considering the value of the Pacific Projects on an “as is” basis (i.e. a different approach than the C&W appraisals).

approximately \$30 million to over \$70 million and I believe it could be even higher than the high end range.

11. As discussed above, in response to certain of the enforcement steps that have been taken, we have now commenced certain NOI Proceedings (as discussed and defined below). I understand that these NOI Proceedings provide a temporary stay of proceedings. However, I believe that the Forme Group would benefit from the proposed CCAA proceedings to allow for a streamlined and efficient process to maximize value for the creditors of each of the Projects and that such a process coordinated by KSV (if appointed as Monitor), with the assistance of TD, is likely to generate greater recoveries for all creditors rather than processes conducted by mortgagees under separate power of sale and/or receivership processes.
12. Further, I am of the view that given the assistance of the Monitor and TD and the supervision of the Court, the proposed CCAA process is likely to be more expedited and efficient than separate power of sale and/or receivership processes, and will not cause undue delay for the mortgagees. While there may be some incremental costs resulting from the sale process, I am of the view they should not be significant and that this process has a better opportunity to generate recoveries for subordinate ranking mortgagees than power of sale processes (or the like). I understand that KSV has extensive experience with the restructuring of real estate development companies and that its expertise in this area will be further outlined in its pre-filing report.

## II. CORPORATE INFORMATION

13. Attached as Exhibit "A" is a corporate organizational chart for the Forme Group. Each member of the Forme Group is incorporated under the *Business Corporations Act* (Ontario). The Forme Group's registered office and head office is located in Markham, Ontario. As set out above, I am the sole shareholder and director of each entity in the Forme Group. More specifically:
  - (a) Forme Development is a service company that provides administrative support for the Forme Group. It employs 12 individuals (including my wife and myself) to provide these services and is the tenant of the head office lease. Forme

Development has guaranteed many of the outstanding mortgages. My daughter, Jessica, works full time for the Forme Group and provides an integral role in the company and in this process. My wife and I have both agreed to defer entitlement to our salaries for this period.

- (b) As is the case with many real estate development companies, I have incorporated single purpose entities that own specific Properties. Those companies make up the balance of the Applicants in this application.

III. THE PROJECTS

14. As set out above, the Forme Group is a commercial and residential real estate development group specializing in low-rise, high-rise, mixed-use and hospitality developments. The projects are primarily located in the Greater Toronto Area with a few in southwestern Ontario and one in Western Canada. The Forme Group currently has one project, Birchmount Gardens, where construction has been completed and the closings are to take place by year-end, and seventeen (17) Projects in various stages of planning and development.

15. The table below provides a project summary (the "Project Summary"). The Project Summary provides a summary of each Project, mortgage debt per Project, appraised values and other information.

No.	Entity Name	Purchase Price	Acquisition Year(s)	Mortgage Debt	Appraised Value	Appraisal Date	Action plan
1	4 Don Hillock Development Inc.	2,002,500	2017	2,400,000	3,200,000	5-Jun-17	Sell
2	250 Danforth Development Inc.	7,330,000	2014	20,300,000	32,200,000	5-Jul-18	Sell
3	3310 Kingston Development Inc.	3,830,000	2014, 2015	12,700,000	14,500,000	20-Oct-16	Sell
4	12696 Kennedy Development Inc.	2,740,000	2015	7,200,000	12,100,000	1-Jun-18	Sell
5	7397 Islington Development Inc.	3,200,000	2015	8,000,000	13,800,000	27-Oct-17	Sell
6	1326 Wilson Development Inc.	1,700,000	2016	3,000,000	10,400,000	0-Jan-00	Sell
7	101 Columbia Development Inc.	3,908,887	2016	4,345,000	11,000,000	25-Jul-18	Sell
8	4208 Kingston Development Inc.	5,878,000	2016	7,908,000	1,790,000	18-Sep-18	Sell
9	376 Derry Development Inc.; and 390 Derry Development Inc.	14,850,000	2016	19,075,000	34,600,000	1-Aug-17	Sell

No.	Entity Name	Purchase Price	Acquisition Year(s)	Mortgage Debt	Appraised Value	Appraisal Date	Action plan
10	159 Carrville Development Inc.; 169 Carrville Development Inc.; and 189 Carrville Development Inc.	10,653,000	2015, 2016, 2017	15,491,500	19,600,000	7-Nov-17	Sell
11	4439 John Development Inc.; and 5507 River Development Inc.	5,209,900	2016	4,336,930	N/A	N/A	Development under consideration
12	186 Old Kennedy Development Inc.; and 31 Victory Development Inc.	34,500,000	2015, 2016	46,350,000	77,500,000	1-Jun-18	Develop
13	58 Old Kennedy Development Inc.; 82 Old Kennedy Development Inc.; and 76 Old Kennedy Development Inc.	20,800,000	2015, 2016	21,525,000	55,600,000	3-Apr-18	Sell
14	22 Old Kennedy Development Inc.; 35 Thelma Development Inc.; and 19 Turtl' Development Inc.	5,262,000	2015, 2016	4,890,000	10,400,000	2017-Apr-5 and 2018-Apr-03	Sell
15	4550 Steeles Development Inc.	11,700,000	2016	12,000,000	30,900,000	3-Apr-18	Sell
16	9500 Dufferin Development Inc.	14,750,000	2017	13,500,000	14,750,000	25-Aug-17	Sell
17	27 Anglin Development Inc.; and 29 Anglin Development Inc.	6,170,000	2016	6,923,500	12,100,000	15-Jun-17	Sell
18	2358825 Ontario Ltd. (Birchmount)	N/A	N/A	8,550,000	N/A	N/A	Complete closing
<b>Total</b>		<b>154,484,287</b>		<b>218,494,930</b>	<b>354,440,000</b>		
<b>Note: Mortgage balances above are before certain interest, costs and fees, which continue to accrue.</b>							

16. Although I continue to have confidence in all of the Projects, as set out above, the reality is that the Forme Group does not have the liquidity required to fund the development costs for all of the Projects. I am also cognizant that some of my stakeholders have lost confidence in me and the Forme Group because I have been unable to advance the projects as planned, which, as explained, is due to, *inter alia*, liquidity constraints resulting from the persistent delays. I also want to make sure that this process maximizes value for the creditors of each Property and for the Forme Group's other creditors where possible.

**(a) Projects being Retained**

17. As discussed above, the Forme Group proposes that certain Projects be excluded from the sale process to be sought.

(i) Birchmount Gardens

18. Birchmount Gardens, located at 1483 Birchmount Road, is a group of urban townhouses in Scarborough. Birchmount Gardens is fully sold and construction is completed. Closing remains subject to receiving the final certificate of occupancy and a few other steps which we anticipate to occur by not later than the end of 2018, and likely earlier. We expect the proceeds from closing to be sufficient to repay all outstanding mortgages on the Property; limited interim funding will be required to get to closing.

(ii) 186 Old Kennedy/Victory Properties

19. The 186 Old Kennedy/Victory Properties is one portion of the Pacific Projects owned by the Forme Group intended for the development of 222 townhomes into the Pacific Gardens. The Forme Group is the second largest owner of Property within a larger development known as the Milliken Centre Secondary Plan, including the 186 Old Kennedy/Victory Properties (as well as the other Properties listed above which form part of the Pacific Gardens Properties).
20. Based on my experience and history in the real estate development market, I believe the 186 Old Kennedy/Victory Properties have significant equity in them and will create significant value for my stakeholders. The values of the 186 Old Kennedy/Victory Properties are supported by the C&W appraisals as well as the TD review of the appraisals, property information, related development plans and the “as is” value, based on comparative transactions.
21. The current plan with respect to the Pacific Projects is two-fold. First, we intend to continue development of the 186 Old Kennedy/Victory Properties with the DIP Financing (subject to Court approval, as discussed below), which I believe will maximize value for its creditors. Second, the remaining properties comprising the Pacific Projects are to be listed for sale as soon as possible after Court approval of the sale process, and based on the C&W appraisals and TD’s value estimates, are expected to generate substantial recoveries beyond the mortgages which will be used to satisfy my guarantees on other Projects.

22. While the 186 Old Kennedy/Victory Properties are being developed, and subject to approval of the proposed DIP financing facility (but after the comeback motion), I intend to cause the applicable mortgagors to service the mortgages on those properties. In the event the sale process is less successful than anticipated, I am prepared to sell the 186 Old Kennedy/Victory Properties; however, that decision will be made at a later date, based on input from TD and KSV, if appointed Monitor.

(iii) Niagara Falls Project

23. The Niagara Falls Properties are a number Properties acquired for the purpose of the construction of a number of condominium suites. The Properties are situated in a prime Niagara Falls location, just blocks from the Fallsview casino and minutes to the Rainbow Bridge crossing to the United States. We have already spent significant time and resources to obtain the development approvals but that is still in process. Although I would like to continue with development of this Project, I will be discussing this and the cash requirements to continue development with KSV (if the CCAA is granted) before any decisions are made. If we determine to continue with development of the Niagara Falls Properties, we will continue to service the mortgage obligations on those Properties (after the comeback motion).

**(b) Remaining Projects**

24. The present intention is to return to Court as soon as possible to seek approval of a sale process to be led by KSV (assuming it is appointed Monitor) and TD (assuming its listing agreement is approved by the Court) that would see the balance of the Properties listed for sale forthwith. In fact, we have already taken steps to move forward in that regard. In consultation with KSV, we felt it was important to retain a real estate advisor from the outset so that we could present a clear plan as part of this Application and move forward without delay.
25. I assume that the mortgagees will not want to participate in, nor will they likely support, an uncertain and protracted process, and I believe the early engagement of TD and the listing of the Properties in the near term will assist in expediting the sale of the Properties that are to be listed for sale. The process is intended to provide transparency and certainty



to all stakeholders; not a drawn out CCAA proceeding with an uncertain direction. I understand that the details of TD's engagement will be set out in the pre-filing report of KSV and that such report will also provide commentary on the reasonableness of the terms of TD's engagement based on KSV's experience and expertise in this area.

#### **IV. FINANCIAL POSITION OF THE FORME GROUP**

##### **(a) Financial Statements**

26. Attached as Exhibit "B" is the most recent available financial information for the Applicants, being non-consolidated internal financial statements as at October 31, 2018. The Forme Group has never been required to have its financial statements audited. As such, the information provided is what is currently available. In discussing this with KSV, I understand that further work may need to be done to update our financial statements or provide further financial information to KSV and/or the Court.

##### **(b) Secured Obligations of the Forme Group**

27. As discussed above, the Project Summary provides a summary of the mortgage obligations on each Property with mortgage obligations outstanding with a total aggregate of approximately \$220 million. Some of the mortgages are cross-collateralized. Certain of the amounts owing to the mortgagees listed on the Project Summary may exclude interest and costs, which continue to accrue.

##### **(c) Unsecured Obligations of the Forme Group**

28. In addition to the above, the Forme Group, on a consolidated basis, has unsecured obligations owing to third parties, including consultants and other service providers. My accounting department is continuing to bring my financial statements up to-date, so these amounts are subject to change.

29. The Forme Group is current with respect to sales tax remittances and its payroll obligations. Forme Development maintains a group benefit plan for its employees and is current on all premiums. Forme Development's employees are not unionized and there is no pension plan.

## V. CASH MANAGEMENT

### (a) Bank Accounts

30. Each entity in the Forme Group maintains individual bank accounts, meaning that there are over 20 bank accounts. Currently, the Forme Group has approximately \$230,000 in its accounts in total. I am a signatory on all accounts. The bank accounts are not consolidated. There is no centralized cash management system. Monies are periodically transferred from one account to another, based on the cash requirements of the entities. We track and account for all intercompany transfers. Monies from the project accounts are also transferred from each entity to Forme Development to fund head office costs, such as payroll, rent and utilities. Going forward, if the DIP Financing is approved, I understand that advances will be made to a Monitor's trust account and then funds will be disbursed from there either to us or to creditors, as needed. Deposits on sales are kept in segregated accounts and are not part of the bank balances referenced above.

### (b) Intercompany Loans

31. From time to time, various members of the Forme Group have advanced funds by way of an intercompany loan to another member to cover ongoing costs. We are in the process of doing reconciliations but with a small staff, we have not been able to complete the reconciliation. I expect to be working with the Monitor to continue to do this work in the coming weeks.

## VI. THE PROPOSED CCAA PROCEEDINGS AND REQUESTED RELIEF

32. As set out above, the Forme Group is facing severe liquidity issues and is unable to service its debts. We have already received several demand or default notices as well as notices under Section 244 ("**244 Notices**") of the *Bankruptcy and Insolvency Act*. Additionally on November 1, 2018, the Forme Group missed interest payments on all of its outstanding mortgages. Among the correspondence and notices we have received are: (a) three (3) 244 Notices in respect of mortgages on properties owned by 58 Old Kennedy Development Inc., 76 Old Kennedy Development Inc. and 82 Old Kennedy Development Inc. and (collectively, "**58/76/82 Old Kennedy**"); (b) a judgment for possession in respect of the mortgage on 9500 Dufferin Development Inc. ("**9500 Dufferin**"); and (c) demand letters

purporting to enclose 244 Notices with respect to 159 Carville Development Inc. (“**159 Carville**”), 250 Danforth Development Inc. (“**250 Danforth**”), 3310 Kingston Development Inc. (“**3310 Kingston**”) and 1296 Kennedy Development Inc. (“**1296 Kennedy**” and together with 58/76/82 Old Kennedy, 9500 Dufferin, 159 Carville, 250 Danforth, 3310 Kingston, the “**NOI Companies**”).

33. In response to the 244 Notices and judgement for possession: (a) 58/76/82 Old Kennedy each filed a notice of intention (“**NOI**”) to make a proposal under the BIA on October 26, 2018; (b) 9500 Dufferin filed an NOI on November 1, 2018; (c) 250 Danforth, 3310 Kingston and 1296 Kennedy each filed an NOI on November 2, 2018; and (d) 159 Carrville filed an NOI on November 5, 2018 (collectively, the “**NOI Proceedings**”). Attached as Exhibit “C” are the certificates of filing for the NOI Proceedings other than the 159 Carrville certificate which I understand is pending. KSV was appointed as the proposal trustee in each of those proceedings.

**(a) The Applicants are Insolvent**

34. I am advised by Jennifer Stam of Goldman, Sloan, Nash & Haber LLP, the Forme Group’s legal counsel, that the CCAA requires that: (i) one or more applicants thereunder must be subject to claims that in the aggregate exceed \$5 million; and (ii) the applicant(s) must be insolvent in order for a CCAA application to be granted and an Initial CCAA Order made by the Court.
35. As noted above, the aggregate claims against the Applicants exceed the requirements of the CCAA. Further, and for the reasons set out in this affidavit including the filing of the NOI Proceedings and the missed interest payments on all mortgages, the Applicants are insolvent and are unable to meet their obligations as they come due without the benefit of an Initial CCAA Order and DIP Financing (discussed below).

**(b) The Applicants’ Cash Flow Projections**

36. The Applicants, with the assistance of KSV, have prepared a cash flow projection for operations for the period November 5, 2018 to December 9, 2018, assuming the relief sought is granted. A copy of the cash flow projection will be attached to KSV’s pre-filing

report. The Applicants will require DIP Financing to fund these proceedings as there are currently insufficient funds to fund the process. The funding will be used to service the debt on the retained projects, and fund head office costs such as payroll and rent, some development activity and professional costs. The status of obtaining DIP Financing is discussed below.

## VII. PROPOSED INITIAL CCAA ORDER

37. The Applicants are seeking the Initial CCAA Order substantially in the form of the model order adopted for CCAA proceedings commenced in Toronto, Ontario, subject to certain changes as reflected in the proposed form of order contained in the Applicants' Application Record. Certain key relief sought is set out below.

### (a) Certain Key Terms of the Initial Order

#### (i) Conversion of NOI Proceedings

38. The conversion of the NOI Proceedings into a single CCAA proceeding with the other entities in the Forme Group will provide for administrative efficiencies within this process. There is no benefit to keeping the NOI Companies in NOI Proceedings with the balance of the Forme Group in CCAA. Additionally, the NOI Companies require funding that is contemplated to come from DIP funding and an administrative charge for the professionals in these proceedings. To date there have been no proposals filed nor have there been any Court appearances in the NOI Proceedings.

#### (ii) Stay of Proceedings

39. A stay of proceedings is required to provide protective relief during this process. In addition to the stay of proceedings for the Forme Group, the Applicants are also requesting a limited third party stay for my benefit given my personal guarantees on many of the mortgages. Allowing enforcement on personal guarantees during the pendency of the CCAA proceedings will only result in an end run around the primary purpose of the main stay of proceedings, which is to maximize recoveries for all creditors. As most of my net worth is tied up in the equity in these projects, and my intention is to use the equity realized in the CCAA proceedings to repay my creditors, I require the benefit of a stay while an

orderly restructuring process is conducted. I do not believe that any creditor will be prejudiced by the stay as I do not have the financial means to satisfy my guarantees until I can realize on my equity in certain of the Projects in any event.

(iii) Administration Charge

40. It is proposed that the Monitor, its counsel and the Applicants' counsel be granted a court-ordered charge (the "**Administration Charge**") on the assets of the Applicants as security for their pre and post-filing fees and disbursements relating to the services rendered in respect of the Applicants. On an interim basis, it is proposed that the Administration Charge will not exceed \$300,000 in the aggregate. The Administration Charge is intended to secure the fees of the Monitor, its counsel and the Applicants' counsel associated with the preparation for these CCAA proceedings and activities during the proceedings. To date, none of these parties have been paid any fees or retainers in connection with their assistance with the preparation of this Application. I am advised by Ms. Stam that there will be a "come back" hearing shortly on notice to affected creditors and I anticipate that at that time an increase in the amount of the Administration Charge will be sought.
41. The Applicants propose that the Administration Charge be granted super-priority status over all existing encumbrances with respect to the Pacific Projects and second priority status behind all first mortgages on all of the other Properties. I understand that there will need to be an accounting of professional fees and other costs on a per project basis but given the anticipated remaining equity value in the Pacific Gardens Properties, I do not see any harm or burden in granting a super-priority charge with respect to the Pacific Projects.
42. The Applicants have worked with KSV, the proposed Monitor, to estimate the proposed quantum and priority of the Administration Charge. Bobby Kofman, President of KSV, has advised me that he believes it to be reasonable and appropriate in view of the complexities of the Applicants' CCAA proceedings, lack of liquidity and the services to be provided by the beneficiaries of the Administration Charge. I also understand that KSV's pre-filing report will include commentary on this issue.

(iv) The Monitor

43. KSV has consented to act as the Court-appointed Monitor of the Applicants, subject to Court approval. KSV has prepared a pre-filing report in order to assist this Court with its consideration of the Applicants' application and the relief requested by the Applicants in connection with its CCAA filing.
44. KSV is a trustee within the meaning of Section 2 of the *Bankruptcy and Insolvency Act* (Canada), as amended, and is not subject to any of the restrictions set out in section 11.7(2) of the CCAA.
45. KSV has been working closely with me for the last two weeks to consider the issues relevant to a successful proceeding under the CCAA, meaning a process that has the opportunity to expediently conduct a process that maximizes value for the creditors, protects the interests of those creditors, and provides me the opportunity to do that on an orderly basis. KSV has been working with my legal advisors and TD since shortly after I contacted KSV. KSV is now largely familiar with the status of the Projects and the financial issues and challenges confronting the Forme Group. KSV's oversight of the intended sale process will provide stakeholders with independent oversight by a court officer so that they have confidence that the process is being advanced appropriately.
46. KSV, as proposed monitor, is supportive of the relief being sought in the Initial Order, including, among other things, the existence and amounts of the proposed Court-ordered charges.

(v) DIP Financing

47. As discussed above, the Forme Group does not have sufficient liquidity to fund this process absent debtor-in-possession financing ("**DIP Financing**"). KSV, given its specialization in insolvency and real estate, has canvassed potential real estate lenders for DIP Financing.
48. I am advised by KSV that it solicited two proposals to provide a DIP facility. Both parties submitted DIP proposals and negotiations as to a DIP term sheet are in final stages. I anticipate that the agreed on form of DIP term sheet with the chosen DIP lender will be finalized prior to the hearing of this application but if not, very shortly after this application.

49. The DIP loan is integral to achieving the objectives of an orderly sale process and maximizing value. Absent DIP financing, the Forme Group will be unable to fund the costs of this process, which will be to the detriment of all stakeholders.
50. As set out in the cash flow, the Forme Group has an immediate and urgent need for borrowings under the DIP Facility of up to \$750,000. As such, if the DIP term sheet is finished by this initial application, the Forme Group will be requesting approval of a term sheet that provides for a \$5 million DIP facility with an interim limit on borrowing of a maximum of \$750,000. The security for the DIP Financing will be the Pacific Gardens Properties only in second priority after the Administration Charge but ahead of the first mortgage. As the DIP Financing will be used to fund the sales and any development work on the other Projects, use of funds and allocation thereunder will be accomplished through the Intercompany Charge (defined and discussed below).
51. I expect that the Forme Group will return to Court on notice to affected parties to seek a subsequent increase to the DIP Financing (i.e. from the interim amount of \$750,000 to \$5 million, being the maximum amount available under the DIP Facility).

(vi) Intercompany Charge

52. As set out above, from time to time, funds from one Project may be loaned to another Project and from a Project to Forme Development to fund head office and administrative costs. During this CCAA process, it is likely there will be funds used from the DIP Financing which will be secured against the Pacific Projects only for the benefit of the completion or sale of other Properties. We will work with the Monitor to account for any such transfers. For the protection of the creditors of the lending entity, the Applicants are proposing an intercompany charge to secure such loans.

(vii) Ranking of Court-Ordered Charges and Comeback Motion

53. The Applicants are seeking approval of the court-ordered charges set out as follows:

(a) Administration Charge (to an interim maximum of \$300,000):

(ii) First priority over all encumbrances with respect to the Pacific Projects; and

- (iii) Second priority over all encumbrances after the first mortgage on all other property or assets of the Applicants.
- (b) DIP Lender's Charge: Second priority over all encumbrances other than the Administration Charge on the Pacific Projects.
- (c) Intercompany Charge: Third priority charge after the first mortgage and Administration Charge on all Properties other than the Pacific Gardens Properties.

*(viii) Retention of TD*

- 54. As set out above, in order to be proactive, the Forme Group has retained TD to advise on real estate matters and assist to develop a sale process. TD's engagement letter is subject to Court approval. As set out above, the pre-filing report will also include observations regarding the reasonableness of the commercial terms of TD's retention. TD's real estate expertise is integral to the success of this process. KSV has worked with TD's realtors successfully on several matters, including the Urbancorp CCAA proceeding.
- 55. In order to advance the restructuring process expediently, I am of the view that TD's engagement letter should be approved at this time as it will require several weeks to prepare the properties for sale. Delaying such approval will mean work cannot start immediately as TD requires the certainty of Court approval of its retention. TD has advised KSV that it would like to use the pre-holiday period to prepare its materials so that the sale process can be launched as quickly as possible, ideally before the holiday season, but that is uncertain. Additionally, TD has expertise that will benefit the process before the sale process commences.


**VIII. CONCLUSION**


- 56. The relief sought in the Initial CCAA Order, including the stay of proceedings, has been tailored to the Applicants' particular circumstances and will provide the Applicants with the protections and breathing room that it needs in order to continue to focus on its goal of maximizing value for stakeholders.



57. I am confident that the granting of the Initial CCAA Order, with the relief requested, is in the best interests of the Applicants and its many stakeholders.

SWORN BEFORE ME at the City of Toronto, in the Province of Ontario, this 5<sup>th</sup> day of November, 2018.

  
\_\_\_\_\_  
Commissioner for taking affidavits

  
\_\_\_\_\_  
Yuan Hua Wang

**Schedule "A" – List of Applicants**

2358825 Ontario Ltd.  
27 Anglin Development Inc.  
29 Anglin Development Inc.  
4 Don Hillock Development Inc.  
250 Danforth Development Inc.  
3310 Kingston Development Inc.  
1296 Kennedy Development Inc.  
7397 Islington Development Inc.  
1326 Wilson Development Inc.  
101 Columbia Development Inc.  
4208 Kingston Development Inc.  
376 Derry Development Inc.  
390 Derry Development Inc.  
189 Carrville Development Inc.  
169 Carrville Development Inc.  
159 Carrville Development Inc.  
5507 River Development Inc.  
4439 John Development Inc.  
186 Old Kennedy Development Inc.  
31 Victory Development Inc.  
58 Old Kennedy Development Inc.  
76 Old Kennedy Development Inc.  
82 Old Kennedy Development Inc.  
22 Old Kennedy Development Inc.  
35 Thelma Development Inc.  
19 Turff Development Inc.  
4550 Steeles Development Inc.  
9500 Dufferin Development Inc.

## **Appendix “F”**

## David Sieradzki

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**From:** Bobby Kofman  
**Sent:** February 21, 2019 1:56 PM  
**To:** 'Mike Wang'  
**Cc:** Jessica Wang; David Sieradzki; Jennifer Stam (stam@gsnh.com); Mario J Forte (forte@gsnh.com); Aimie Yang; Sean Zweig (ZweigS@bennettjones.com)  
**Subject:** FW: Fwd: 58 Old Kennedy KSV Jonathan Requested  
**Attachments:** Cheque from purchaser-22 old kennedy.pdf; Cheque from purchaser-22 old kennedy-2019-02-04.pdf; Cheque from purchaser.pdf; Cheque from purchaser-2019-02-04.pdf

Mike,

You may be aware that KSV, as proposal trustee, has a statutory obligation to review a debtor's transactions for the year preceding the filing of the Notice of Intention to Make a Proposal. In this regard, David reviewed the bank statements for 58/76/82 Old Kennedy and identified transactions totaling approximately [REDACTED] for which he asked Aimie to provide backup. About an hour ago we received the email below from Aimie, with the attachments, which are copies of cheques payable to your lawyer, Yi Zhou, apparently from the purchaser of the 58/76/82 Old Kennedy. The cheques are summarized as follows:

- [REDACTED] in respect of 4550 Steeles Avenue;
- [REDACTED] for 22 Old Kennedy Road;
- [REDACTED] for 22 Old Kennedy Road; and
- [REDACTED] for an undisclosed property.

It is evident that these are deposits or transaction proceeds for various real estate owned by the Forme Group (as referenced above).

As you well know, you personally have the benefit of a stay of proceedings in the Forme Group CCAA proceedings. I am sure you will recall that was granted to you because you didn't want to be sued while you tried to sell your properties for the benefit of your creditors, including those creditor obligations which you guaranteed personally. That was the very premise of the entire CCAA process. In light of your stay of proceedings, I have no doubt that you are mindful of your obligation to report these transactions to us. I'm sure you will recall that we have discussed this issue a number of times. Accordingly, I look forward to receiving by the end of the day copies of the Purchase and Sale Agreements for these transactions.

Thank you,

Bobby Kofman  
President and Managing Director  
KSV Advisory Inc.  
bkofman@ksvadvisory.com  
(o) 416.932.6228  
(c) 647.282.6228

---

**From:** David Sieradzki <dsieradzki@ksvadvisory.com>  
**Sent:** February 21, 2019 1:27 PM  
**To:** Bobby Kofman <bkofman@ksvadvisory.com>  
**Subject:** FW: Fwd: 58 Old Kennedy KSV Jonathan Requested

## **Appendix “G”**

## David Sieradzki

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**From:** Bobby Kofman  
**Sent:** February 22, 2019 6:05 AM  
**To:** Aimie Yang  
**Cc:** David Sieradzki; Jennifer Stam (stam@gsnh.com); Jessica Wang; Mario J Forte (forte@gsnh.com); Mike Wang; Sean Zweig (ZweigS@bennettjones.com)  
**Subject:** RE: 58 Old Kennedy KSV Jonathan Requested  
**Importance:** High

Mike,

I have not heard from you regarding my email below. I have copied the attached from your affidavit sworn in support of the stay of proceedings in the CCAA.

*"A stay of proceedings is required to provide protective relief during this process. In addition to the stay of proceedings for the Forme Group, the Applicants are also requesting a limited third party stay for my benefit given my personal guarantees on many of the mortgages. Allowing enforcement on personal guarantees during the pendency of the CCAA proceedings will only result in an end run around the primary purpose of the main stay of proceedings, which is to maximize recoveries for all creditors. As most of my net worth is tied up in the equity in these projects, and my intention is to use the equity realized in the CCAA proceedings to repay my creditors, I require the benefit of a stay while an orderly restructuring process is conducted. I do not believe that any creditor will be prejudiced by the stay as I do not have the financial means to satisfy my guarantees until I can realize on my equity in certain of the Projects in any event."*

In light of the lack of response from you, we are drafting motion materials to advise the Court of the situation and to make appropriate recommendations. We expect to be in court promptly on this.

Thank you,

Bobby

Bobby Kofman  
President and Managing Director  
KSV Advisory Inc.  
bkofman@ksvadvisory.com  
(o) 416.932.6228  
(c) 647.282.6228

**From:** Aimie Yang <aimie@formedevelopmentgroup.com>  
**Sent:** February 21, 2019 2:08 PM  
**To:** Bobby Kofman <bkofman@ksvadvisory.com>  
**Cc:** David Sieradzki <dsieradzki@ksvadvisory.com>; Jennifer Stam (stam@gsnh.com) <stam@gsnh.com>; Jessica Wang <jessica@formedevelopmentgroup.com>; Mario J Forte (forte@gsnh.com) <forte@gsnh.com>; Mike Wang <mike@formedevelopmentgroup.com>; Sean Zweig (ZweigS@bennettjones.com) <zweigs@bennettjones.com>  
**Subject:** Re: 58 Old Kennedy KSV Jonathan Requested

Not a problem. I just forwarded you something that is not related to your question.

## **Appendix “H”**

## David Sieradzki

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**From:** Mike Wang <mike@formedevelopmentgroup.com>  
**Sent:** February 24, 2019 12:59 PM  
**To:** Bobby Kofman  
**Cc:** Aimie Yang; David Sieradzki; Jennifer Stam (stam@gsnh.com); Jessica Wang; Mario J Forte (forte@gsnh.com); Sean Zweig (ZweigS@bennettjones.com)  
**Subject:** Re: 58 Old Kennedy KSV Jonathan Requested

Bobby,

I apologize for the delay of the reply.

Please be advised that we are in the process of negotiating the sale of certain properties. A summary of the proposed terms for the two hopeful transactions are as follows:

### Transaction 1 (Site B)

**Seller:** 22 Old Kennedy Development Inc. & 19 Turff Development Inc. & 35 Thelma Development Inc.

**Real Property:** 22 Old Kennedy Road and 16 Old Kennedy Road, 19 Turff Avenue, 35 Thelma Avenue

**Price:** [REDACTED]

### Transaction 2 (Site C)

**Seller:** 4550 Steeles Development inc

**Real Property:** 4550 Steeles Avenue East and 31 Old Kennedy Road

**Price:** [REDACTED]

The buyer for each of these transactions is the same Buyer.



The negotiations are ongoing. We are hopeful to reach definitive purchase agreements in place in the near term. We have reached deals in principal with the buyer for these properties, however, certain terms are still being finalized (for example, closing date, Buyer's Financing). I am prepared to disclose or inform you the sale upon final execution.

We also intend to discuss with you next week to go through the terms of the deals. My intention is always an orderly liquidation of my properties by working with you together.

We believe that the sale of these assets generates very helpful liquidity that will only serve to enhance the outcome for all stakeholders in these CCAA proceedings. We look forward to discussing same with you.

Please do not hesitate to contact me should you have any questions.

Thanks,

Mike Wang



**Forme Development Group**

7100 Woodbine Avenue, Suite 206  
Markham, ON L3R 5J2

T +1-905-604-5766 x108 C +1-416-728-8813

F +1-905-604-5768

E [mike@formedevelopmentgroup.com](mailto:mike@formedevelopmentgroup.com)

W [formedevelopmentgroup.com](http://formedevelopmentgroup.com)



*This communication is confidential and intended only for the party to whom it is addressed, and may contain information which is privileged or confidential. Any other delivery, distribution, copying or disclosure is strictly prohibited and is not a waiver of privilege or confidentiality. If you have received this communication in error, please notify the sender immediately by return electronic mail and destroy the message.*

On Fri, Feb 22, 2019 at 6:05 AM Bobby Kofman <[bkofman@ksvadvisory.com](mailto:bkofman@ksvadvisory.com)> wrote:

Mike,

I have not heard from you regarding my email below. I have copied the attached from your affidavit sworn in support of the stay of proceedings in the CCAA.

## **Appendix “I”**

## David Sieradzki

---

**From:** Bobby Kofman  
**Sent:** February 25, 2019 6:16 AM  
**To:** Mike Wang  
**Cc:** Aimie Yang; David Sieradzki; Jennifer Stam (stam@gsnh.com); Jessica Wang; Mario J Forte (forte@gsnh.com); Sean Zweig (ZweigS@bennettjones.com)  
**Subject:** RE: 58 Old Kennedy KSV Jonathan Requested

Mike,

Thank you for your email. It was received yesterday, four days after I first wrote to you concerning this issue. In my view, this is a continuation of our concerns regarding disclosure and communication. These concerns have been raised with you previously and you are well aware of our frustrations in this regard. To this end, your email does not name the buyer nor have you provided copies of any agreement between you and the buyer.

In light of your representations to the court and your creditors in your affidavit at the application for the Initial Order (see quote below), which is the stated purpose of the CCAA proceedings, KSV will be finalizing a report to court by no later than tomorrow morning that provides the following:

1. For as long as you have the benefit of a stay of proceedings in the CCAA:
  - a. The proceeds generated from the sale (or any other transaction) involving any real property owned by Non-Applicants are to be paid to the Monitor, net of all amounts owing on *bond fide* mortgages;
  - b. The sale proceeds will be held pending a further order of the court;
  - c. The distribution of any of the sale proceeds is subject to a claims process that will include all creditors for whom you provided a personal guarantee.

The order will contemplate any transaction involving Non-Applicant real property, and will include both transactions by the relevant Non-Applicant or a mortgagee, i.e. all mortgagees will be directed to pay the net proceeds to the Monitor if the transaction is via mortgagee enforcement.

If necessary, and when appropriate, we can include a provision in a future court order allowing for you and your family to receive reasonable living expenses until the completion of the claims process.

We have scheduled court time for next Monday. We are not prepared to move forward on this issue without a court order.

Bobby Kofman  
President and Managing Director  
KSV Advisory Inc.  
bkofman@ksvadvisory.com  
(o) 416.932.6228  
(c) 647.282.6228

**From:** Mike Wang <mike@formeddevelopmentgroup.com>  
**Sent:** February 24, 2019 12:59 PM  
**To:** Bobby Kofman <bkofman@ksvadvisory.com>  
**Cc:** Aimie Yang <aimie@formeddevelopmentgroup.com>; David Sieradzki <dsieradzki@ksvadvisory.com>; Jennifer Stam (stam@gsnh.com) <stam@gsnh.com>; Jessica Wang <jessica@formeddevelopmentgroup.com>; Mario J Forte