Court File No. CL- 26-00000319-0000

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
1682 VICTORIA PARK AVENUE INC.

FACTUM OF THE APPLICANT, FINDEV LENDING INC.

DATE: July 15, 2026

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PART I - OVERVIEW

1. This factum is submitted on behalf of Findev Lending Inc. (the "**Applicant**" or "**Findev**") in support of an application for an initial order pursuant to the *Companies' Creditors Arrangement Act*, RSC 1985, c-C 36, as amended (the "**CCAA**") in respect of 1682 Victoria Park Avenue Inc. (the "**Debtor**").

2. The Debtor is the developer of a 147-townhouse project constructed between 1648-1682 Victoria Park Avenue, south of Lawrence Avenue in Toronto, Ontario and marketed as "The Vic Towns" (the "**Project**"). To date there are 65 unsold townhomes that remain in the Debtor's possession (the "**Units**").

3. The Applicant is a secured creditor of the Debtor with a fourth-ranking mortgage registered against title to the Units. The Debtor owes in excess of $24,000,000.00 to the Applicant, a further $50,000,000.00 to the first, second and fifth mortgagees and in excess of $5,000,000.00 to Canada Revenue Agency for unremitted HST.

4. The necessary criteria for an initial order under the CCAA are established by the evidence before the court: (a) the Debtor is incorporated under the laws of Ontario, headquartered in Ontario, and conducts business in Ontario (b) the Debtor has in excess of $5 million of debt; (c) the Debtor is insolvent (d) the Debtor's most recent financial statements are in evidence; and (e) the Applicant, with the assistance of the proposed CCAA monitor of the Debtor (the "**Proposed Monitor**"), Albert Gelman Inc. ("**AGI**"), has prepared a 15 week cash flow forecast (the "**Cash Flow Forecast**").

5. AGI meets the statutory criteria to be appointed Monitor: AGI is "trustee" within subsection 2(1) of the *Bankruptcy and Insolvency Act* (the "***BIA***") and has consented to act as Monitor, and is not subject to any of the restrictions set out in section 11.7(2) of the

CCAA.

6. An applicant in a "creditor-driven" CCAA application is not required to meet a higher bar than a debtor applicant would have to meet in a typical "debtor-driven" proceeding. However, almost invariably, uncommon circumstances precipitate a creditor-led filing.

7. The Debtor is not in the financial position to commence a CCAA proceeding and has relied on the Applicant for the last year and a half to, among other things, complete the Project, rectify deficiencies, pay priority payables and negotiate with secured creditors. The Debtor has consented to and supports the relief sought by the Applicant.

8. The Debtor's financial inability to bring the within proceeding jeopardizes the creditors' security and the interests of stakeholders generally. The Applicant has proactively brought this proceeding to minimize its losses and attempt to restructure and refinance the Debtor's business by liquidating the Units.

9. The Applicant seeks the assistance of this Court to implement a single transparent process to allow the secured creditors to preserve the assets of the Debtor for the benefit of stakeholders, and to restructure or liquidate, as the case may be, under the supervision of the Court and with the assistance of the Proposed Monitor.

10. The proposed initial order (the "**Initial Order**") is based on the Commercial List model form of order and seeks only the relief necessary during the initial 10 day stay period. The Applicant has scheduled a comeback hearing for July 24, 2026, where it will seek, among other things, an extension of the stay of proceedings and approval of the proposed sale and investment solicitation process (the "**Sale Process**") for the Units, with a stalking horse bid component.

PART II: FACTS

11. The Debtor is a corporation incorporated pursuant to the laws of Ontario with its registered head office located at 3830 Bathurst Street, Suite 115, Toronto, Ontario.

    Reference: Affidavit of Anthony Heller, sworn July 13, 2026 (the "**Heller Affidavit**"), Application Record dated July 14, 2026, at Tab 2, para 5, Exhibit A, B.

12. The Debtor is the developer of a 147-townhouse project between 1648-1682 Victoria Park Avenue (the "**Real Property**"), south of Lawrence Avenue, in Toronto, Ontario (the "**Project**") marketed as "The Vic Towns".

    Reference: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, para 9.

13. The Debtor is the registered owner of the 65 unsold townhouse Units more particularly described in Schedule "A" of the Notice of Application.

    Reference: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, paras 8, 9.

Encumbrances

14. There are five charges registered against title to the Real Property:

    A. **First Charge**: On June 13, 2022, the Debtor granted Windsor Family Credit Union Limited a first charge against title to the Real Property in the principal sum of $70,000,000.00, registered as Instrument No. AT6105081 (the "**WFCU Charge**");

    B. **Second Charge**: On July 30, 2025, the Debtor granted Firm Capital Mortgage Fund Inc. a second charge against title to the Real Property in the principal sum of $15,000,000.00, registered as Instrument No. AT6870139 (the "**Firm Capital Charge**").

    C. **Third Charge**: On October 21, 2020, the Debtor granted Westmount Guarantee Services Inc. a charge against title to the Real Property in the principal sum of $27,000,000.00, registered as Instrument No. AT5550826 (the "**Westmount**

Charge");

D. **Fourth Charge**: On January 27, 2017, the Debtor granted Towncorp Asset Management Inc. a charge against title to the Real Property as Instrument No. AT447215 (the "**Applicant's Charge**"), as was subsequently amended and assigned to the Applicant herein;

E. **Fifth Charge**: On October 31, 2013, the Debtor granted Sorrenti Law Professional Corporation a charge against title to the Real Property as Instrument No. AT3444643 that was assigned to Yonge-Abell Mortgage Partners Limited pursuant to Instrument No. AT5531426 and AT5531427 (the "**Yonge-Abell Charge**") on September 29, 2020.

Reference: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, paras 10, 12, 22-33, Exhibits G, K, L, O, Q, U.

15. As of June 30, 2026 the approximate indebtedness owing by the Debtor on the aforementioned charges exceeds $75,000,000.00 and is particularized as follows:

A. WFCU Charge: $24,328,081.23;

B. Firm Capital Charge: $9,000,000.00;

C. Westmount Charge: $1,000,000.00;

D. Applicant's Charge: $24,347,706.00;

E. Yonge-Abell Charge: $17,000,000.00.

Reference: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, para 37.

16. The WFCU Charge matured on June 30, 2026 and the Applicant and Debtor have entered into a forbearance agreement with WFCU.

Reference: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, para 33.

17. The indebtedness owing on the WFCU Charge has been guaranteed by the president of the

Applicant corporation, Anthony Heller, and Plazacorp Investments Limited ("**Plazacorp**"), a related corporation to the Applicant.

> **Reference**: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, para 2, 28, Exhibit U.

Default

18. As a result of the significant downturn in the real estate market in Toronto and Ontario more generally, the Debtor has been unable to sell the unsold Units and generate the revenue necessary to meet its obligations as they fall due.

> **Reference**: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, para 38.

19. On June 9, 2026, Canada Revenue Agency issued a Requirement to Pay to the Debtor, noting an indebtedness of $5,524,569.88 for unremitted HST (the "**HST Trust Claim**").

> **Reference**: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, para 34, Exhibit V.

20. On June 12, 2026, the Applicant issued a demand letter and Notice of Intention to Enforce Security pursuant to subsection 244(1) of the *Bankruptcy and Insolvency Act*. The Debtor subsequently delivered an Acknowledgement, Waiver and Consent in response to the Applicant's demand.

> **Reference**: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, para 35-36, Exhibit W, X.

21. The financial issues faced by the Debtor required Plazacorp to make protective disbursement payments of $7,246,688.00 from January of 2025. This sum was paid out to complete the Project, fix deficiencies in the 82 sold townhouses, rectify Tarion related warranty claims, complete the outstanding finishings in the unsold Units, pay property taxes owing and the interest accruing on the WFCU Charge.

> **Reference**: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, para 39.

22. The Applicant now seeks the issuance of the Initial Order and related relief pursuant to the CCAA, including the appointment of AGI as Monitor. The Applicant intends to submit a stalking horse credit bid within the proposed Sale Process of the Units. The Applicant submits that the relief sought is necessary in the circumstances and designed to minimize the losses suffered by various stakeholders.

> **Reference**: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, paras 44-47.

PART III: THE ISSUES

23. The issues to be determined by this Honourable Court are whether:

    A. The Applicant, as creditor, has standing to bring the within application;

    B. The Debtor is a company to which the CCAA applies;

    C. The Stay Period should be granted;

    D. AGI should be appointed Monitor in these CCAA proceedings; and

    E. The Administration Charge should be granted.

PART IV: LAW & ARGUMENT

General Principles

24. The CCAA is remedial legislation, and Canadian courts have held it should be given a broad and liberal interpretation. It provides the Court with the flexibility to make any order that it considers appropriate in the given circumstances, so long as the requested relief is not expressly prohibited by the CCAA.

> **Reference**: *Canada v Canada North Group Inc.*, 2021 SCC 30, at para 21, 31.

25. The purpose of the CCAA is to enable the compromise or restructuring of corporation's debts to avoid the devastating social and economic effects of insolvency, by preserving the business in a manner that is intended to cause the least amount of harm to the company, its

stakeholders, and to the communities in which it carries on business.

Reference: *9354-9186 Québec Inc v Callidus Capital Corp.*, 2020 SCC 10 at para 40-42.

A. The Applicant may bring this Application

26. A CCAA proceeding is commenced by application. The CCAA does not require that the application be filed by the debtor company.

Reference: *CCAA*, section 9(1).

27. Sections 4 and 5 of the CCAA grant a creditor the ability to bring an initial application under the CCAA in respect of certain debtor companies, as opposed to the debtors themselves.

Reference: *CCAA*, sections 4, 5.

28. Canadian courts have repeatedly recognized the ability of creditors to bring an application for an initial order pursuant to section 4 or 5 of the CCAA. In *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp*, creditors successfully sought and obtained an initial order under the CCAA.

Reference: *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp*, 2008 CanLII 21724.

29. In granting the order, the Court held that the creditor-commenced application "complied with all the requirements of the CCAA", and "is also consistent with the purpose and policy of the CCAA".

Reference: *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp*, 2008 CanLII 21724, at para 17.

30. In *Great Basin Gold Ltd (Re)*, Justice Fitzpatrick noted that, while rare, commencement of CCAA proceedings by creditors of an insolvent company is "not unheard of".

Reference: *Re Great Basin Gold Ltd.*, 2012 BCSC 1459, at para 97.

31. In *Miniso International Hong King Limited v Migu Investments Inc.*, Justice Fitzpatrick

held as follows:

> "The commencement of CCAA proceedings is a proper exercise of creditors' rights where, ideally, the CCAA will preserve the going-concern value of the business and allow it to continue for the benefit of the "whole economic community", including the many stakeholders here. This is intended to allow stakeholders to avoid losses that would be suffered in an enforcement and liquidation scenario."

> **Reference**: *Miniso International Hong Kong Limited v Migu Investments Inc.*, 2019 BCSC 1234, at para 47.

32. Creditor-driven CCAA proceedings are appropriate where management of the debtor company is either neglecting or failing to abide by its fiduciary duties or where management cannot exercise its duties in an objective manner.

> **Reference**: Luc Morin & Arad Mojtahedi, "In Search of a Purpose: The Rise of Super Monitors & Creditor-Driven CCAAs" (2019) 14 Ann Rev Insolv 1 at page 2.

33. Creditors must demonstrate that the active or passive conduct of management is detrimental to not only the creditors' interests but also those of other stakeholders. Specifically, the Courts have allowed the commencement of creditor-driven CCAA proceedings while also granting enhanced powers to the monitor where i) the management body of the debtor company has resigned, ii) management is unfit to conduct CCAA proceedings, iii) management has no plan or their plan is doomed to fail, or iv) management is conflicted.

> **Reference**: Luc Morin & Arad Mojtahedi, "In Search of a Purpose: The Rise of Super Monitors & Creditor-Driven CCAAs" (2019) 14 Ann Rev Insolv 1 at page 6.

34. The Applicant has brought these proceedings, in consultation with Debtor's president, the secured creditors and the Proposed Monitor, in the form of a creditor-initiated CCAA application that will provide the best opportunity to maximize the Debtor's value through an *en bloc* sale of the Units.

B. The Debtor is a Company to which the CCAA Applies

35. This Court may grant CCAA protection to a "debtor company", being a company having assets or doing business in Canada, or "affiliated debtor companies" where the total amount of claims against the debtor or its affiliates exceeds five million dollars.

    Reference: *CCAA*, section 3(1).

36. The insolvency of a debtor is determined as of the time the CCAA application is filed. The CCAA does not define "insolvent". However, courts have held that a company is insolvent under the CCAA if:

    A. the company meets the definition of "insolvent person" under the BIA, which includes a person "…who is for any reason unable to meet [its] obligations as they generally become due"; or

    B. the company faces a looming liquidity crisis.

    Reference: *Stelco Inc., Re,* 2004 CanLII 24933 (ON SC), at para 4, 21, 22, 26.

37. In *Re Stelco Inc.*, Justice Farley held that the definition of "insolvent" should be expanded to give effect to the objectives of the CCAA of allowing the debtor company to obtain breathing room in order to restructure.

    Reference: *Stelco Inc., Re,* 2004 CanLII 24933 (ON SC), at para 26.

38. As described above, the Debtor meets the definition of debtor company and exceeds the minimum debt threshold required for protection under the CCAA.

    Reference: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, paras 37.

39. The Debtor is insolvent and cannot continue to operate as a going concern. It cannot meet its obligations in the ordinary course of business, as illustrated by the nonpayment of the indebtedness owed to secured creditors and the HST Trust Claim. Moreover, the CCAA will allow the Debtor to proceed with a court-supervised Sale Process that will facilitate

the purposes of the CCAA.

Reference: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, paras 34, 42-46.

40. Accordingly, the Debtor is eligible for protection under the CCAA.

C. The Stay of Proceedings Should be Granted

41. Pursuant to section 11.02 of the CCAA, a court may grant a stay of proceedings upon an initial application under the CCAA for a period of no more than ten days, provided that the court is satisfied that circumstances exist that make the order appropriate.

Reference: *CCAA*, section 11.02.

42. The CCAA stay of proceedings has been described as the "engine that drives a broad and flexible statutory scheme." The purpose of the stay is to maintain the status quo and provide the debtor company with an essential respite from the burden of dealing with litigation and other claims against it while it attempts to restructure its affairs.

Reference: *Nortel Networks Corporation (Re)*, 2010 ONSC 1304, at para 34; *Comstock Canada Ltd. (Re)*, 2013 ONSC 6043 at para 17; *Redstone Investment Corporation (Re)*, 2014 ONSC 2004 at para 50.

43. In this case, the requested stay of proceedings accomplishes these objectives because it will allow the Applicant and the Proposed Monitor to:

   A. Develop and implement a sales process for the Debtor's assets; and

   B. Protect and realize upon the value of the Debtor's assets by completing a sale under the auspices of the CCAA.

44. While the stay of proceedings will not apply to WFCU and Firm Capital, they have agreed to forbear enforcement proceedings while the Applicant and Proposed Monitor implement the Sale Process.

D. AGI Should be appointed as Monitor with Enhanced Powers

45. Pursuant to section 11.7(1) of the CCAA, a court is required to appoint a person to monitor the business and financial affairs of a debtor company at the time that an initial CCAA order is made.

    Reference: *CCAA*, section 11.7.

46. Section 11.7(2) of the CCAA also sets out certain requirements for, and restrictions on, who may act as a monitor, including that the monitor be a trustee within the meaning of subsection 2 of the BIA.

    Reference: *CCAA*, section 11.7(2).

47. AGI is a trustee within the meaning of subsection 2(1) of the BIA and is not disqualified under any of the restrictions pursuant to section 11.7(2) of the CCAA. AGI has consented to act as Monitor of the Debtor in these proceedings.

    Reference: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, para 48, Exhibit Y.

48. In preparing for this filing, AGI has assisted in preparation of the Cash Flow Forecast. As a result, AGI has gained critical knowledge about the Debtor, its business operations, and financial challenges. Similarly, AGI has experience acting in other large insolvency matters as receiver and trustee in bankruptcy.

    Reference: Pre-Filing Report of AGI, dated July 14, 2026, at para 43, Appendix A.

49. The Initial Order sought by the Applicant confers certain enhanced powers on the Proposed Monitor, including:

    A. Incurring expenses on the Debtor's behalf for the preservation of the unsold Units;

    B. Payment for goods and services supplied to the Debtor following the date of the Initial Order;

C. Disposing of non-material assets of the Debtor and terminating employees; and

D. Controlling bank accounts in the name of the Debtor.

(collectively, the "**Enhanced Powers**").

50. These powers are necessary and appropriate having regard to the fact that management of the Debtor is no longer actively operating its business.

Reference: Heller Affidavit, Application Record dated July 14, 2026, at Tab 2, paras 42-44.

51. This Court has confirmed that the CCAA confers upon the Court the jurisdiction to grant a monitor enhanced powers where they are "appropriate in light of what is needed in the circumstances".

Reference: *Harte Gold Corp. (Re)*, 2022 ONSC 653, at paras 91-92.

52. Should the Court grant the Initial Order, the Applicant will continue to make protective disbursements as and when required to protect the value of the unsold Units. The Monitor expects that it will supervise such disbursements in accordance with its rights and duties under the Initial Order.

Reference: Pre-Filing Report of AGI, dated July 14, 2026, at para 24.

53. In light of the absent status of the Debtor's management, the Proposed Monitor has recommended these Enhanced Powers to ensure that it is in a position to facilitate the effective supervision of the unsold Units during the CCAA proceedings.

Reference: Pre-Filing Report of AGI, dated July 14, 2026, at para 25.

54. As noted in the Pre-Filing Report, the Proposed Monitor does not contemplate that it will be necessary to use any of the Enhanced Powers. However, the Applicant seeks an order providing the Proposed Monitor these Enhanced Powers to ensure that the Proposed Monitor is able to take certain limited decisions and incur expenses on the Debtor's behalf,

should it be advantageous to the contemplated sale of the Debtor's assets.

> **Reference**: Pre-Filing Report of AGI, dated July 14, 2026, at para 25.

E. The Administration Charge Should be Approved

55. The Applicant seeks a fourth-ranking priority Administration Charge over the Debtor's Property (as defined in the proposed Initial Order) in the maximum amount of $100,000 in favour of the Proposed Monitor, counsel to the Proposed Monitor and counsel to the Applicant (collectively, the **Professionals Group**"), to secure payment of their professional fees and disbursements, whether incurred before or after the date of the Initial Order.

> **Reference**: Pre-Filing Report of AGI, dated July 14, 2026, at paragraphs 31-34.

56. The Court may grant an administration charge pursuant to section 11.52 of the CCAA. In deciding whether to grant an administration charge, the courts have considered a number of factors including:

    A. the size and complexity of the businesses being restructured;

    B. the proposed role of the beneficiaries of the charge;

    C. whether there is an unwarranted duplication of roles;

    D. whether the quantum of the proposed charge appears to be fair and reasonable;

    E. the position of the secured creditors likely to be affected by the charge; and

    F. the position of the Monitor.

> **Reference**: *Canwest Publishing Inc*. 2010 ONSC 222, at para 54; and *Re Lydian International Limited*, 2019 ONSC 7473 at para 46.

57. The Applicant submits that it is appropriate for this Court to exercise its discretion to grant the Administration Charge. The Applicant's counsel, and the Proposed Monitor and its counsel, have been extensively involved in the preparation of this CCAA application. If

the proposed Initial Order is granted, the Professionals Group will have extensive involvement during the CCAA proceedings and will play a critical role in this restructuring. Each member of the Professionals Group will perform distinct functions, and in any event, will ensure that there is no unnecessary duplication of roles among them.

58. While estimating the quantum of an administration charge is "an inexact exercise," the quantum of the administration charge sought is reasonable and commensurate with the size and complexity of the Applicant's business and anticipated restructuring.

Reference: *Springer Aerospace Holdings Limited*, 2022 ONSC 6581, at para 19.

PART V: ORDERS REQUESTED

59. The Applicant requests that this Honourable Court grant the Initial Order in the proposed form.

ALL OF WHICH IS RESPECTUFLLY SUBMITTED, this 15th day of July, 2026.

HOWARD MANIS / DANIEL LITSOS

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SCHEDULE "A"

Authorities Cited

1. *Canada v Canada North Group Inc.*, 2021 SCC 30
2. *9354-9186 Québec Inc v Callidus Capital Corp.*, 2020 SCC 10
3. *ATB Financial v Metcalfe & Mansfield Alternative Investments II Corp*, 2008 CanLII 21724
4. *Re Great Basin Gold Ltd.*, 2012 BCSC 1459
5. *Century Services Inc. v. Canada (Attorney General)*, 2010 SCC 60
6. *Miniso International Hong Kong Limited v Migu Investments Inc*., 2019 BCSC 1234
7. *Stelco Inc., Re,* 2004 CanLII 24933 (ON SC)
8. *Target Canada Co. (Re)*, 2015 ONSC 303
9. *Nortel Networks Corporation (Re)*, 2010 ONSC 1304
10. *Comstock Canada Ltd. (Re)*, 2013 ONSC 6043
11. *Redstone Investment Corporation (Re)*, 2014 ONSC 2004
12. *Canwest Publishing Inc*. 2010 ONSC 222
13. *Re Lydian International Limited*, 2019 ONSC 7473
14. *Harte Gold Corp. (Re)*, 2022 ONSC 653
15. *Springer Aerospace Holdings Limited*, 2022 ONSC 6581

I certify that I am satisfied as to the authenticity of every authority.

Note: Under the Rules of Civil Procedure, an authority or other document or record that is published on a government website or otherwise by a government printer, in a scholarly journal or by a commercial publisher of research on the subject of the report is presumed to be authentic, absent evidence to the contrary (rule 4.06.1(2.2)).

SCHEDULE "B"
Statutes and Regulations Cited

***Companies' Creditors Arrangement Act* (R.S.C., 1985, c. C-36)**

Application

3 (1) This Act applies in respect of a debtor company or affiliated debtor companies if the total of claims against the debtor company or affiliated debtor companies, determined in accordance with section 20, is more than $5,000,000 or any other amount that is prescribed.

Compromise with unsecured creditors
4 Where a compromise or an arrangement is proposed between a debtor company and its unsecured creditors or any class of them, the court may, on the application in a summary way of the company, of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Compromise with secured creditors
5 Where a compromise or an arrangement is proposed between a debtor company and its secured creditors or any class of them, the court may, on the application in a summary way of the company or of any such creditor or of the trustee in bankruptcy or liquidator of the company, order a meeting of the creditors or class of creditors, and, if the court so determines, of the shareholders of the company, to be summoned in such manner as the court directs.

Jurisdiction of court to receive applications
9 (1) Any application under this Act may be made to the court that has jurisdiction in the province within which the head office or chief place of business of the company in Canada is situated, or, if the company has no place of business in Canada, in any province within which any assets of the company are situated.

Stays, etc. — initial application
11.02 (1) A court may, on an initial application in respect of a debtor company, make an order on any terms that it may impose, effective for the period that the court considers necessary, which period may not be more than 10 days,

> **(a)** staying, until otherwise ordered by the court, all proceedings taken or that might be taken in respect of the company under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
> **(b)** restraining, until otherwise ordered by the court, further proceedings in any action, suit or proceeding against the company; and
> **(c)** prohibiting, until otherwise ordered by the court, the commencement of any action, suit or proceeding against the company.

Court to appoint monitor
11.7 (1) When an order is made on the initial application in respect of a debtor company, the court shall at the same time appoint a person to monitor the business and financial affairs of the company. The person so appointed must be a trustee, within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act*.

Restrictions on who may be monitor
(2) Except with the permission of the court and on any conditions that the court may impose, no trustee may be appointed as monitor in relation to a company

(a) if the trustee is or, at any time during the two preceding years, was

(i) a director, an officer or an employee of the company,

(ii) related to the company or to any director or officer of the company, or

(iii) the auditor, accountant or legal counsel, or a partner or an employee of the auditor, accountant or legal counsel, of the company; or

(b) if the trustee is

(i) the trustee under a trust indenture issued by the company or any person related to the company, or the holder of a power of attorney under an act constituting a hypothec within the meaning of the *Civil Code of Quebec* that is granted by the company or any person related to the company, or

(ii) related to the trustee, or the holder of a power of attorney, referred to in subparagraph (i).

***Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended**
Interpretation
Definitions
2 In this Act…
insolvent person means a person who is not bankrupt and who resides, carries on business or has property in Canada, whose liabilities to creditors provable as claims under this Act amount to one
thousand dollars, and

(a) who is for any reason unable to meet his obligations as they generally become due,

(b) who has ceased paying his current obligations in the ordinary course of business as they generally become due, or

(c) the aggregate of whose property is not, at a fair valuation, sufficient, or, if disposed of at a fairly conducted sale under legal process, would not be sufficient to enable payment of all his obligations, due and accruing due;

…
trustee or ***licensed trustee*** means a person who is licensed or appointed under this Act.

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 1682 VICTORIA PARK AVENUE INC.

Court File No. CL-26-00000319-0000

ONTARIO
SUPERIOR COURT OF JUSTICE
(Commercial List)

Proceeding commenced at
TORONTO

FACTUM OF THE APPLICANT, FINDEV LENDING INC.

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