Court File No. CL-26-00000319-0000

ONTARIO

SUPERIOR COURT OF JUSTICE

COMMERCIAL LIST

B E T W E E N:

FINDEV LENDING INC.

Applicant

\- and –

1682 VICTORIA PARK AVENUE INC.

Respondent

AIDE MEMOIRE OF THE MONITOR (MOTION RETURNABLE SEPTEMBER 15, 2026)

September 14, 2026

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Lawyers for Albert Gelman Inc. in its capacity as Court-appointed Monitor

TO: Service List

A. Background

1. On July 17, 2026 (the "**Filing Date**"), Findev Lending Inc. ("**Findev Lending**" or the "**Applicant**" or the "**Purchaser**"), a secured creditor of 1682 Victoria Park Avenue Inc. ("**Victoria Park**" or the "**Debtor**"), sought and obtained an initial order (the "**Initial Order**") under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "***CCAA***") in favour of Victoria Park.

2. The Monitor has prepared this aide memoire in connection with the Applicant's motion for an approval and reverse vesting order which would approve the Applicant's purchase of all outstanding shares in the Debtor through a reverse vesting order mechanism.

3. In particular, the Monitor has prepared this aide memoire to provide the Court and stakeholders with a summary of the law governing approvals of such transactions.

4. In short, the Monitor is of the view that the Transaction is commercially reasonable and recommends that it be approved by the Court.

B. The Court should approve the Transaction

5. The Monitor is of the view that the Transaction is commercially reasonable and superior to other alternatives to realizing upon the Debtor's assets for the benefit of stakeholders.

6. In particular, the Monitor is of the view that:

   (a) The financial terms of the Transaction are superior to reasonable alternatives; and

(b) The reverse vesting order mechanism is appropriate.

1. The financial terms of the Transaction are superior to reasonable alternatives

7. The sale of assets in the context of proceedings under the *CCAA* is governed by the test established by the Court of Appeal in *Soundair*,[1] being:

(a) whether sufficient effort has been made to obtain the best price and that the debtor has not acted improvidently;

(b) the interests of all parties;

(c) the efficacy and integrity of the process by which offers have been obtained; and

(d) whether there has been unfairness in the working out of the process.

8. Even where a debtor company does not engage in a Court-supervised sale process, this same test applies.[2]

9. In such circumstances, the Court has emphasized that it must be satisfied that the asset sale has been produced through a "robust and transparent"[3] process to ensure that the absence of a Court-supervised sale process does not occasion any unfairness to stakeholders.

[1] *Royal Bank v. Soundair Corp*, 1991 CanLII 2727 ["***Soundair***"].
[2] *Paystone Holdings Inc. (Re)*, 2026 ONSC 3693 at para. 26 ["***Paystone***"].
[3] *Paystone* at para. 33.

10. This Transaction is not a "prepack" transaction in the sense that it was finalized prior to the Initial Order. However, even if the Transaction were subjected to the scrutiny worthy of such a transaction, the Court ought to be satisfied that the Transaction represents an advantageous and commercially reasonable outcome for stakeholders which satisfies the *Soundair* test. In particular, the Monitor notes as follows:[4]

(a) Good faith and absence of improper purpose: There are no allegations of bad faith made against any party involved in the Transaction. The purpose of the Transaction is to enable the Applicant to acquire the Unsold Units and pay off the significant secured debt ranking in priority to the Applicant to preserve the value of the Applicant's position;

(b) Heightened level of advance disclosure: the Applicant has negotiated the terms of the Transaction directly with the Monitor and the financial terms of the Transaction are not confidential. Stakeholders have an unfettered ability to assess the merits of the Transaction;

(c) A robust assessment by the Monitor: the Second Report sets out the Monitor's detailed analysis concerning the value generated for stakeholders by the Transaction compared to other alternatives. In particular, the Monitor compared the purchase price under the Transaction to two sets of appraisals of the Debtor's assets and then grossed up the value of those appraisals to account for the value generated by the reverse vesting order structure of the Transaction. In the Monitor's view, given the significant

[4] See *Propostition de SRTX inc.*, 2026 QCCS 570 at para. 27.

discrepancy between the purchase price under the Subscription Agreement and the appraisals obtained by the Monitor (even accounting for its gross-up analysis), the financial terms of the Transaction are clearly and markedly superior to the value that could be reasonably expected to be generated through an alternative transaction;

(d) Broad level of support from a variety of stakeholders: the Transaction is supported or unopposed by key stakeholders including the first mortgagee, the second mortgagee, the third mortgagee, the lien claimants and the fifth mortgagee (which fifth mortgagee will not receive any recovery from the Transaction); and

(e) Absence of objective reason to delay the approval of the Transaction: given the significant difference between the appraised value of the Unsold Units and the purchase price under the Subscription Agreement, the Monitor is of the view that there is no benefit to delaying the Transaction. On the contrary, a delay in the completion of the Transaction would only have the effect of accruing further interest and professional fees, to the detriment of all stakeholders.

2. The RVO mechanism is appropriate

11. The Court's decision in *Harte Gold* sets out the following factors to be considered in determining whether to grant a reverse vesting order:[5]

[5] *Harte Gold Corp. (Re)*, 2022 ONSC 653 at para. 38 ["***Harte Gold***"].

(a) Why is the RVO necessary in this case?;

(b) Does the RVO structure produce an economic result at least as favourable as any other viable alternative?;

(c) Is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative?; and

(d) Does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the RVO structure?

12. Taking into account these concerns, the Monitor is of the view that the Transaction is in the best interest of the Debtor's stakeholders and ought to be approved. In particular:

(a) <u>Why is the RVO necessary in this case?:</u> the RVO is necessary to (1) preserve the value of the Debtor's license to sell new homes and (2) minimize the tax liability generated through the Transaction:

(i) Per the *New Home Construction Licensing Act*, the Debtor's license to sell new homes is not transferrable. Without the RVO the value of this license will be inaccessible to stakeholders;[6] and

(ii) The RVO avoids the need to convey legal title to the Unsold Units to complete the Transaction. This avoids both HST and land transfer tax on the Transaction;

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[6] *New Home Construction Licensing Act, 2017*, S.O. 2017, c. 33, Sched. 1 at s. 47.

(b) Does the RVO structure produce an economic result at least as favourable as any other viable alternative?: as noted above, the Monitor is of the view that the purchase price of the Transaction is significantly higher than any reasonable alternative;

(c) Is any stakeholder worse off under the RVO structure than they would have been under any other viable alternative?: while the Transaction does avoid certain taxes that would otherwise be payable to Ontario and Canada, neither Ontario nor Canada have objected to this feature of the Transaction. The Monitor notes that the Court has approved an RVO with such a feature in the past;[7] and

(d) Does the consideration being paid for the debtor's business reflect the importance and value of the licences and permits (or other intangible assets) being preserved under the RVO structure?: the Monitor assessed the maximum value of the tax savings generated through the RVO. Even after adding this maximum value to the appraisals of the Unsold Units, the purchase price of the Transaction remained materially higher. As a result, the Monitor is of the view that the purchase price under the Transaction provides appropriate value to stakeholders in consideration of these tax savings. While the Monitor has not specifically calculated the value of the Debtor's license to sell new homes (for which there is no market) the Monitor again notes that the significant difference between the value of the

[7] *Marshallzehr Group Inc. v. 2301402 Ontario Limited et al*, CV-25-00741261-00CL, Endorsement of Justice J. Dietrich, February 20, 2026 at para. 22.

Unsold Units and the purchase price under the Transaction should provide comfort to stakeholders and the Court that appropriate value is being provided such license in the Transaction.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 14th day of September, 2026.

Jeffrey Larry/Ryan Shah

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PROCEEDING COMMENCED AT TORONTO

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