

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 PROPOSED PLAN OF COMPROMISE OR
ARRANGEMENT WITH RESPECT TO CFG HOLDINGS INC.,
FORMERLY CERVUS FINANCIAL GROUP INC.**

Applicant

NOTICE OF MOTION

CFG HOLDINGS INC., FORMERLY KNOWN AS CERVUS FINANCIAL GROUP INC. (the "**Company**") will make a motion to the Judge presiding over the Commercial List on Wednesday, December 27, 2006 at 10:00 a.m. or as soon after that time as the motion can be heard at 330 University Avenue, Toronto, Ontario.

THE MOTION IS FOR an Order:

1. abridging the time for service and approving the method of service of this motion;
2. approving the Sixth Report of the Monitor, and approving the activities of the Monitor as set out in the Sixth Report of the Monitor;
3. approving a distribution by the Monitor of certain net sales proceeds to the majority of the shareholders of the company, as well as the implementation of procedures for facilitating this distribution as set out in the draft Order;

4. permitting the Company to apply for a Winding Up Order under the Alberta *Corporations Act* to wind up the Company, upon all distributions to shareholders being completed, and with the consent of the Monitor;
5. extending the “Stay Date” in paragraph 4 of the Initial Order to February 28, 2006 to enable the Company to implement the distributions to the shareholders and the winding up of the Company;
6. granting such further and other relief as the Company may request and that this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. the Company was originally granted protection under the CCAA on June 8, 2006 (and at which time there were then multiple Applicants), pursuant to the Initial Order which was amended by the Order of Justice Cumming dated June 15, 2006;
2. on June 15, 2005 Mr. Justice Cumming granted the Approval and Vesting Order which, *inter alia*, authorized the then group of Applicants to implement the terms of a sale agreement (the “**Sale Agreement**”);
3. on June 29, 2006 Mr. Justice Morawetz granted a Settlement Approval Order approving the Settlement Agreement that was a condition of completion of the Sale Agreement;
4. on July 7, 2006, Justice Lax granted an extension Order, extending the Stay Period under the Initial Order to September 22, 2006;
5. on September 6, 2006 Justice Cumming approved Orders:
 - (a) establishing a claims procedure (the “**Claims Procedure Order**”);
 - (b) amending the title of proceedings (to reflect the fact that the Company is now the only remaining Applicant);
 - (c) amending the Initial Order;

- (d) extending the Stay Period under the Initial Order to November 30, 2006;
6. the transactions contemplated under the terms of the Sale Agreement closed on July 6, 2006, and the Monitor was in possession of sale proceeds in the amount of \$11,284,312 (the “**Sale Proceeds**”) after a prior payment made pursuant to the Settlement Agreement, and repayment of amounts owing under the DIP Facility and the Warehouse DIP Facility, as more particularly set out in the Monitor’s Fourth Report;
 7. the Monitor and the Company have conducted a Claims Procedure in accordance with the Claims Procedure Order to identify, quantify and adjudicate the claims of creditors against the Company, as well as claims against the officers and directors of the Company, CFC, and Funding who have each been indemnified by the Company;
 8. on October 13, 2006 Justice Cumming granted an Order (the “**Creditor Distribution Order**”) that approved the distribution of \$7,082,948.70 of the Sales Proceeds in accordance with the proposed distribution set out in the Fifth Report by the Monitor, as well as the proposed procedure for distribution of the remaining Sales Proceeds to the Shareholders of the Company, and granted an extension of the stay of proceedings to December 29th, 2006;
 9. the Company, with the support of the Monitor, is implementing a procedure for distributing the remaining Sale Proceeds to the shareholders of the Company; however, certain of the Founding Shareholders of the Company who have signed a Founders Undertaking to return certain shares to the Company for cancellation must fulfill the terms of the Founders Undertaking before a share distribution can occur;
 10. for a variety of technical reasons the documents that would ordinarily be used to implement the Founders Undertaking cannot be implemented prior to December 31, 2006, consequently, the Company asks the Court for an order that will assist the implementation of the intended effect of the Founders Undertaking, so that a distribution can be made to the majority of the shareholders, pending a resolution of these issues;

11. in order to implement the distribution of the Sale Proceeds to the shareholders in due course, and to wind up the Company, the Company will require the extension of the stay of proceedings with respect to the Company, as well as with respect to the officers and directors of the Company, CFC and Funding, to February 28, 2006;
12. During the extended Stay Period the Company, with the assistance of the Monitor will complete the steps necessary to implement a distribution to the shareholders, and wind up the Company as more particularly discussed in the Monitor's Sixth Report;
13. the Monitor supports the extension of the stay of proceedings as requested;
14. the Company has been acting in good faith and with due diligence in conducting their business and affairs;
15. the Initial Order, as amended;
16. the Approval and Vesting Order;
17. the Settlement Approval Order;
18. the Claims Procedure Order;
19. the Creditor Distribution Order;
20. the provisions of the CCAA, and specifically s.11 (4) and s.11 (6) thereof;
21. rules 2.03, 3.02, 14.05, 16 and 26.01 of the *Rules of Civil Procedure*; and
22. section 106 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

1. the Affidavit of Peter Williams in support of this motion and the exhibits annexed thereto;
2. the Sixth Report of the Monitor; and

3. such further and other materials as counsel may advise and this Honourable Court may permit.

December 21, 2006

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Applicant

**AFFIDAVIT OF PETER WILLIAMS
(Sworn December 21, 2006)**

I, **PETER H. WILLIAMS**, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND SAY:**

1. I am the Chief Executive Officer of CFG Holdings Inc., formerly Cervus Financial Group Inc. (the "**Company**"). As such, I have personal knowledge of the matters to which I herein depose in respect of (i) the Company and (ii) the Company's former wholly-owned subsidiaries, Cervus Financial Corp. ("**CFC**") and Cervus Funding Corp. ("**Funding**"). The Company, Funding and CFC are hereinafter collectively called the "**Applicants**". To the extent that I do not have personal knowledge, I verily believe the information to which I depose to be true.

I. Overview

2. The Company is a widely held publicly traded company listed on the Toronto Stock Exchange. The primary business of the Applicants was, through the Company's former subsidiary CFC, to source, originate, fund, sell and service

prime residential mortgages. As at April 2006, the Applicants ranked 10th by volume out of 47 residential mortgage providers in the Canadian mortgage broker market and administered about \$1.2 billion in residential mortgages.

3. The Applicants obtained protection under the *Companies' Creditors Arrangement Act* ("CCAA") by the granting of an Initial Order by Mr. Justice Morawetz on June 8, 2006 (the "**Initial Order**"). Attached hereto as Exhibit "A" is a true copy of the Initial Order. Under the Initial Order, KPMG Inc. was appointed as Monitor (the "**Monitor**").
4. The Applicants required restructuring because of the loss of liquidity arising from operating losses that occurred from reduction of the Applicants' profit margins, largely due to an unprecedented compression in interest rate spreads. At the time of the issuance of the Initial Order, the Applicants were about to run out of cash flow, and would have had to cease business, without the granting of CCAA protection.
5. The Company was granted an extension of the stay period granted under the Initial Order to September 22, 2006, pursuant to the Order of Justice Lax dated July 7, 2006 (the "**Extension Order**") and to November 30, 2006 pursuant to the Order of Justice Cumming dated September 6, 2006 in order to have sufficient time to implement a claims procedure, and to formulate a plan of arrangement. Attached hereto as Exhibit "B" is a true copy of the Extension Order.

II. Sale Transaction

6. The Boards of the Company and CFC respectively agreed to enter into a sale of the business of the Applicants (the "**Transaction**") to 6578268 Canada Inc. (the "**Purchaser**"), which is an indirect wholly owned subsidiary of Macquarie Bank Limited ("**Macquarie Bank**"), a large Australian-based global financial services institution. The Transaction followed an extensive canvassing of all of the options available to the Applicants, and lengthy discussions with Macquarie

Bank, some of which included KPMG Inc. (“**KPMG**”), the Monitor appointed under the Initial Order.

7. The Transaction envisioned CFC continuing as a going concern, with all creditors of CFC and the Company paid, all employees save myself continuing with their employment and the possibility of some return being made to the shareholders of the Company.
8. On June 15th, 2006, Mr. Justice Cumming granted an Order (the “**Approval and Vesting Order**”), approving, *inter alia*, the Purchase and Sale Agreement between the Company, CFC and the Purchaser dated as of June 8, 2006 (the “**Definitive Agreement**”), and approving the completion of the transactions contemplated under the Definitive Agreement. Attached hereto as Exhibit “C” is a copy of the Approval and Vesting Order. On the same date Justice Cumming also granted an Order amending certain language in the Initial Order. Attached hereto as Exhibit “D” is a copy of the June 15th Order of Justice Cumming amending the Initial Order.
9. Under the terms of the Definitive Agreement, the purchase price payable on closing was \$12,500,000 (the “**Sales Proceeds**”), less the total amount advanced under the DIP Financing provided by Macquarie Bank pursuant to the terms of the Initial Order (the “**DIP Financing**”). The Purchaser acquired the shares of CFC held by the Company (being 100% of the equity), plus certain intercompany debt owing by CFC to the Company (collectively, the “**Purchased Assets**”), after certain assets of the Company were conveyed to CFC immediately prior to closing (the “**Intercompany Transferred Assets**”). The Approval and Vesting Order vested the Intercompany Transferred Assets in CFC, and the Purchased Assets in the Purchaser, upon the delivery of a Vesting Certificate certifying that all conditions to closing have been completed (the “**Vesting Certificate**”).
10. On June 29th, 2006 Justice Morawetz granted an Order (the “**Settlement Approval Order**”) approving the terms of a settlement between the Applicants and Gary Bartholomew, the former Chief Executive Officer of the Company, and

a director of the Company and CFC (the “**Settlement Agreement**”). Attached hereto as Exhibit “E” is a copy of the Settlement Approval Order.

11. The Transaction closed on July 6, 2006 upon the filing of the Vesting Certificate. Attached hereto as Exhibit “F” is a copy of the Vesting Certificate as filed with the Court. To my knowledge, information and belief, as at the date of this affidavit the Monitor is in possession of the remaining net Sale Proceeds in the amount of \$3,825,082.

12. As more particularly set out in the Monitor’s Sixth Report dated December 21, 2006 (the “**Sixth Report**”), these Sale Proceeds are the net amount remaining from the amounts paid to the Monitor at the closing of the Transaction, after payment by the Monitor of:
 - (i) the amounts payable pursuant to the Settlement Agreement, as approved by the Court in the Settlement Approval Order,
 - (ii) amounts owing by the Applicants at the time of the closing of the Transaction with respect to the DIP Loan Facility and the Warehouse DIP Facility,
 - (iii) amounts payable to the creditors of the Company identified by the Claims procedure established under the Claims Order of Justice Cumming dated September 6, 2006 (the “**Claims Order**”), which payments were approved by the Order of Justice Cumming dated October 13, 2006 (the “**Creditor Distribution Order**”);
 - (iv) normal course disbursements in these CCAA proceedings in accordance with the September 6th Order of Justice Cumming amending the Initial Order and extending stay of proceedings (the “**Order Amending Initial Order**”).

Attached as Exhibit “G” is a copy of the Claims Order. Attached as Exhibit “H” is a copy of the Creditor Distribution Order.

13. To my knowledge, information and belief, subsequent to the closing of the Transaction, the amounts owing by the Applicants under the DIP Facility, and the Warehouse DIP Facility, for indebtedness incurred prior to the closing of the Transaction, were repaid to the DIP Lender and the Warehouse DIP Lender

respectively. Accordingly the DIP Lender Charge and the Warehouse DIP Lender Charge, as well as all other security interests granted in favour of the DIP Lender, and the Warehouse DIP Lender, over the assets of the Company, were discharged and expunged as against the assets of the Company and the Sale Proceeds by the Order Amending Initial Order. Attached hereto as Exhibit "I" is a copy of the Order Amending Initial Order. The Order Amending Initial Order also extended the Stay Period to November 30, 2006. The Creditor Distribution Order extended the stay to December 29, 2006.

III. Payment of all Creditor Claims

14. After the closing of the Proposed Transaction, the Monitor disbursed a portion of the "Sale Proceeds", as described in the Approval and Vesting Order, in accordance with the provisions of the Definitive Agreement and the Settlement Approval Order.
15. In order to distribute the remaining net Sale Proceeds to the Creditors of the Company, the Company formulated a claims identification procedure to identify the claims of the creditors of the Company, as well as to identify whether there are any claims against the present and former officers and directors of any of the Applicants (the "**Officers and Directors**").
16. The precise terms of the claims procedure are set out in the Claims Order.
17. The claims procedure barred claims against any creditor of the Company, or claims against any of the Officers and Directors, if no proof of claim was filed by October 6, 2006 (the "**Claims Bar Date**").
18. As noted in the Sixth Report, the Company and the Monitor implemented the Claims Procedure as set out in the Creditor Distribution Order. The Monitor, with the approval of the Court pursuant to the Creditor Distribution Order, distributed \$7,082,948.70 to the creditors of the Company on October 13, 2006. Two claims totalling approximately \$51,000 were subsequently resolved and/or adjudicated. As noted in the Sixth Report, the Monitor is also continuing to liaise with the

Canada Revenue Agency in order to resolve its alleged claim of approximately \$140,000 related to Goods and Services Tax (“GST”).

IV. Procedure for Distributing Remaining Sales Proceeds to Shareholders

19. Subject to continued adjudication of the GST claim referred to in the preceding paragraphs, the Company believes that all proper creditors of the Company have been identified and paid the amounts owing to them. The only remaining creditors with Claims to the sale proceeds are the possible GST liability described above and the professionals whose fees are secured by the Administration Charge, and whose fees are being paid by the Monitor in the ordinary course.
20. The Company has attempted to implement a system for identifying the shareholders of the Company and their proper shareholdings, to distribute the remaining Sale Proceeds to the shareholders, and to continue with the process designed to wind up the Company as set out in the Sixth Report. There are 42,373,660 shares of the Company issued and outstanding.
21. As noted in the Sixth Report, prior to a distribution being made to the shareholders, the issues relating to an undertaking to redistribute or return to the Company for cancellation certain issued and outstanding shares of the Company must be resolved. In general terms, on March 2nd, 2006 certain of the early shareholders of the Company, namely Richard Bell (“**Bell**”), Howard Broughton (“**Broughton**”), Jeff Patterson (“**Patterson**”), High Point Merchant Capital Inc. (“**HPMC**”), Gary Bartholomew (“**Bartholomew**”), Joel Bates (“**Bates**”), Stephen Barley (“**Barley**”) and Grant MacKenzie (“**MacKenzie**”) (collectively, the “**Founders**”) executed the founders’ undertaking (the “**Founders’ Undertaking**”) in which they each agreed, *inter alia*, to direct that certain shares initially issued to them, be returned to the Company so that the Company could reallocate the shares to members of the senior management of the Company still participating in management through the creation of a management trust. Attached as Exhibit “J” is a copy of the Founders Undertaking.

22. The Founders' Undertaking provided, among other things, that:
- (i) the Founders would surrender or cause to be surrendered to CFG, for no consideration, 6,750,000 issued and outstanding common shares of CFG; and
 - (ii) the Founders would cause to be transferred for nominal consideration to a new trust to be established for the benefit of members of the senior management of CFG, 1,350,000 issued and outstanding common shares of CFG.
23. As at December 1, 2006 it was the Company's understanding that 5,737,501 common shares remained held in escrow pursuant to two escrow agreements (the "**Escrowed Shares**"). The first escrow, dated June 25, 2004 and executed by Equity Transfer Services Inc. (the "**ETS**"), GMP Securities Ltd. ("**GMP**"), CFG, the Founders, and certain other parties related to the Founders (the "**ETS/GMP Escrow Agreement**"). The second escrow agreement was dated June 25, 2004 and was executed by ETS, Lawrence Asset Management Inc. ("**Lawrence**"), and the Founders (the "**ETS/Lawrence Escrow Agreement**"). Attached as Exhibit "K" to my Affidavit is a copy of the ETS/GMP Escrow Agreement. Attached as Exhibit "L" to my Affidavit is a copy of the ETS/Lawrence Escrow Agreement.
24. The Company, by its Counsel, on December 1st and 4th wrote to the Founders, ETS, GMP and Lawrence proposing that all of the 5,737,501 shares held in escrow by ETS (the "**Escrowed Shares**") be released from escrow and provided directions for the Founders to execute and return by December 8th, 2006. The 8,100,000 common shares (being the total amount of shares referred to in paragraph 22) committed under the Founders' Undertaking would then be transferred to the Company for cancellation. Shares surrendered to the Company will be cancelled and returned to unissued capital of the Company, thus reducing the aggregate number of issued and outstanding shares of the Company.
25. The right of senior management of the Company, as well as the chairman of the Board of Directors (the "**Senior Management**") to receive 1,350,000 common shares of the Company, as intended under the terms of the Founders Undertaking, would be satisfied by payment in cash equal to the amount that would be

distributable to holders of that number of common shares once the shares were returned for cancellation by the Founders, and these shares would be notionally reallocated to the members of senior management for the purpose of calculating their revised entitlement to a distribution from the Sale Proceeds. Any escrowed common shares to which the Founders would be entitled after satisfaction of the Founders' Undertaking would be returned to the Founders. Attached as Exhibit "M" to my Affidavit is a true copy of the form of correspondence and directions sent by counsel for the Company to the Founders, ETS, GMP and Lawrence.

26. On the afternoon of December 20th, 2006, ETS provided information to counsel for the Company concerning the numbers of shares that were being held by ETS that was different from the information previously provided to counsel for the Company by ETS and upon which the directions circulated to the Founders were based. Consequently, counsel for the Company will be circulating revised directions to the Founders for their signature.
27. Counsel for the Company followed up with certain of the Founders with respect to their fulfillment of the Founders Undertaking. MacKenzie, Bell, Bates and Bartholomew have agreed to comply with the Founders Undertaking and are proceeding to have the directions executed by themselves and their family members, as expeditiously as possible.
28. I am advised by my counsel, Alex Ilchenko, and do verily believe him, that Barley did not respond to the initial correspondence from counsel for the Company, nor a follow up call made by Mr. Ilchenko on December 12th, 2006, an email on December 15th, 2006 and another call on December 19th, 2006. At the time of the swearing of this Affidavit, counsel is continuing to try to reach Barley.
29. On or about December 19th, 2006 Patterson, Broughton and HPMC advised counsel for the Company that they were prepared to fulfill the terms of the Founders Undertaking provided that certain technical issues related to certain indemnity language contained in the Founders Undertaking that allegedly impact

their ability to fulfill the terms of the Founders Undertaking needed to be resolved.

30. On December 20th, 2006 ETS advised Counsel for the Company that unless all of the Founders execute the necessary directions, ETS cannot release any of the Escrowed Shares.
31. In these circumstances the Company proposes that:
 - (i) the Company will endeavour to obtain the signatures of all of the Founders to the revised directions with the revised share amounts as well as to obtain the consent of all of the Founders to release the Escrowed Shares;
 - (ii) upon receipt by the Monitor of a revised shareholder register reflecting the amended shareholder amounts after the surrender of the Shares contemplated under the Founders Undertaking (the "**Revised Shareholder Register**"), and confirmation through the Revised Shareholder Register that HPMC and Broughton have registered sufficient shares with CDS Clearing and Depository Services Inc. ("CDS") to fulfill the terms of the Founders Undertaking, and all steps necessary to complete the implementation of the Founders Undertaking will have been completed to the satisfaction of the Monitor, the Monitor may proceed to implement a distribution of the net Sales Proceeds, minus a holdback to be determined by the Company in consultation with the Monitor (the quantum of which holdback shall reflect the outstanding matters necessary to be resolved at that time, including such matters as are referred to in this affidavit) (the "**Distributed Proceeds**") based on the Revised Shareholder List;
 - (iii) if Barley fails to fulfill the terms of the Founders Undertaking, the Court shall direct the Monitor that any payment to be made to Barley would be an amount equivalent to his shareholdings minus the number of shares he is deemed to have returned pursuant to the Founders Undertaking, and that the Monitor shall hold back from the Distributed Proceeds the amount equivalent to the shares committed to be returned by him under the Founders Undertaking.
 - (iv) contemporaneously with the distribution to the shareholders, the Monitor shall make a payment in cash to the Senior Management of the Company, as contemplated in the Founders Undertaking of the cash equivalent of the shares they would have received

pursuant to the Founders Undertaking, in the amounts approved by the Company;

- (v) if a resolution of the technical issues raised by the HPMC Group is not achieved, then the Court shall direct the Monitor that any payment to be made to any member of the HPMC Group would be an amount equivalent to that person's shareholdings minus the number of shares that they are deemed to have returned pursuant to the Founders Undertaking, and the Monitor shall hold back from the Distributed Proceeds the amount equivalent to the shares committed to be returned by the members of the HPMC Group under the Founders Undertaking;
- (vi) the Founders shall not transfer any shares of the Company in their possession or control to any other party, other than returning the shares for cancellation to the Company prior to the distribution by the Monitor; and
- (vii) this Court direct ETS to return the Escrowed Shares for which directions have been received to the Company for cancellation, whether or not directions are received from all of the Founders, and that ETS be absolved from liability from doing so, despite not receiving directions to do so from all of the Founders, and their family members.

V. **Proposed Procedure for Winding Up the Company**

- 32. After the completion of all of the distributions to all of the shareholders, the resolution of the Founders Undertaking issue and the GST issue, and the completion of the duties of KPMG as Monitor, as noted in the Sixth Report, the Company will have to be wound up under the *Alberta Corporations Act*, under which the Company was incorporated. The Company proposes that in due course KPMG Inc., be appointed by a separate Order as liquidator under the provisions of the ABCA to wind up the Company.
- 33. The Company requests that the Court grant the Company the authority at this time to apply for a winding up order in Alberta upon the completion of the shareholder distribution and the resolution of the GST issue and with the approval of the Monitor. The Company would ask the Alberta Court to recognize that this CCAA proceeding should be the proper forum for the resolution of creditor claims and shareholder distributions, in order to avoid a multiplicity of proceedings and

would request the assistance of the Alberta Court in the coordination of these proceedings.

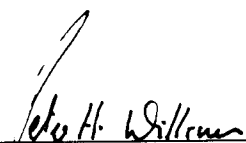
VI. Extension of Stay Period

34. In order to have sufficient time to resolve the outstanding issues described above and in the Sixth Report, and to conduct the distribution of the Sales Proceeds to creditors and to the shareholders, the Company will require an extension of the "Stay Date" as defined in paragraph 4 of the Initial Order to February 28, 2007. The Company has been proceeding in good faith, and with due diligence to expeditiously conclude this restructuring. To the knowledge of the Company, the Monitor supports the granting of this extension.
35. Under the provisions of paragraph 11 of the Initial Order any action, suit or other proceeding against the Officers and Directors was stayed. Therefore the stay of proceedings with respect to the Officers and Directors must also be extended.

VII. Conclusion

36. As was anticipated, the restructuring of the Company under the CCAA has resulted in payment of the creditors of the Company in full. Upon the resolution of the issues raised above and in the Sixth Report, and the winding up of the Company, the Monitor will apply for its discharge and the termination of these proceedings.

SWORN before me at the City of)
 Toronto in the Province of Ontario this)
 21st day of December, 2006)
 _____)
 Commissioner for Taking Affidavits, etc.)
 Alex A. Ilchenko)



 Peter H. Williams