

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

THE HONOURABLE

)

MONDAY, THE 30TH

JUSTICE CAVANAGH

)

DAY OF AUGUST, 2021



**IN THE MATTER OF THE PROPOSAL OF
2505243 ONTARIO LIMITED, OF THE CITY OF
TORONTO, IN THE PROVINCE OF ONTARIO**

**ORDER
(Proposal Approval Order)**

THIS MOTION, made by KSV Restructuring Inc., in its capacity as the proposal trustee (in such capacity, the “**Proposal Trustee**”), for an order, *inter alia*, approving the proposal in respect of 2505243 Ontario Limited (the “**Company**”) filed on July 26, 2021 (the “**Proposal**”), was heard this day virtually via Zoom videoconference as a result of the COVID-19 pandemic.

ON READING the Motion Record of the Proposal Trustee, and on hearing the submissions of counsel for the Proposal Trustee and the Company, and those other parties present, no one appearing for any other person on the service list, although properly served as appears from the affidavit of service of Eichel Archer sworn August 23, 2021, filed:

1. **THIS COURT ORDERS** that capitalized terms used and not defined herein shall have the meanings ascribed thereto in the Proposal.

SERVICE

2. **THIS COURT ORDERS** that the time for service and filing of the Notice of Motion and the Motion Record of the Proposal Trustee is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

APPROVAL OF PROPOSAL

3. **THIS COURT ORDERS AND DECLARES** that the Proposal, as accepted by the requisite majority of the Company's creditors and as attached hereto as **Schedule "A"**, is fair and reasonable and is hereby approved and is binding and effective in accordance with its terms on the Company, all Preferred and Unsecured Creditors and all other Persons as provided for in the Proposal or in this Order.

PROPOSAL IMPLEMENTATIONS

4. **THIS COURT ORDERS** that effective at the Proposal Implementation Time, the Proposal shall be implemented and all of its provisions shall be fully effective and binding on the Company and on all Persons affected by the Proposal, and their respective heirs, executors, administrators, legal representatives, successors and assigns.

5. **THIS COURT ORDERS** that in addition to the powers and rights afforded to it under the *Bankruptcy and Insolvency Act*, R.S.C., 1985, c. B-3, the Proposal Trustee be and is hereby authorized to take all actions and steps necessary or appropriate to implement the Proposal and the transactions contemplated thereby, subject to the terms of the Proposal, and that such steps and actions are hereby approved.

6. **THIS COURT ORDERS AND DECLARES** that the distributions, payments and disbursements delivered pursuant to the Proposal are not delivered by the Proposal Trustee in

its personal or corporate capacity or as legal representative of the Company and shall be without personal or corporate liability of the Proposal Trustee, and without limiting the foregoing, the Proposal Trustee shall have no, and is released from any, obligation or liability in connection with any taxes owing by the Company, or any withholdings or deductions that any person may assert should or should not have been paid or made in connection with such distributions, disbursements or payments.

7. **THIS COURT ORDERS** that, for the avoidance of doubt, the Proposal Trustee shall incur no liability or obligation for any act or omission as a result of carrying out the provisions of this Order and the Proposal, save and except for any gross negligence or wilful misconduct on its part.

8. **THIS COURT ORDERS** that effective at the Proposal Implementation Time, the commencement, continuation or prosecution, whether directly, indirectly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgment, or other remedy or recovery from, or against, the Released Parties shall be and are hereby permanently barred, estopped and enjoined.

9. **THIS COURT ORDERS AND DECLARES** that effective at the Proposal Implementation Time, any and all claims of any nature against the Released Parties shall be and are hereby compromised, discharged and released in accordance with the Proposal, and the ability of any Person to proceed against the Released Parties in respect of or relating to any such claims shall be and is hereby forever discharged and restrained, and all proceedings with respect to, in connection with, or relating to, such claims shall be and are hereby permanently stayed.

GENERAL

10. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces

and territories in Canada against all Persons, firms, corporations, governmental, municipal and regulatory authorities against whom it may be enforceable.

11. **THIS COURT ORDERS AND REQUESTS** the aid and recognition of any court or any judicial, regulatory or administrative body in any province or territory of Canada and the Federal Court of Canada and any judicial, regulatory or administrative tribunal or other court constituted pursuant to the Parliament of Canada or the legislature of any province to act in aid of and to be complementary to this Court 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 as may be necessary or desirable to give effect to this Order or to assist the Company and the Proposal Trustee and their agents in carrying out the terms of this Order.

SCHEDULE "A"

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

**IN THE MATTER OF THE NOTICE OF INTENTION
TO MAKE A PROPOSAL OF 2505243 ONTARIO LIMITED,
OF THE CITY OF TORONTO,
IN THE PROVINCE OF ONTARIO**

PROPOSAL

2505243 Ontario Limited (the “**Company**”) hereby submits the following Proposal under Part III, Division I of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the “**BIA**”).

ARTICLE 1- INTERPRETATION

1.01 Definitions

In this Proposal, capitalized terms have the following meanings:

- (a) “**Administrative Fees and Expenses**” means the Proposal Trustee’s and the Company’s fees and expenses, including legal fees and disbursements incurred by the Proposal Trustee and the Company, on or incidental to the appointment of the Proposal Trustee, the NOI Proceedings, negotiations, preparation, presentation, consideration and implementation of this Proposal, and any subsequent proposals and any proceedings relating to, arising out of, or under this Proposal including advice to the Company.
- (b) “**Applicable Law**” means, with respect to any Person, property, transaction, event or other matter, any Law relating or applicable to such Person, property, transaction, event or other matter, including, where appropriate, any interpretation of the law (or any part) by any Person, court or tribunal having jurisdiction over it, or charged with its administration or interpretation.
- (c) “**Business Day**” means any day other than a Saturday or a Sunday or a day observed as a holiday under the laws of the Province of Ontario or the federal laws of Canada applicable therein.
- (d) “**Claim**” means any claim against the Company and includes any indebtedness, liability, action, cause of action, suit, debt, due, account, bond, covenant, contract, counterclaim, demand, claim, right and obligation of any nature whatsoever of the Company to any Person, whether liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, unsecured, present, future, known or unknown, by guarantee, by surety or otherwise and whether or not such right is executory in nature, including the right or ability of any Person to advance a claim for contribution or indemnity or otherwise with respect to any matter, action, cause or chose in action whether existing at present or commenced in the future based in whole or in part on facts which existed prior to or at the Filing Date, and including Director Claims and Employee Claims, but excluding Unaffected Claims.
- (e) “**Company**” has the meaning given to it in the preamble.

- (f) “**Court**” means the Ontario Superior Court of Justice (in Bankruptcy and Insolvency) (Commercial List) or any other court with jurisdiction in respect of the PGH Litigation.
- (g) “**Creditor**” means any Person holding a Claim.
- (h) “**Crown**” means Her Majesty in Right of Canada or of any Province of Canada and their agents.
- (i) “**Crown Claim**” means any Claim arising from amounts that were outstanding at the time of the Filing Date and are of a kind that could be subject to a demand under Subsection 224(1.2) of the *Income Tax Act* or under provincial legislation or the *Canada Pension Plan* or *Employment Insurance Act*, in each case to the extent described in Section 60(1.1) of the BIA.
- (j) “**Director**” has the meaning given to it in the BIA.
- (k) “**Director Claim**” means any Claim against the Directors that relates to the obligations of the Company where Directors are by law liable in their capacity as directors for the payment of such obligations and, for greater certainty, excludes any claim which cannot be compromised under the BIA.
- (l) “**Employee Claim**” means any Claim of current or former employees of the Company for any amounts but excluding, for greater certainty, Unaffected Employee ESA Claims.
- (m) “**Employee ESA Claim**” means any Claim arising from or in relation to the Company’s liability or obligation to remit termination and/or severance payments to its former employees pursuant to Applicable Law.
- (n) “**Filing Date**” means the date on which the NOI Proceedings were commenced.
- (o) “**Final Order**” means an order of the Court, as the same has become final and non-appealable, directing payment of damages by PGH in connection with the Judgment.
- (p) “**Governmental Entity**” means any government, regulatory authority, governmental department, agency, commission, bureau, official, minister, Crown corporation, court, board, tribunal or dispute settlement panel or other law, rule or regulation-making organization or entity: (a) having or purporting to have jurisdiction on behalf of any nation, province, territory or state or any other geographic or political subdivision of any of them; or (b) exercising, or entitled or purporting to exercise any administrative, executive, judicial, legislative, policy, regulatory or taxing authority or power.
- (q) “**Judgment**” means the trial judgment of the Ontario Superior Court of Justice issued on July 5, 2021, in relation to the PGH Litigation, as the same may be upheld or varied on appeal.
- (r) “**Levy**” means any amounts payable to the Superintendent of Bankruptcy in respect of the levy payable pursuant to Section 147 of the BIA in respect of distributions under this Proposal.
- (s) “**Meeting**” means a meeting of the Unsecured Creditors of the Company called for the purpose of considering and voting in respect of this Proposal.
- (t) “**NOI Proceedings**” means the proceedings initiated by the Company’s filing of a notice of intention to make a proposal on September 24, 2020, pursuant to Section 50.4 of the BIA.
- (u) “**Person**” means any individual, corporation, firm, limited or unlimited liability company, general or limited partnership, association (incorporated or unincorporated), trust, unincorporated organization, joint venture, trade union, government authority or any agency, regulatory body or officer thereof or any other entity, wherever situate or domiciled, and whether or not having legal status.

- (v) “**PGH**” means Princes Gates GP Inc., the general partner of Princes Gates Hotel Limited Partnership.
- (w) “**PGH Litigation**” means the Company’s litigation proceedings commenced against PGH on July 20, 2020, bearing court file number CV-20-00644262.
- (x) “**PGH Litigation Funds**” means funds received by the Proposal Trustee pursuant to the Final Order, but not including any PGH Litigation Employee Funds.
- (y) “**PGH Litigation Employee Funds**” means funds received by the Proposal Trustee pursuant to the Final Order in respect of Employee ESA Claims.
- (z) “**Preferred Claim**” means any Claim set out in Sections 136(1)(a) to 136(1)(g) of the BIA, outstanding as of the Filing Date against the Company, if any.
- (aa) “**Preferred Creditors**” means those persons with Claims that are Preferred Claims.
- (bb) “**Proposal**” means this Proposal made pursuant to the BIA, as may be further amended or supplemented from time to time.
- (cc) “**Proposal Approval Motion**” has the meaning given to it in Section 9.01 hereof.
- (dd) “**Proposal Approval Order**” has the meaning given to it in Section 9.02 hereof.
- (ee) “**Proposal Implementation Date**” means the date on which this Proposal is implemented as evidenced by the service of the Proposal Trustee’s certificate as contemplated by Section 9.04.
- (ff) “**Proposal Implementation Time**” means the time designated as the effective time of the Proposal as set out in the Proposal Trustee’s certificate contemplated by Section 9.04.
- (gg) “**Proposal Trustee**” means KSV Restructuring Inc., in its capacity as proposal trustee in this Proposal.
- (hh) “**Released Parties**” has the meaning given to it in Section 7.01 hereof.
- (ii) “**Required Majority**” means the required majority of Unsecured Creditors entitled to vote on the Proposal as contemplated by Section 54 of the BIA.
- (jj) “**Unaffected Claims**” means:
 - i. any Claims secured by Court-ordered charges granted in the NOI Proceedings against the estate of the Company;
 - ii. Unaffected Employee ESA Claims; and
 - iii. Crown Claims.
- (kk) “**Unaffected Creditor**” means a Person holding one or more Unaffected Claims in respect of and to the extent of such Unaffected Claim.
- (ll) “**Unaffected Employee ESA Claims**” means those Employee ESA Claims, and any portions thereof, to the extent they have been or will be paid with the PGH Litigation Employee Funds.
- (mm) “**Unsecured Claims**” means the Claims of Unsecured Creditors.
- (nn) “**Unsecured Creditors**” means those Persons with unsecured Claims, except for those Claims that:
 - i. have been finally and conclusively disallowed;

- ii. are Preferred Claims; and
 - iii. are Unaffected Claims.
- (oo) **“Unsecured Creditor Pool”** means those funds available for distribution on account of Unsecured Claims after payment of the other amounts hereunder, Unaffected Claims and Administrative Fees and Expenses.

1.02 Headings

The division of this Proposal, into parts, paragraphs and subparagraphs, and the insertion of headings, is for convenience only and is not to affect the construction or interpretation of this Proposal.

1.03 Business Days

In the event that any date on which any action is required to be taken hereunder is not a Business Day, such action will be required to be taken on the next succeeding day that is a Business Day.

1.04 Inclusiveness

The words "includes" and "including" and similar terms of inclusion shall not, unless expressly modified by the words "only" or "solely", be construed as terms of limitation, but rather shall mean "includes but is not limited to" and "including but not limited to", so that references to included matters shall be regarded as illustrative without being either characterizing or exhaustive.

1.05 Successors and Assigns

This Proposal will be binding upon and will enure to the benefit of all Persons named or referred to herein including all Unsecured Creditors and their heirs, estate administrators, personal representatives, successors and assigns as the case may be.

ARTICLE 2 – PURPOSE AND EFFECT OF THIS PROPOSAL

2.01 Purpose

The primary purpose of this Proposal is to effect one or more distributions from the Unsecured Creditor Pool to holders of proven Unsecured Claims in accordance with their *pro rata* share, meaning the value that such proven Unsecured Claim bears to the total value of all proven Unsecured Claims.

2.02 Unaffected Claims

Unaffected Claims will not be affected by this Proposal and are to continue in the ordinary course under their present arrangements unless otherwise agreed to by an Unaffected Creditor. For greater certainty, to the extent that the PGH Litigation Employee Funds are insufficient to pay in full the Unaffected Employee ESA Claims, the unpaid Unaffected Employee ESA Claims shall be Unsecured Claims under this Proposal.

ARTICLE 3 – DISTRIBUTIONS

3.01 All Administrative Fees and Expenses and Unaffected Claims shall be paid in priority to all Claims of Preferred Creditors and Unsecured Creditors.

3.02 Any Preferred Claims that may arise shall be paid in full as set forth in Section 136(1) of the BIA in priority to all Claims of Unsecured Creditors.

3.03 Crown Claims shall be paid in full within six months after the Proposal Approval Order is granted, or as agreed to by Her Majesty.

3.04 The Levy shall be paid in respect of Preferred Claims and Unsecured Claims.

3.05 After payment of the foregoing amounts, the Proposal Trustee may make distributions from the Unsecured Creditor Pool, including interim distributions, on account of proven Unsecured Claims from time to time in its discretion.

ARTICLE 4 – VOTING ON THE PROPOSAL

4.01 For the purpose of voting on the Proposal, the Unsecured Creditors shall comprise one class of creditors.

4.02 In order to be eligible to vote at the Meeting, each Unsecured Creditor shall file a proof of claim with the Proposal Trustee in accordance with the applicable provisions of the BIA and thereafter the Proposal Trustee shall administer the claims in accordance with the provisions of section 135 of the BIA.

ARTICLE 5 – CLAIMS AGAINST DIRECTORS

5.01 In accordance with Section 50(13) of the BIA, at the Proposal Implementation Time, the Proposal shall be deemed, for all purposes whatsoever, to constitute the complete compromise, release and discharge of all Director Claims, provided however that nothing in this section shall release or discharge or be deemed to have released or discharged any claims against any Director that cannot be released or discharged pursuant to Section 50(14) of the BIA.

ARTICLE 6 – PREFERENCES, TRANSFERS AT UNDERVALUE, ETC.

6.01 In conformity with Section 101.1 of the BIA, Sections 95-101 of the BIA and any provincial statute related to preference, fraudulent conveyance, transfer at undervalue, or the like shall not apply to this Proposal.

6.02 As a result of and in accordance with Section 6.01 hereof and all of the rights, remedies, recourses and Claims described therein:

- (a) all such rights, remedies and recourses and any Claims based thereon shall be completely unavailable to the Proposal Trustee or any Unsecured Creditor against the Company, any of the Company's assets or property or any other Person whatsoever; and
- (b) the Proposal Trustee and all of the Unsecured Creditors shall be deemed, for all purposes whatsoever, to have irrevocably and unconditionally waived and renounced such rights, remedies and recourses and any Claims based thereon against the Company, the Company's assets and property or any other Persons.

ARTICLE 7 – RELEASE

7.01 Release

At the Proposal Implementation Time, the Company, the Proposal Trustee and each of their present and former employees and contractors and each of their respective financial advisors, legal counsel and agents (all in such capacities herein referred to as the “**Released Parties**”) shall be released and discharged from any and all rights and Claims of any Person against a Released Party, including without limitation any Unsecured Claim, provided, however, that nothing in this Section 7.01 will release or discharge:

- (a) Any Unaffected Claims against the Company;
- (b) the Company or the Proposal Trustee of, or from, any obligation under this Proposal or under any Order; or
- (c) a Released Party if the Released Party is adjudged by the express terms of a judgment rendered on a final determination on the merits to have committed fraud or wilful misconduct.

ARTICLE 8 – PROPOSAL TRUSTEE

8.01 KSV Restructuring Inc. is acting in its capacity as Proposal Trustee under this Proposal and not in its personal capacity, and:

- (a) shall not incur any personal liabilities or obligations in connection with this Proposal or in respect of the business, liabilities, obligations of the Company, whether existing as at the Filing Date or incurred subsequent thereto, except for liabilities arising out of gross negligence or wilful misconduct; and
- (b) shall have those powers granted to it by this Proposal and the BIA.

ARTICLE 9 – COURT APPROVAL, CONDITIONS PRECEDENT AND IMPLEMENTATION

9.01 Application for Approval Order

After acceptance of this Proposal by the Required Majority at the Meeting, in accordance with the provisions of the BIA, the Proposal Trustee will present a motion (the “**Proposal Approval Motion**”) to the Court seeking the Proposal Approval Order on a date to be set out in the mailing to creditors provided by the Proposal Trustee.

9.02 Proposal Approval Order

The order approving the Proposal (the “**Proposal Approval Order**”) shall, among other things, declare that:

- (a) this Proposal is fair and reasonable;
- (b) this Proposal has been approved pursuant to Section 60 of the BIA and will be binding and effective as herein set out on the Company, all Preferred and Unsecured Creditors and any other Person to the extent provided for in this Proposal or in the Proposal Approval Order;

- (c) grant to the Proposal Trustee, in addition to its rights and obligations under the BIA and any other Court Order, the powers, duties and protections contemplated by and required under the Proposal;
- (d) the commencement or prosecution, whether directly, indirectly, derivatively or otherwise, of any demands, claims, actions, counterclaims, suits, judgment, or other remedy or recovery as described in Section 7.01 hereof shall be permanently enjoined; and
- (e) compromise, discharge and release the Company from any and all Claims in accordance with this Proposal, and declare that the ability of any Person to proceed against the Company in respect of or relating to any such claims shall be forever discharged and restrained, and all proceedings with respect to, in connection with or relating to such claims be permanently stayed.

9.03 Conditions to Implementation

The implementation of this Proposal shall be conditional upon the fulfillment, satisfaction or waiver (to the extent permitted by this Proposal) of the following conditions:

- (a) the Proposal shall have been approved by the Required Majority at the Meeting;
- (b) the Court shall have granted the Proposal Approval Order, the operation and effect of which shall not have been stayed, reversed or amended, or in the event of an appeal or application for leave to appeal, final determination shall have been made by the applicable appellate court;
- (c) no Applicable Law shall have been passed and become effective, the effect of which makes the consummation of this Proposal illegal or otherwise prohibited;
- (d) all documents necessary to give effect to all material provisions of this Proposal shall have been executed and/or delivered by all relevant Persons;
- (e) the PGH Litigation Funds shall have been received by the Proposal Trustee;
- (f) the Unsecured Creditor Pool shall have been created; and
- (g) all required stakeholder, regulatory and Court approvals, consents, waivers and filings shall have been obtained or made, as applicable, and, in the case of waiting or suspensory periods, such waiting or suspensory periods shall have expired or been terminated.

9.04 Proposal Trustee's Certificate of Proposal Implementation

Upon written notice from the Proposal Trustee that the conditions to implementation set out in Section 9.03 have been satisfied or waived, the Proposal Trustee shall, as soon as possible following receipt of such written notice, serve on the service list, and file with the Court, a certificate which states that all conditions precedent set out in Section 9.03 have been satisfied or waived and that the Proposal Implementation Date has occurred or will occur on a future date at a specific time specified in the certificate.

ARTICLE 10 – TERMINATION

10.01 The Company may, with the consent of the Proposal Trustee, provide notice of termination of this Proposal in the event that the Company, in its reasonable business judgment, determines that the PGH Litigation Funds (or some portion thereof) will not be paid pursuant to the Final Order and no distributions on account of Unsecured Claims will be able to be made.

10.02 In the event that the Proposal is terminated in accordance with Section 10.01, the Company shall be in default of this Proposal, the Proposal Trustee shall file a certificate of termination with the Court and the Superintendent of Bankruptcy and thereafter the Company shall be deemed bankrupt.

ARTICLE 11 – MISCELLANEOUS

11.01 On receipt of the Proposal Approval Order, all Unsecured Creditors will be deemed to have consented and agreed to all of the provisions of this Proposal in its entirety, including the terms of the Proposal Approval Order. For greater certainty, each such Unsecured Creditor will be deemed to have waived any default by the Company in any provision, express or implied, in any agreement existing between the Unsecured Creditor and the Company that has occurred on or prior to the Filing Date, and to have agreed that, to the extent that there is any conflict between the provisions of any such agreement and the provisions of the Proposal, the provisions of this Proposal take precedence and priority and the provisions of any such agreement are amended accordingly.

11.02 The payment, compromise or other satisfaction of any Claim under this Proposal will be binding on all Preferred Creditors and Unsecured Creditors and their respective heirs, executors, administrators, successors and assigns for all purposes.

11.03 The Proposal shall be governed by and construed in accordance with the Laws of Ontario and the federal laws of Canada applicable therein. Any disputes as to the interpretation or application of the Proposal and all proceedings taken in connection with the Proposal shall be subject to the exclusive jurisdiction of the Court.

[The remainder of this page has been left intentionally blank.]

Dated at Toronto this 26th day of July, 2021.

2505243 ONTARIO LIMITED

Per:


Peter Eliopoulos

President

(I have the authority to bind the Company)

**ONTARIO
SUPERIOR COURT OF JUSTICE
IN BANKRUPTCY AND INSOLVENCY
(COMMERCIAL LIST)**

Proceeding commenced at TORONTO

**ORDER
(Proposal Approval Order)**

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