Estate/Court File No.: 31-2675288

***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**

# MOTION RECORD OF 2505243 ONTARIO LIMITED
**(Extension of Time to File a Proposal and Further DIP Increase)**

February 24, 2021

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Lawyers for 2505243 Ontario Limited

**TO:** **THE SERVICE LIST**

Estate/Court File No.: 31-2675288

***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**

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# TAB 1

Estate/Court File No.: 31-2675288

***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**

# NOTICE OF MOTION
## (Extension of Time to File a Proposal and Further DIP Increase)

2505243 Ontario Limited (the **Company**) will make a motion to the Commercial List of the Superior Court of Justice, on a date and time to be fixed during the week of March 1, 2021, before the Honourable Justice Gilmore.

**THE PROPOSED METHOD OF HEARING**: The motion is to be heard via zoom videoconference.

**THE MOTION IS FOR AN ORDER**:

1. Abridging the time for service of the Notice of Motion and Motion Record in respect of this motion and dispensing with further service thereof;

2. Extending the time for filing a proposal in the Company's NOI Proceedings (as defined below) from March 8, 2021 to 15 business days after the day on which the Court releases its final decision in respect of the trial of the Action (defined below);

3. Further increasing the maximum borrowing available in Post-Filing Advances (as defined in the Order of this Court dated October 20, 2020, the **October 20 Order**) from $900,000 to $1,500,000 on the terms as amended by the Third DIP Amendment (as defined below);

4. Approving the fifth report of KSV Restructuring Inc. as proposal trustee (the **Proposal Trustee**) to be filed (the **Fifth Report**) and the activities of the Proposal Trustee set out therein; and

5. Such further and other relief as this Court may deem just.

**THE GROUNDS FOR THE MOTION ARE:**

***Background***

1. On September 24, 2020, the Company filed a notice of intention (**NOI**) to make a proposal pursuant to the BIA and commenced these proceedings (the **NOI Proceedings**). KSV Restructuring Inc. was named as the Proposal Trustee in the NOI Proceedings;

2. The filing was made in response to the filing of an application for a bankruptcy order by Princes Gates GP Inc., the general partner of Princes Gates Hotel Limited Partnership (collectively, **PGH**) and a small number of other trade creditors of the Company;

3. On October 20, 2020, the Company sought and obtained the October 20 Order for, among other things, (a) extension of time to file a proposal in the NOI Proceedings to December 8, 2020; (b) approval of the Administration Charge (as defined in the October 20 Order); and (c) approval of post-filing funding up to $300,000 from Peter and Paul's Gifts Limited (the **DIP Lender**);

4. Since the granting of the October 20 Order, the Company and PGH have agreed to an expedited litigation timetable;

5. On November 10, 2020, the Court endorsed the following timetable (the **Litigation Timetable**):

(a) the motion for security for costs was on December 4, 2020;

(b) the pre-trial settlement conference was heard on February 9, 2021;

(c) the trial management conference was heard on February 19, 2021; and

(d) the trial is scheduled to commence on March 1, 2021;

6. On December 4, 2020, the Company sought and obtained orders:

(a) extending the time for filing a proposal in its NOI Proceedings to January 22, 2021; and

(b) increasing the maximum post-filing funding from $300,000 to $460,000;

7. On January 22, 2021, the Company sought and obtained orders:

(a) extending the time for filing a proposal in its NOI Proceedings to March 8, 2021; and

(b) increasing the maximum post-filing funding from $460,000 to $900,000;

8. The Company and PGH have spent the last few months adhering to the Litigation Timetable and are now on the eve of commencing a seven-day trial on March 1, 2021.

***Funding***

9. As set out above, the DIP Lender initially agreed to fund the Company up to $300,000 pursuant to a DIP Term Sheet dated as of October 16, 2020 (the **DIP Term Sheet**), which was approved by the Court on October 20, 2020.

10. The DIP Lender subsequently agreed to increase the maximum amount of Post-Filing Advances to $460,000 pursuant to an amendment to the DIP Term Sheet dated November 30,

2020, which was approved by the Court on December 4, 2020. A further increase was agreed to by the DIP Lender and the maximum amount of Post-Filing Advances was again increased up to $900,000 pursuant to a second amendment to the DIP Term Sheet dated November 30, 2020 (the **Second DIP Amendment**). The Second DIP Amendment also increased the interest rate from 5% to 7% on advances made going forward. The Second DIP Amendment was approved by the Court on January 22, 2021.

11. The Company's expenses are now projected to exceed $900,000. As such, the DIP Lender has agreed to further increase the maximum amount of Post-Filing Advances by $600,000 pursuant to an amendment to the DIP Term Sheet dated February 24, 2021 (the **Third DIP Amendment**) to bring the maximum amount available to be borrowed under the DIP facility to $1,500,000;

12. The Post-Filing Advances will continue to be used to fund the Company's minimal operating costs, the PGH litigation and other professional costs of the NOI proceeding;

***Extension of Time to File a Proposal***

13. The Company is seeking an extension of time to file a proposal from March 8, 2021 to 15 business days after the day on which the Court releases its final decision in respect of the trial of the Action, which, as mentioned above, is scheduled to commence on March 1, 2021, to allow the Company to complete the trial and to provide the Court adequate time to issue its decision;

14. The Company is seeking this extension as the only asset of any material value in the Company is any recovery out of the Action;

15. Preparation and filing a proposal in the absence of a trial decision and without the knowledge of the value of the estate would be unfair to the Company and its creditors;

16. The Company has worked with the Proposal Trustee to prepare a revised cash flow forecast (the **Revised Cash Flow**) for the proposed extension period, a copy of which is attached to the Fifth Report;

17. The Revised Cash Flow indicates that the Company will have sufficient funds to fund its expenses during the extension period provided the Third DIP Amendment is approved;

18. The Company has and continues to act in good faith and with due diligence;

19. No stakeholder will be materially prejudiced by the extension;

***Report and Activities of the Proposal Trustee***

20. The Proposal Trustee's activities as set out in the Fifth Report are lawful and proper and have provided assistance to the Court and interested stakeholders;

21. Sections 50.4(9) and 50.6 of the BIA; and

22. Such further and other grounds as counsel may advise and this Court may permit.

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

1. The Affidavit of Peter Eliopoulos sworn February 24, 2021;

2. The Affidavit of Peter Eliopoulos sworn January 18, 2021 (without exhibits);

3. The Affidavit of Peter Eliopoulos sworn November 30, 2020 (without exhibits);

4. The Affidavit of Peter Eliopoulos sworn October 16, 2020 (without exhibits);

5. The Affidavit of Peter Eliopoulos sworn September 25, 2020 (without exhibits);

6. The Fifth Report;

7. The Order of this Court dated October 9, 2020;

8. The Order of this Court dated October 20, 2020;

9. The Endorsement of the Honourable Justice Koehnen dated November 10, 2020;

10. The Order of this Court dated December 4, 2020;

11. The Endorsement of the Honourable Justice Cavanagh dated December 7, 2020;

12. The Endorsement of the Honourable Justice Koehnen dated December 22, 2020;

13. The Order of this Court dated January 22, 2021; and

14. Such further and other evidence as counsel may advise and this Honourable Court may permit.

February 24, 2021

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Lawyers for 2505243 Ontario Limited

**TO: THE SERVICE 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

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**NOTICE OF MOTION**
**(Extension of Time to File a Proposal and Further DIP Increase)**

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# TAB 2

Estate/Court File No.: 31-2675288

***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**

# AFFIDAVIT OF PETER ELIOPOULOS
**(sworn February 24, 2021)**
**(Extension of Time to File a Proposal and Further DIP Increase)**

I, Peter Eliopoulos, of the City of Toronto and the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1 I am the Founder and President of 2505243 Ontario Limited (the **Company**) and, as such, have knowledge of the facts stated herein.

2 Except as otherwise indicated, the facts set forth in this Affidavit are based upon my personal knowledge, my review of relevant documents and information provided to me by employees working under my supervision, or in my opinion based upon my experience, knowledge and information concerning the operations of the Company and the industry in which it operates. Where I do not possess personal knowledge, I state the source of my information and, in all such cases, verily believe it to be true.

3 I swear this affidavit in connection with the Company's filing of a notice of intention (**NOI**) to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (**BIA**) and its current motion seeking, among other things, an order:

(a) extending the time in which the Company must file a proposal;

(b) further increasing the maximum borrowing available in Post-Filing Advances (as defined in the Order of this Court dated October 20, 2020, the **October 20 Order**) from $900,000 to $1,500,000; and

(c) approving the fifth report (the **Fifth Repor**t) of KSV Restructuring Inc. as proposal trustee (the **Proposal Trustee**) and the activities of the Proposal Trustee described therein.

## A. BACKGROUND

4 Details regarding the background of the Company and the facts leading up to these proceedings are set out in my affidavits sworn September 25, 2020 (the **Initial Affidavit**) and October 16, 2020, and therefore are not repeated herein. I understand that copies of my previous affidavits will be included for reference in the Company's motion record (the **Motion Record**).

5 On Friday, September 24, 2020, the Company filed a NOI to make a proposal pursuant to the BIA and commenced these proceedings (the **NOI Proceedings**). KSV Restructuring Inc. was named as the Proposal Trustee in the NOI Proceedings.

6 The filing was made in response to the filing of an application for a bankruptcy order (the **Bankruptcy Application**) by Princes Gates GP Inc., the general partner of Princes Gates Hotel Limited Partnership (collectively, **PGH**) and a small number of other trade creditors of the Company.

7 Immediately upon the commencement of the NOI Proceedings, the Company's lawyers, Norton Rose Fulbright Canada LLP (**NRFC**), scheduled a motion to be heard on the following Tuesday, September 29, 2020 to address the Bankruptcy Application in light of the filing of the NOI. That motion was opposed by PGH and was adjourned to October 9,

2020. On October 9, 2020, the Court stayed PGH's bankruptcy application to permit the NOI Proceedings continue.

8 On October 20, 2020, the Company sought and obtained the October 20 Order for, among other things, (a) extension of time to file a proposal in the NOI Proceedings to December 8, 2020; (b) approval of the Administration Charge (as defined in the October 20 Order); and (c) approval of post-filing funding up to $300,000 from Peter and Paul's Gifts Limited (the **DIP Lender**).

**PGH Litigation**

9 The Company's primary purpose for commencing the NOI Proceedings was to seek protection under the BIA so that it could obtain a streamlined and clear path for its litigation claim against PGH (the **Action**) with the ultimate goal of recovery from PGH and repayment to creditors. The Company does not have any other assets of any material value other than any recovery it may obtain if successful in the Action.

10 The Company and PGH have spent the last few months adhering to a strict and expedited litigation timetable and are now on the eve of commencing a seven-day trial on March 1, 2021.

## B. EXTENSION OF TIME TO FILE A PROPOSAL

11 The Company has sought prior extensions of time in which to file its proposal. The current date by which the Company must file a proposal is March 8, 2021.

12 The Company is seeking a final extension of the time in which it must file a proposal to 15 business days after the day on which the Court releases its final decision in respect of the

trial of the Action, which, as mentioned above, is scheduled to commence on March 1, 2021.

13 The Company requires this extension of time so that it may complete the trial and to provide the Court adequate time to issue its decision. As noted above, the only asset of any material value in the Company is any recovery out of the Action. Preparation and filing a proposal in the absence of a trial decision and without the knowledge of the value of the estate would be unfair to the Company and its creditors.

14 The Company has worked with the Proposal Trustee to prepare a revised cash flow forecast (the **Revised Cash Flow**) for the proposed extension period, a copy of which will be attached to the Fifth Report. The Revised Cash Flow indicates that the Company will have sufficient funds to fund its expenses during the extension period provided the Third DIP Amendment is approved.

15 The Company is acting in good faith and with due diligence.

16 I do not believe any stakeholder will be materially prejudiced by the extension.

## C. CASH FLOW AND FUNDING

17 As set out in my Initial Affidavit, the Company has understood that funding would need to be provided going forward given that the Company does not generate revenue since its shutdown in March and purported termination by PGH in July.

18 The DIP Lender initially agreed to fund the Company up to $300,000 (the **Original DIP Amount**) pursuant to a DIP Term Sheet dated as of October 16, 2020 (the **DIP Term Sheet**), which was approved by the Court on October 20, 2020.

19 The DIP Lender subsequently agreed to increase the maximum amount of Post-Filing Advances to $460,000 pursuant to an amendment to the DIP Term Sheet dated November 30, 2020 (the **First DIP Amendment**), which was approved by the Court on December 4, 2020. A further increase was agreed to by the DIP Lender and the maximum amount of Post-Filing Advances was again increased up to $900,000 pursuant to a second amendment to the DIP Term Sheet dated November 30, 2020 (the **Second DIP Amendment**). The Second DIP Amendment also increased the interest rate from 5% to 7% on advances made going forward. The Second DIP Amendment was approved by the Court on January 22, 2021.

20 Copies of the DIP Term Sheet, the First DIP Amendment and the Second DIP Amendment are attached hereto as Exhibit "A".

21 The Company's expenses are now projected to exceed $900,000. As such, the DIP Lender has agreed to further increase the maximum amount of Post-Filing Advances by $600,000 (the **DIP Increase Amount**) pursuant to an amendment to the DIP Term Sheet dated February 24, 2021 (the **Third DIP Amendment**) to bring the maximum amount available to be borrowed under the DIP facility to $1,500,000. The Post-Filing Advances will continue to be used to fund the Company's minimal operating costs, litigation and trial costs and other professional costs of the NOI Proceedings. A copy of the Third DIP Amendment is attached hereto as Exhibit "B".

22 I understand that an updated cash flow projection will be filed with the Fifth Report.

SWORN BEFORE ME via videoconference at the City of Oakville, in the Province of Ontario, this 24th day of February, 2021.

A Commissioner for taking Affidavits

**PETER ELIOPOULOS**

THIS IS **EXHIBIT "A"** TO THE AFFIDAVIT OF
PETER ELIOPOULOS SWORN BEFORE ME VIA
VIDEOCONFERENCE IN THE CITY OF OAKVILLE,
IN THE PROVINCE OF ONTARIO,
THIS 24TH DAY OF FEBRUARY, 2021.

*A Commissioner for taking Affidavits in Ontario*

**INTERIM DIP FINANCING TERM SHEET**

**Dated as of October 16, 2020**

**WHEREAS** 2505243 Ontario Limited (the "**Borrower**") has requested and the DIP Lender (as defined below) has agreed to provide financing to the Borrower during the pendency of the Borrower's proceedings (the "**NOI Proceedings**") under the *Bankruptcy and Insolvency Act* (Canada) (the "**BIA**") which commenced upon the Borrower's filing of a notice of intention ("**NOI**") to make a proposal on September 24, 2020, such financing to be provided in accordance with the terms and conditions set out herein;

**AND WHEREAS,** the DIP Lender has agreed to provide financing in order to fund certain obligations of the Borrower during the NOI Proceedings;

**NOW THEREFORE**, the parties, in consideration of the foregoing and the mutual agreements contained herein (the receipt and sufficiency of which are hereby acknowledged), agree as follows:

| | | |
|---|---|---|
| **1.** | **BORROWER:** | 2505243 Ontario Limited |
| **2.** | **DIP LENDER:** | Peter and Paul's Gifts Limited (the "**DIP Lender**"). |
| **3.** | **DEFINED TERMS:** | Unless otherwise defined herein, capitalized words and phrases used in this DIP Financing Term Sheet have the meanings given thereto in Schedule A hereto. Unless otherwise noted, all references to currency, "dollars" or "$" shall be deemed to refer to Canadian dollars. |
| **4.** | **DIP FACILITY; DRAWDOWNS:** | A senior secured debtor-in-possession, interim, non-revolving multiple draw credit facility (the "**DIP Facility**") up to a maximum principal amount of $300,000 (the "**Facility Amount**"), subject to the terms and conditions contained herein.<br><br>The initial advance of the Facility Amount shall be funded to the Borrower within two (2) Business Days after the date on which the Funding Conditions (as defined below) have been satisfied or waived in accordance with Section 8, or such shorter period as the DIP Lender may agree in its sole discretion. |
| **5.** | **INTEREST:** | Interest shall be payable in cash on the aggregate of the outstanding principal amount of the Facility Amount from the date of the funding thereof at a rate equal to 5% per annum, compounded monthly and payable in full on the Maturity Date. |

All interest and fees shall be computed on the basis of a year of 365 days, provided that whenever a rate of interest or fee hereunder is calculated on the basis of a year (the "**deemed year**") that contains fewer days than the actual number of days in the calendar year of calculation, such rate of interest or fee rate shall be expressed as a yearly rate by multiplying such rate of interest or fee by the actual number of days in the calendar year of calculation and dividing it by the number of days in the deemed year.

The parties shall comply with the following provisions to ensure that no receipt by the DIP Lender of any payments under this DIP Financing Term Sheet would result in a breach of section 347 of the *Criminal Code* (Canada):

(a) If any provision of this DIP Financing Term Sheet would obligate the Borrower to make any payment to the DIP Lender of an amount that constitutes "interest", as such term is defined in the *Criminal Code* (Canada) and referred to in this section as "**Criminal Code Interest**", which would result in the receipt by the DIP Lender of Criminal Code Interest at a criminal rate (as defined in the *Criminal Code* (Canada) and referred to in this section as a "**Criminal Rate**"), then, notwithstanding such provision, that amount or rate shall be deemed to have been adjusted with retroactive effect to the maximum amount or rate of interest, as the case may be, as would not result in the receipt by the DIP Lender of Criminal Code Interest at a Criminal Rate, and the adjustment shall be effected, to the extent necessary, as follows:

(i) *first*, by reducing the amount or rate of interest required to be paid to the DIP Lender; and

(ii) *thereafter*, by reducing any other amounts (other than costs and expenses) (if any) required to be paid to the DIP Lender which would constitute Criminal Code Interest.

(b) Any amount or rate of Criminal Code Interest referred to in this section shall be calculated and determined in accordance with generally accepted actuarial practices and principles as an effective

annual rate of interest over the term that any portion of the DIP Facility remains outstanding on the assumption that any charges, fees or expenses that constitute Criminal Code Interest shall be pro-rated over the period commencing on the date of the advance of the Facility Amount and ending on the relevant Maturity Date (as may be extended by the DIP Lender from time to time under this DIP Financing Term Sheet).

**6. COSTS AND EXPENSES**

The Borrower will reimburse, without duplication, the DIP Lender for all reasonable and documented out-of-pocket expenses (including reasonable and documented legal fees and expenses of counsel for the DIP Lender) in connection with the NOI Proceedings and the on-going monitoring, administration and enforcement of the DIP Facility.

**7. PURPOSE AND PERMITTED PAYMENTS:**

The Borrower shall use proceeds of the DIP Facility solely for the following purposes, in each case in accordance with the DIP Order and the DIP Budget (subject to the Permitted Variance):

(a) to pay (i) the reasonable and documented legal fees and expenses of the DIP Lender in accordance with Section 6 hereof, (ii) the reasonable and documented financial advisory fees and legal fees and expenses of the Borrower, and (iii) the reasonable and documented fees and expenses of the Proposal Trustee and its legal counsel;

(b) to pay the fees and interest owing to the DIP Lender under this DIP Financing Term Sheet; and

(c) to fund the Borrower's expenses as contemplated by the DIP Budget.

**8. CONDITIONS PRECEDENT TO INITIAL FUNDING OF FACILITY AMOUNT:**

The DIP Lender's agreement to fund the initial advance Facility Amount to the Borrower is subject to the satisfaction or waiver by the DIP Lender of the following conditions precedent (the "**Funding Conditions**"):

(a) The DIP Lender (or its counsel) shall have had a reasonable opportunity to review advance copies of, and shall be reasonably satisfied with, all material documents to be filed in respect of the DIP Order;

(b) The Court shall have entered the DIP Order substantially in the form reasonably acceptable to the DIP Lender (or its counsel), which shall include the grant by the Court of a charge in favour of the DIP Lender (the "**DIP Lender's Charge**") on the Collateral, securing all obligations owing by the Borrower to the DIP Lender hereunder including, without limitation, all principal, interest, and fees owing to the DIP Lender as set out herein (collectively, the "**DIP Financing Obligations**") and providing, among other things, that the DIP Lender's Charge shall have priority on the Collateral over all Liens, other than the Permitted Priority Liens, and such DIP Order shall not have been stayed, vacated or otherwise amended, restated or modified in any manner that adversely affects the DIP Lender, without the written consent of the DIP Lender;

(c) The DIP Lender (or its counsel) shall be satisfied that the entering into of this DIP Financing Term Sheet, the granting of the DIP Lender's Charge, the consummation of the transactions contemplated hereby has been approved by the Borrower;

(d) The Borrower shall have executed and delivered this DIP Financing Term Sheet;

(e) No Event of Default shall have occurred or will occur as a result of the requested advance;

(f) There shall be no Liens ranking in priority to the DIP Lender's Charge over the property and assets of the Borrower, other than the Permitted Priority Liens; and

(g) All reasonable and documented expenses (including all reasonable and documented legal fees and expenses) of the DIP Lender incurred in connection with the DIP Facility and invoiced by no later than two (2) Business Days' prior to the initial funding of the Facility Amount shall have been paid in full as and to the extent required under Section 6 (which expenses may be deducted from the advance of the Facility

Amount).

**9. DIP FACILITY SECURITY:** All obligations of the Borrower to the DIP Lender under or in connection with the DIP Facility shall be secured by the DIP Lender's Charge.

**10. REPAYMENT:** The DIP Facility shall be repayable in full on the earlier of: (i) the occurrence of any Event of Default hereunder which is continuing and has not been cured and a demand for repayment in writing having been made by the DIP Lender to the Borrower with a copy to the Proposal Trustee (and each of their respective counsel); (ii) the implementation of a proposal under the BIA, in which case the DIP Financing Obligations shall be treated in the manner contemplated thereunder; and (iii) March 24, 2021 (the earliest of such dates being the "**Maturity Date**"). The Maturity Date may be extended from time to time at the request of the Borrower and with the prior written consent of the DIP Lender for such period and on such terms and conditions as the Borrower and the DIP Lender may agree, provided that any material amendments to the terms and conditions shall be also be subject to the prior written consent of the Proposal Trustee.

**11. DIP BUDGET AND VARIANCE REPORTING:** Attached as Schedule B hereto is a copy of the agreed initial DIP Budget as in effect on the date hereof, which the DIP Lender acknowledges and agrees has been reviewed and approved by the DIP Lender, and is in form and substance satisfactory to the DIP Lender. Such DIP Budget shall be the DIP Budget referenced in this DIP Financing Term Sheet until such time as a revised DIP Budget has been approved by the DIP Lender in accordance with this Section 11.

The Borrower, with the assistance of the Proposal Trustee, shall update the DIP Budget from time to time coincident with the Borrower's Extension Motions and provide all updated DIP Budgets to the DIP Lender at least five (5) Business Days (or such shorter time as the DIP Lender may agree) in advance of filing such updated DIP Budget with the Court. If the DIP Lender determines that the proposed revised DIP Budget is not acceptable provide written notice to the Borrower (and its legal counsel) and the Proposal Trustee as soon as reasonably thereafter after receipt stating that the proposed revised DIP Budget is not acceptable and setting out the reasons why such revised DIP Budget is not acceptable, and until the Borrower has

delivered a revised DIP Budget acceptable to the DIP Lender, the prior DIP Budget shall remain in effect.

At any time, the latest DIP Budget accepted by the DIP Lender (or which has not been designated as not acceptable by the DIP Lender by written notice to the Borrower, as provided above), shall be the DIP Budget for the purpose of this DIP Financing Term Sheet.

Coincident with the Borrower's Extension Motions, the Borrower shall deliver to the DIP Lender's counsel, a variance calculation (the "**Variance Report**") setting forth (i) actual receipts and disbursements for the preceding extension period, and (ii) actual receipts and disbursements on a cumulative basis since the beginning of the period covered by the then-current DIP Budget, in each case as against the then-current DIP Budget, and setting forth all the variances, on an aggregate basis in comparison to the amounts set forth in respect thereof in the DIP Budget; each such Variance Report to be promptly discussed with the DIP Lender and its advisors upon request.

**12. PREPAYMENTS:** The Borrower may, without premium or penalty, prepay any amounts outstanding under the DIP Facility at any time prior to the Maturity Date.

**13. CURRENCY:** If any payment is received by the DIP Lender hereunder in a currency other than Canadian dollars, or, if for the purposes of obtaining judgment in any court it is necessary to convert a sum due in Canadian dollars (the "**Original Currency**") into another currency (the "**Other Currency**"), the parties hereby agree, to the fullest extent permitted by Applicable Law, that the rate of exchange used shall be the rate at which the DIP Lender is able to purchase the Original Currency with the Other Currency after any premium and costs of exchange on the Business Day preceding that on which such payment is made or final judgment is given.

**14. REPRESENTATIONS AND WARRANTIES:** The Borrower represents and warrants to the DIP Lender, upon which the DIP Lender is relying in entering into this DIP Financing Term Sheet, that:

(a) The transactions contemplated by this DIP Financing Term Sheet:

(i) are within the corporate power of the Borrower;

(ii) have been duly executed and delivered by or on behalf of the Borrower;

(iii) upon the granting of the DIP Order, shall constitute legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms;

(iv) upon the granting of the DIP Order, do not require any material authorization from, the consent or approval of, registration or filing with, or any other action by, any governmental authority or any third party; and

(v) will not violate the articles or by-laws of the Borrower or any Applicable Law.

(b) The Collateral is free and clear of all Liens other than Permitted Liens and, upon the granting of the DIP Order, the DIP Lender's Charge.

**15. AFFIRMATIVE COVENANTS:**

The Borrower agrees to do, or cause to be done, the following, unless otherwise consented to or waived in writing by the DIP Lender, acting reasonably:

(a) The Borrower shall serve its motion materials for the DIP Order on all material secured parties, if any, and shall include a request by the Borrower requesting that the Court order that the DIP Lender's Charge shall rank in priority to the Liens of any such secured parties, but excluding, in each case, any secured party holding a Permitted Priority Lien;

(b) Use the proceeds of the DIP Facility only in accordance with Section 7 and in accordance with the restrictions set out herein and pursuant to the DIP Budget;

(c) Comply with the provisions of the DIP Order and all other orders of the Court entered in connection with the NOI Proceedings (collectively, the "**Court Orders**" and each a "**Court Order**");

(d) Promptly notify the DIP Lender of the occurrence of any Event of Default;

(e) Comply in all material respects with Applicable Law, except to the extent not required to do so pursuant to the DIP Order or any other Court Order;

(f) Take all actions necessary or available to defend the Court Orders from any appeal, reversal, modifications, amendment, stay or vacating to the extent that it would materially affect the rights and interests of the DIP Lender or the Hotel X Claim;

(g) Comply with the DIP Budget subject to the Permitted Variance;

**16. NEGATIVE COVENANTS:** The Borrower covenants and agrees not to do, or cause not to be done, the following, other than with the prior written consent of the DIP Lender, acting reasonably:

(a) Transfer, lease or dispose of all or any substantial part of its property, assets or undertaking outside of the ordinary course of business, except such asset sales or dispositions as are permitted pursuant to the DIP Order;

(b) Make any payment, including, without limitation, any payment of principal, interest or fees, in respect of pre-filing indebtedness, or in respect of any other pre-filing liabilities, other such amounts as are permitted to be paid pursuant to the DIP Order and provided that the aggregate amount of all such pre-filing amounts shall not exceed the amount set out in the DIP Budget;

(c) Create or permit to exist any indebtedness other than (A) the indebtedness existing as of the date hereof, (B) the DIP Financing Obligations and (C) as the DIP Lender and the Proposal Trustee may agree;

(d) Make any distribution, dividend, return of capital or other distribution in respect of, or any redemption of, equity securities (in cash, securities or other property or otherwise);

(e) Make any material investments or acquisitions whether direct or indirect, other than as reflected in the DIP Budget;

(f) Create or permit to exist any Liens on any of its properties or assets other than the Permitted Liens;

(g) Amalgamate, consolidate with or merge into or sell all or substantially all of their assets to another entity, or change their corporate or capital structure (including their organizational documents); or

(h) Seek, or consent to the appointment of, a receiver or trustee in bankruptcy or any similar official in any jurisdiction.

**17. EVENTS OF DEFAULT:** The occurrence of any one or more of the following events shall constitute an event of default (each an "**Event of Default**") under this DIP Financing Term Sheet:

(a) Failure by the Borrower to pay: (i) principal, interest or other amounts within three (3) Business Days of such amounts becoming due under this DIP Financing Term Sheet; or (ii) costs and expenses of the DIP Lender in accordance with Section 6 hereof within ten (10) Business Days of receiving an invoice therefor;

(b) Failure by the Borrower to comply with its covenants as set out herein and such failure remains unremedied for ten (10) Business Days following receipt of notice thereof from the DIP Lender;

(c) Any representation or warranty by the Borrower made in this DIP Financing Term Sheet is or proves to be incorrect or misleading in any material respect as of the date made;

(d) Issuance of a Court Order: (i) dismissing the NOI Proceedings or lifting the stay in the NOI Proceedings to permit the enforcement of any security against the Borrower or the Collateral, the appointment of a receiver, interim receiver or similar official, an assignment in bankruptcy, or the making of a bankruptcy order against or in

respect of the Borrower, in each case which order is not stayed pending appeal thereof, and other than in respect of a non-material asset not required for the operations of the Borrower's business; (ii) granting any other Lien in respect of the Collateral that is in priority to or pari passu with the DIP Lender's Charge other than as permitted pursuant to this DIP Financing Term Sheet (including, for greater certainty, any Permitted Priority Liens granted pursuant to a Court Order), or (iii) staying, reversing, vacating or otherwise modifying this DIP Financing Term Sheet or the DIP Lender's Charge, in each case unless otherwise consented to by the DIP Lender;

(e) Unless consented to in writing by the DIP Lender, the expiry of the stay of proceedings under the BIA;

(f) As at the date of any Variance Report, there shall exist a net negative variance from the DIP Budget in excess of 20% (the "**Permitted Variance**") on a cumulative basis since the beginning of the period covered by the then-current DIP Budget; or

(g) The denial or repudiation by the Borrower of the legality, validity, binding nature or enforceability of this DIP Financing Term Sheet.

**18. REMEDIES:**

Upon the occurrence of an Event of Default, the DIP Lender may, upon not less than seven (7) days' prior written notice to the Borrower and the Proposal Trustee, and otherwise subject to the provisions of the Court Orders, declare the DIP Financing Obligations to be immediately due and payable and may thereafter, exercise any and all of its rights and remedies against the Borrower or the Collateral under or pursuant to this DIP Financing Term Sheet and the DIP Lender's Charge, including, without limitation:

(a) apply to a court for appointment of a receiver, receiver and manager or interim receiver, or for a bankruptcy order against the Borrower and for the appointment of a trustee in bankruptcy of the Borrower;

(b) set-off or consolidate any amounts then owing by the DIP Lender to the Borrower against the obligations of any of the Borrower to the DIP Lender (in their capacities as such) hereunder; and

(c) exercise all such other rights and remedies under Applicable Law.

| | |
|---|---|
| **19. INDEMNITY AND RELEASE:** | The Borrower agrees to indemnify and hold harmless the DIP Lender and its directors, officers, employees and agents (all such persons and entities being referred to hereafter as "**Indemnified Persons**") from and against any and all actions, suits, proceedings, claims, losses, damages and liabilities of any kind or nature whatsoever (excluding indirect or consequential damages and claims for lost profits) which may be incurred by or asserted against any Indemnified Person as a result of or arising out of or in any way related to the DIP Facility, this DIP Financing Term Sheet and, upon demand, to pay and reimburse any Indemnified Person for any reasonable legal or other out-of-pocket expenses incurred in connection with investigating, defending or preparing to defend any such action, suit, proceeding or claim; provided, however, the Borrower shall not be obligated to indemnify any Indemnified Person against any loss, claim, damage, expense or liability (x) to the extent it resulted from the gross negligence or wilful misconduct of such Indemnified Person as finally determined by a court of competent jurisdiction (y) relating to the DIP Lender's failure to comply with or breach of their respective obligations under this DIP Financing Term Sheet, or (z) to the extent arising from any dispute solely among Indemnified Persons other than any claims arising out of any act or omission on the part of the Borrower. The Borrower shall not be responsible or liable to any Indemnified Person or any other person for consequential damages, loss of profits or punitive damages. |
| **20. DIP LENDER'S APPROVALS:** | Any consent, agreement, amendment, approval, waiver or instruction of the DIP Lender to be delivered hereunder, may be delivered by any written instrument, including by way of electronic mail, by counsel on behalf of the DIP Lender. |
| **21. FURTHER ASSURANCES:** | The Borrower shall, at its expense, from time to time do, execute and deliver, or will cause to be done, executed and delivered, all such further acts, documents and things as the DIP Lender may reasonably request for the purpose of giving effect to this DIP Financing Term Sheet. |
| **22. ENTIRE AGREEMENT; CONFLICT:** | This DIP Financing Term Sheet, including the schedules hereto, constitute the entire agreement between the parties relating to the subject matter hereof. |
| **23. AMENDMENTS,** | No waiver or delay on the part of the DIP Lender in |

**WAIVERS, ETC.:** exercising any right or privilege hereunder will operate as a waiver hereof or thereof unless made in writing by the DIP Lender and delivered in accordance with the terms of this DIP Financing Term Sheet, and then such waiver shall be effective only in the specific instance and for the specific purpose given.

**24. ASSIGNMENT:** The DIP Lender may, with the consent of the Borrower (which consent shall not be required during the existence of any Event of Default hereunder), assign this DIP Financing Term Sheet and its rights and obligations hereunder, in whole or in part, to any Person (subject in all cases to (i) providing the Proposal Trustee with reasonable evidence that such assignee has the financial capacity to fulfill the obligations of such assigning DIP Lender hereunder and (ii) the assignee entering into an agreement with the Borrower, in form and substance reasonably acceptable to the Borrower and the Proposal Trustee, to confirm such assignment). Neither this DIP Financing Term Sheet nor any right or obligation hereunder may be assigned by the Borrower.

**25. SEVERABILITY:** Any provision in this DIP Financing Term Sheet which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction.

**26. NO THIRD PARTY BENEFICIARY:** No person, other than the Borrower, the DIP Lender and the Indemnified Parties, is entitled to rely upon this DIP Financing Term Sheet and the parties expressly agree that this DIP Financing Term Sheet does not confer rights upon any other party.

**27. COUNTERPARTS AND ELECTRONIC SIGNATURES:** This DIP Financing Term Sheet may be executed in any number of counterparts and by facsimile or other electronic transmission including "pdf email", each of which when executed and delivered shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

**28. NOTICES:** Any notice, request or other communication hereunder to any of the parties shall be in writing and be well and sufficiently given if delivered personally or sent by electronic mail to the such Person at its address set out on its signature page hereof. Any such notice, request or

other communication hereunder shall be concurrently sent to the Proposal Trustee and its counsel.

Any such notice shall be deemed to be given and received when received, unless received after 5:00pm (Toronto time) or on a day other than a Business Day, in which case the notice shall be deemed to be received the next Business Day.

**29. GOVERNING LAW:** This DIP Financing Term Sheet shall be governed by, and construed in accordance with, the laws of the Province of Ontario and the federal laws of Canada applicable therein.

**[signature pages follow]**

**IN WITNESS HEREOF**, the parties hereby execute this DIP Financing Term Sheet as at the date first above mentioned.

Address:

6260 Hwy 7, Unit 1
Vaughan, Ontario, L4H 4G3

Attention: Peter Eliopoulos
Email: peterandpauls@gmail.com

**PETER AND PAUL'S GIFTS LIMITED**

Per: _____
Name: Anna Eliopoulos
Title: President

I have authority to bind the corporation.

Address:

6260 Hwy 7, Unit 1
Vaughan, Ontario, L4H 4G3

Attention: Peter Eliopoulos
Email: peterandpauls@gmail.com

With a copy to:

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario, M5K 1E7

Attention: Jennifer Stam
Email:
jennifer.stam@nortonrosefulbright.com

**BORROWER:**
**2505243 ONTARIO LIMITED**

Per: _____
Name: Peter Eliopoulos
Title: President

I have authority to bind the corporation.

## SCHEDULE A

## DEFINED TERMS

"**Administration Charge**" means an administration charge in an aggregate amount not to exceed **$100,000** which shall rank in priority to the DIP Lender's Charge pursuant to the DIP Order.

"**Applicable Law**" means, in respect of any Person, property, transaction or event, all applicable laws, statutes, rules, by-laws and regulations and all applicable official directives, orders, judgments and decrees of any Governmental Authority having the force of law and binding on such Person.

"**BIA**" has the meaning given thereto in the Recitals.

"**Borrower**" has the meaning given thereto in the Recitals.

"**Business Day**" means any day other than a Saturday, Sunday or any other day in which banks in Toronto, Ontario are not open for business.

"**Collateral**" means all of the Borrower's current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof.

"**Court**" has the meaning given thereto in the Recitals.

"**Court Order**" and "**Court Orders**" have the meanings given thereto in Section 15(c).

"**Criminal Code Interest**" has meaning given thereto in Section 5.

"**Criminal Rate**" has meaning given thereto in Section 5.

"**DIP Budget**" means the financial projections prepared by the Borrower in connection with its October 20 Extension Motion, which shall be in form and substance reasonably acceptable to the DIP Lender, which financial projections may be amended from time to time in accordance with Section 11.

"**DIP Facility**" has the meaning given thereto in Section 4.

"**DIP Financing Obligations**" has the meaning given thereto in Section 8.

"**DIP Lender**" has the meaning given thereto in Section 2.

"**DIP Lender Charge**" has the meaning given thereto in Section 8(b).

"**DIP Order**" means an order of the Court granted pursuant to the BIA approving, among other things, the DIP Lender's Charge.

"**Event of Default**" has the meaning given thereto in Section 17.

"**Extension Motions**" means the Borrower's motions to seek an extension of the time in which it must file a proposal under the BIA.

"**Facility Amount**" has the meaning given thereto in Section 4.

"**Filing Date**" means September 24, 2020.

"**Funding Conditions**" has the meaning given thereto in Section 8.

"**Governmental Authority**" means any federal, provincial, state, municipal, local or other government, governmental or public department, commission, board, bureau, agency or instrumentality, domestic or foreign and any subdivision, agent, commission, board or authority of any of the foregoing.

"**Hotel X Claim**" means (i) the action in the Ontario Superior Court of Justice, bearing Court File No. CV-20-644262, commenced by the Borrower against the operator of Hotel X, Princes Gates GP Inc., on July 2020, 2020, and/or (ii) an arbitration between the Borrower and Princes Gates GP Inc. regarding the same issues as pleaded in the Borrower's statement of claim in the court action referenced above at (i).

"**Indemnified Persons**" has the meaning given thereto in Section 19.

"**Liens**" means all liens, hypothecs, charges, mortgages, trusts, deemed trusts (statutory or otherwise), encumbrances and security interests of every kind and nature whatsoever.

"**Maturity Date**" has the meaning given thereto in Section 10.

"**NOI Proceedings**" has the meaning given thereto in the Recitals.

"**Original Currency**" has the meaning given thereto in Section 13.

"**Other Currency**" has the meaning given thereto in Section 13.

"**Permitted Liens**" means (i) the DIP Lender's Charge; (ii) any charges created under the DIP Order or other Court Order, in each case subsequent in priority to the DIP Lender's Charge and approved by the DIP Lender, acting reasonably; (iii) validly perfected Liens existing prior to the date hereof; (iv) inchoate statutory Liens arising after the Filing Date in respect of any accounts payable arising after the Filing Date in the ordinary course of business, subject to the obligation to pay all such amounts as and when due; and (v) the Permitted Priority Liens.

"**Permitted Priority Liens**" means (i) the Administration Charge, and (ii) any amounts payable by the Borrower for wages, vacation pay, employee deductions, sales tax, excise tax, tax payable pursuant to Part IX of the *Excise Tax Act* (Canada) (net of input credits), income tax and workers compensation claims or governmental liens that have been validly perfected pursuant to the *Personal Property Security Act* (Ontario), solely to the extent such amounts are given priority by

Applicable Law and only to the extent that the priority of such amounts have not been subordinated to the DIP Lender's Charge granted by the Court.

"**Permitted Variance**" has the meaning given thereto in Section 17(f).

"**Person**" means an individual, partnership, corporation, business trust, joint stock company, limited liability company, unlimited liability company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"**Proposal Trustee**" means KSV Restructuring Inc., in its capacity as proposal trustee of the Borrower in the NOI Proceedings.

"**Variance Report**" has the meaning given thereto in Section 11.

# FIRST AMENDMENT TO INTERIM DIP FINANCING TERM SHEET

This First Amendment (the "**First Amendment**") to the Interim DIP Financing Term Sheet dated as of October 16, 2020 (the "**Original DIP Term Sheet**") is dated as of the 30th day of November, 2020

**BETWEEN:**

**2505243 ONTARIO LIMITED**

(the "**Borrower**")

**AND:**

**PETER AND PAUL'S GIFTS LIMITED**

(the "**DIP Lender**")

**WHEREAS**, the Borrower requested and the DIP Lender agreed to provide financing to the Borrower during the pendency of the Borrower's proceedings under the *Bankruptcy and Insolvency* Act, which commenced upon the Borrower's filing of a notice of intention to make a proposal on September 24, 2020;

**AND WHEREAS**, the Borrower and the DIP Lender entered into the Original DIP Term Sheet;

**AND WHEREAS**, the Borrower and the DIP Lender wish to amend the Original DIP Term Sheet on the terms set out in this First Amendment.

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

## 1. AMENDMENT TO TERM SHEET

The Borrower and the DIP Lender agree that the Original DIP Term Sheet is amended as follows:

(a) the definition of "Facility Amount" as defined in paragraph 4 of the Original DIP Term Sheet is amended to replace reference to $300,000 with "$460,000".

## 2. CONSTRUCTION AND INTERPRETATION

This First Amendment shall be read together with the Original DIP Term Sheet. This First Amendment is governed exclusively by, and is to be enforced, construed and interpreted exclusively in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario which is deemed to be the proper law of this First Amendment. If there is a conflict between the

terms and conditions of the Original DIP Term Sheet and the terms and conditions of this First Amendment, the terms and conditions of this First Amendment shall prevail.

## 3. COUNTERPARTS

This First Amendment may be executed by the parties in counterparts and may be executed and delivered by electronic transmission.

**[*Signature page follows*]**

**IN WITNESS HEREOF**, the parties hereby execute this First Amendment to the Interim DIP Financing Term Sheet as at the date first above mentioned.

Address:

6260 Hwy 7, Unit 1
Vaughan, Ontario, L4H 4G3

Attention: Anna Eliopoulos
Email: peterandpauls@gmail.com

**PETER AND PAUL'S GIFTS LIMITED**

Per: _____
Name: Anna Eliopoulos
Title: President

I have authority to bind the corporation.

Address:

6260 Hwy 7, Unit 1
Vaughan, Ontario, L4H 4G3

Attention: Peter Eliopoulos
Email: peterandpauls@gmail.com

With a copy to:

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario, M5K 1E7

Attention: Jennifer Stam
Email:
jennifer.stam@nortonrosefulbright.com

**BORROWER:**
**2505243 ONTARIO LIMITED**

Per: _____
Name: Peter Eliopoulos
Title: President

I have authority to bind the corporation.

# SECOND AMENDMENT TO INTERIM DIP FINANCING TERM SHEET

This Second Amendment (the "**Second Amendment**") to the Interim DIP Financing Term Sheet dated as of October 16, 2020 (as amended on November 30, 2020 pursuant to the First Amendment to the Interim DIP Financing Term Sheet, the "**DIP Term Sheet**") is dated as of the 18th day of January, 2021.

**BETWEEN:**

**2505243 ONTARIO LIMITED**

(the "**Borrower**")

**AND:**

**PETER AND PAUL'S GIFTS LIMITED**

(the "**DIP Lender**")

**WHEREAS**, the Borrower requested and the DIP Lender agreed to provide financing to the Borrower during the pendency of the Borrower's proceedings under the *Bankruptcy and Insolvency* Act, which commenced upon the Borrower's filing of a notice of intention to make a proposal on September 24, 2020;

**AND WHEREAS**, the Borrower and the DIP Lender entered into the DIP Term Sheet;

**AND WHEREAS**, the Borrower and the DIP Lender wish to further amend the DIP Term Sheet on the terms set out in this Second Amendment.

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

## 1. AMENDMENT TO DIP TERM SHEET

The Borrower and the DIP Lender agree that the DIP Term Sheet is amended as follows:

(a) the definition of "Facility Amount" as defined in paragraph 4 of the DIP Term Sheet is amended to replace reference to $300,000 with "$900,000"; and

(b) the first sentence of paragraph 5 of the DIP Term Sheet is replaced in its entirety with "Interest shall be payable in cash on the aggregate of the outstanding principal amount of the Facility Amount (i) at a rate equal to 5% in respect of advances up to the principal amount of $460,000, and (ii) at a rate equal to 7% in respect of advances to the subsequent principal amount of $440,000, in each case per annum, compounded monthly and payable in full on the Maturity Date."

## 2. CONSTRUCTION AND INTERPRETATION

This Second Amendment shall be read together with the DIP Term Sheet. This Second Amendment is governed exclusively by, and is to be enforced, construed and interpreted exclusively in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario which is deemed to be the proper law of this Second Amendment. If there is a conflict between the terms and conditions of the DIP Term Sheet and the terms and conditions of this Second Amendment, the terms and conditions of this Second Amendment shall prevail.

## 3. COUNTERPARTS

This Second Amendment may be executed by the parties in counterparts and may be executed and delivered by electronic transmission.

**[*Signature page follows*]**

**IN WITNESS HEREOF**, the parties hereby execute this Second Amendment to the Interim DIP Financing Term Sheet as at the date first above mentioned.

Address:

6260 Hwy 7, Unit 1
Vaughan, Ontario, L4H 4G3

Attention: Anna Eliopoulos
Email: peterandpauls@gmail.com

**PETER AND PAUL'S GIFTS LIMITED**

Per: _____
Name: Anna Eliopoulos
Title: President

I have authority to bind the corporation.

Address:

6260 Hwy 7, Unit 1
Vaughan, Ontario, L4H 4G3

Attention: Peter Eliopoulos
Email: peterandpauls@gmail.com

With a copy to:

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario, M5K 1E7

Attention: Jennifer Stam
Email:
jennifer.stam@nortonrosefulbright.com

**BORROWER:**
**2505243 ONTARIO LIMITED**

Per: _____
Name: Peter Eliopoulos
Title: President

I have authority to bind the corporation.

THIS IS **EXHIBIT "B"** TO THE AFFIDAVIT OF
PETER ELIOPOULOS SWORN BEFORE ME VIA
VIDEOCONFERENCE IN THE CITY OF OAKVILLE,
IN THE PROVINCE OF ONTARIO,
THIS 24TH DAY OF FEBRUARY, 2021.

*A Commissioner for taking Affidavits in Ontario*

# THIRD AMENDMENT TO INTERIM DIP FINANCING TERM SHEET

This Third Amendment (the "**Third Amendment**") to the Interim DIP Financing Term Sheet dated as of October 16, 2020 (as amended on November 30, 2020 pursuant to the First Amendment to the Interim DIP Financing Term Sheet and as further amended on January 18, 2021 pursuant to the Second Amendment to the Interim DIP Financing Term Sheet, the "**DIP Term Sheet**") is dated as of the 24th day of February, 2021.

**BETWEEN:**

**2505243 ONTARIO LIMITED**

(the "**Borrower**")

**AND:**

**PETER AND PAUL'S GIFTS LIMITED**

(the "**DIP Lender**")

**WHEREAS**, the Borrower requested and the DIP Lender agreed to provide financing to the Borrower during the pendency of the Borrower's proceedings under the *Bankruptcy and Insolvency* Act, which commenced upon the Borrower's filing of a notice of intention to make a proposal on September 24, 2020;

**AND WHEREAS**, the Borrower and the DIP Lender entered into the DIP Term Sheet;

**AND WHEREAS**, the Borrower and the DIP Lender wish to further amend the DIP Term Sheet on the terms set out in this Third Amendment.

**NOW THEREFORE**, in consideration of the premises and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the parties hereto agree as follows:

## 1. AMENDMENT TO DIP TERM SHEET

The Borrower and the DIP Lender agree that the DIP Term Sheet is amended as follows:

(a) the definition of "Facility Amount" as defined in paragraph 4 of the DIP Term Sheet is amended to replace reference to $300,000 with "$1,500,000".

## 2. CONSTRUCTION AND INTERPRETATION

This Third Amendment shall be read together with the DIP Term Sheet. This Third Amendment is governed exclusively by, and is to be enforced, construed and interpreted exclusively in accordance with, the laws of Ontario and the laws of Canada applicable in Ontario which is deemed to be the proper law of this Third Amendment. If there is a conflict between the terms and

conditions of the DIP Term Sheet and the terms and conditions of this Third Amendment, the terms and conditions of this Third Amendment shall prevail.

## 3. COUNTERPARTS

This Third Amendment may be executed by the parties in counterparts and may be executed and delivered by electronic transmission.

**[*Signature page follows*]**

**IN WITNESS HEREOF**, the parties hereby execute this Third Amendment to the Interim DIP Financing Term Sheet as at the date first above mentioned.

Address:

6260 Hwy 7, Unit 1
Vaughan, Ontario, L4H 4G3

Attention: Anna Eliopoulos
Email: peterandpauls@gmail.com

**PETER AND PAUL'S GIFTS LIMITED**

Per: _____
Name: Anna Eliopoulos
Title: President

I have authority to bind the corporation.

Address:

6260 Hwy 7, Unit 1
Vaughan, Ontario, L4H 4G3

Attention: Peter Eliopoulos
Email: peterandpauls@gmail.com

With a copy to:

Norton Rose Fulbright Canada LLP
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, Ontario, M5K 1E7

Attention: Jennifer Stam
Email:
jennifer.stam@nortonrosefulbright.com

**BORROWER:**
**2505243 ONTARIO LIMITED**

Per: _____
Name: Peter Eliopoulos
Title: President

I have authority to bind the corporation.

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

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF PETER ELIOPOULOS**
**(Sworn February 24, 2021)**
**(Extension of Time to File a Proposal and Further DIP Increase)**

**NORTON ROSE FULBRIGHT CANADA LLP**
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

**Jennifer Stam** (LSO# 46735J)
Tel: 416-202-6707
Email: Jennifer.stam@nortonrosefulbright.com
**Randy Sutton** (LSO# 50369C)
Tel: 416-216-4046
Email: randy.sutton@nortonrosefulbright.com

Fax: 416-216-3930

Lawyers for 2505243 Ontario Limited

# TAB 3

Estate/Court File No.: 31-2675288

***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**

# AFFIDAVIT OF PETER ELIOPOULOS
**(Sworn January 18, 2021)**
**(Extension of Time to File a Proposal and Further DIP Increase)**

I, Peter Eliopoulos, of the City of Toronto and the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1 I am the Founder and President of 2505243 Ontario Limited (the **Company**) and, as such, have knowledge of the facts stated herein.

2 Except as otherwise indicated, the facts set forth in this Affidavit are based upon my personal knowledge, my review of relevant documents and information provided to me by employees working under my supervision, or in my opinion based upon my experience, knowledge and information concerning the operations of the Company and the industry in which it operates. Where I do not possess personal knowledge, I state the source of my information and, in all such cases, verily believe it to be true.

3 I swear this affidavit in connection with the Company's filing of a notice of intention (**NOI**) to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (**BIA**) and its current motion seeking, among other things, an order:

(a) extending the time in which the Company must file a proposal pursuant to Section 50.4(9) of the BIA;

(b) further increasing the maximum borrowing available in Post-Filing Advances (as defined in the Order of this Court dated October 20, 2020, the **October 20 Order**) from $460,000 to $900,000; and

(c) approving the fourth report (the **Fourth Repor**t) of KSV Restructuring Inc. as proposal trustee (the **Proposal Trustee**) and the activities of the Proposal Trustee described therein.

## A. BACKGROUND

4 On September 24, 2020, the Company filed a NOI to make a proposal pursuant to the BIA and commenced these proceedings (the **NOI Proceedings**). KSV Restructuring Inc. was named as the Proposal Trustee in the NOI Proceedings.

5 The filing was made in response to the filing of an application for a bankruptcy order by Princes Gates GP Inc., the general partner of Princes Gates Hotel Limited Partnership (collectively, **PGH**) and a small number of other trade creditors of the Company.

6 Further details regarding the background of the Company and the facts leading up to these proceedings are set out in my affidavits sworn September 25, 2020 (the **Initial Affidavit**) and October 16, 2020, and therefore are not repeated herein. I understand that copies of my previous affidavits will be included for reference in the Company's motion record (the **Motion Record**).

7 On October 20, 2020, the Company sought and obtained the October 20 Order for, among other things, (a) extension of time to file a proposal in the NOI Proceedings to December 8, 2020; (b) approval of the Administration Charge (as defined in the October 20 Order); and (c) approval of post-filing funding up to $300,000 from Peter and Paul's Gifts Limited (the **DIP Lender**).

8 Since the granting of the October 20 Order, I understand that the Company and PGH have agreed to an expedited litigation timetable with respect to the Company's litigation claim against PGH (the **Action**). As mentioned in the Initial Affidavit, one of the primary reasons to file the NOI was to seek protection under the BIA so that the Company can obtain a streamlined and clear path forward on the Action with the ultimate goal of recovery from PGH and repayment to creditors. As such, obtaining an endorsement securing the litigation timetable dates was a critical step in these NOI proceedings.

**PGH Litigation Update**

9 On November 10, 2020, the Court endorsed (the **Endorsement**) the following timetable:

(a) motions for security for costs (**Security for Costs Motion**) and certificate of pending litigation (**CPL Motion**) were scheduled to be heard concurrently on December 4, 2020;

(b) the pre-trial settlement conference is scheduled to be heard on February 9, 2021;

(c) the trial management conference is scheduled to be heard on February 19, 2021 (changed from February 22, 2021 as set out in the Endorsement); and

(d) the trial is scheduled to commence on March 1, 2021.

10 I understand that a copy of the Endorsement will be included in the Motion Record.

11 On December 4, 2020, the Company sought and obtained orders:

(a) extending the time for filing a proposal in its NOI Proceedings to January 22, 2021 to pursue its litigation claim against PGH; and

(b) increasing the maximum post-filing funding from $300,000 to $460,000.

12 In a separate motion, also heard on December 4, 2020, the Court endorsed and set the amount of security for costs that the Company must post by January 21, 2021, at $500,000 (the **Security Endorsement**). The Company is currently in the process of finalizing arrangements for the posting of the security for costs with funding outside of the interim financing under the DIP Term Sheet (as defined below). I understand that the Security Endorsement will be included in the Motion Record.

13 The Company did not proceed with the CPL Motion.

**MOL Proceedings**

14 Between September and November 2020, certain former employees of the Company filed complaints with the Ministry of Labour, Training and Skills Development (the **MOL**) against the Company alleging various employment-related compensation issues. On December 22, 2020 and January 11, 2021, the MOL released decisions finding in favour of these former employees and ordered the Company to, among other things, pay each of these former employees certain amounts pursuant to the *Employment Standards Act, 2000*, S.O. 2000, c. 41. I understand that the Company is determining whether to appeal the foregoing decisions of the MOL. In the meantime, I am advised that these decisions and corresponding orders will potentially increase the Company's liabilities.

## B. CASH FLOW AND FUNDING

15 As set out in my Initial Affidavit, the Company has understood that funding would need to be provided going forward given that the Company has not been able to generate any revenue since the shutdown in March and purported termination by PGH in July.

16 I understand that an updated cash flow projection will be filed with the Fourth Report.

17 As set out above, the DIP Lender initially agreed to fund the Company up to $300,000 (the **Original DIP Amount**) pursuant to a DIP Term Sheet dated as of October 16, 2020 (the **DIP Term Sheet**), which was approved by the Court on October 20, 2020. The DIP Lender subsequently agreed to increase the maximum amount of Post-Filing Advances to $460,000 pursuant to an amendment to the DIP Term Sheet dated November 30, 2020 (the **First DIP Amendment**), which was approved by the Court on December 4, 2020. Copies of the DIP Term Sheet and the First DIP Amendment are attached hereto as Exhibits “A” and “B”, respectively.

18 The Company’s expenses are now projected to exceed $460,000. As such, the DIP Lender has agreed to further increase the maximum amount of Post-Filing Advances by $440,000 (the **DIP Increase Amount**) pursuant to an amendment to the DIP Term Sheet dated January 18, 2021 (the **Second DIP Amendment**) to bring the maximum amount available to be borrowed under the DIP facility to $900,000. Pursuant to the Second DIP Amendment, the DIP Increase Amount will accrue interest at 7%, whereas prior Post-Filing Advances (*i.e.* up to the first $460,000) were advanced at an interest rate of 5%. The increase in the interest rate accounts for, among other things, the increased risks and potential liabilities of the estate. The Post-Filing Advances will continue to be used to fund the Company’s minimal operating costs, litigation and other professional costs of the NOI Proceedings. A copy of the Second DIP Amendment is attached hereto as Exhibit “C”.

## C. EXTENSION OF TIME TO FILE A PROPOSAL

19 The current date by which the Company must file a proposal is January 22, 2021. The Company requires an extension of the time in which it must file a proposal to March 8, 2021 so that it may further pursue the Action in accordance with the timetable as set out

in the Endorsement. I believe that the continued pursuit of the litigation is in the best interest of creditors.

20 The Company has worked with the Proposal Trustee to prepare a revised cash flow forecast (the **Revised Cash Flow**) for the proposed extension period, a copy of which will be attached to the Fourth Report. The Revised Cash Flow indicates that the Company will have sufficient funds to fund its expenses during the extension period provided the Second DIP Amendment is approved.

21 The Company is acting in good faith and with due diligence.

22 I do not believe any stakeholder will be materially prejudiced by the extension.

SWORN BEFORE ME via videoconference at the City of Oakville, in the Province of Ontario, this 18th day of January, 2021.

A Commissioner for taking Affidavits *(or as may be)*

**PETER ELIOPOULOS**

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

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF PETER ELIOPOULOS**
**(Sworn January 18, 2021)**
**(Extension of Time to File a Proposal and Further DIP Increase)**

**NORTON ROSE FULBRIGHT CANADA LLP**
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Lawyers for 2505243 Ontario Limited

# TAB 4

Estate/Court File No.: 31-2675288

***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**

# AFFIDAVIT OF PETER ELIOPOULOS
**(Sworn November 30, 2020)**

I, Peter Eliopoulos, of the City of Toronto and the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1 I am the Founder and President of 2505243 Ontario Limited (the **Company**) and, as such, have knowledge of the facts stated herein.

2 Except as otherwise indicated, the facts set forth in this Affidavit are based upon my personal knowledge, my review of relevant documents and information provided to me by employees working under my supervision, or in my opinion based upon my experience, knowledge and information concerning the operations of the Company and the industry in which it operates. Where I do not possess personal knowledge, I state the source of my information and, in all such cases, verily believe it to be true.

3 I swear this affidavit in connection with the Company's filing of a notice of intention (**NOI**) to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (**BIA**) and its current motion seeking, among other things, an order:

(a) extending the time in which the Company must file a proposal pursuant to Section 50.4(9) of the BIA;

(b) increasing the maximum borrowing available in Post-Filing Advances (as defined in the Order of this Court dated October 20, 2020, the **October 20 Order**) from $300,000 to $460,000; and

(c) approving the third report (the **Third Repor**t) of KSV Restructuring Inc. as proposal trustee (the **Proposal Trustee**) and the activities of the Proposal Trustee described therein.

## A. BACKGROUND

4 On September 24, 2020, the Company filed a NOI to make a proposal pursuant to the BIA and commenced these proceedings (the **NOI Proceedings**). KSV Restructuring Inc. was named as the Proposal Trustee in the NOI Proceedings.

5 The filing was made in response to the filing of an application for a bankruptcy order by PGH Gates GP Inc., the general partner of Princes Gates Hotel Limited Partnership (collectively, **PGH**) and a small number of other trade creditors of the Company.

6 Further details regarding the background of the Company and the facts leading up to these proceedings are set out in my affidavits sworn September 25, 2020 (the **Initial Affidavit**) and October 16, 2020, and therefore are not repeated herein. I understand that copies of my previous affidavits will be included for reference in the Company's motion record (the **Motion Record**).

7 On October 20, 2020, the Company sought and obtained the October 20 Order for, among other things, (a) extension of time to file a proposal in the NOI Proceedings to December 8, 2020; (b) approval of the Administration Charge (as defined in the October 20 Order); and (c) approval of post-filing funding up to $300,000 from Peter and Paul's Gifts Limited (the **DIP Lender**).

8 At the time, the purpose of the extension was to allow the Company to further pursue its litigation claim against PGH and to seek to realize upon any other assets.

## B. PGH LITIGATION UPDATE

9 Since the granting of the October 20 Order, I understand that the Company and PGH have agreed to an expedited litigation timetable with respect to the Company's litigation claim against PGH (the **Action**). As mentioned in the Initial Affidavit, one of the primary reasons to file the NOI was to seek protection under the BIA so that the Company can obtain a streamlined and clear path forward on the Action with the ultimate goal of recovery from

PGH and repayment to creditors. As such, obtaining an endorsement securing the litigation timetable dates was a critical step in these NOI proceedings.

10 On November 10, 2020, the Court endorsed (the **Endorsement**) the following timetable:

(a) motions for security for costs (**Security for Costs Motion**) and certificate of pending litigation (**CPL Motion**) are scheduled to be heard concurrently with this motion on December 4, 2020;

(b) the pre-trial settlement conference is scheduled to be heard on February 9, 2021;

(c) the trial management conference is scheduled to be heard on February 22, 2021;

(d) and the trial is scheduled to commence on March 1, 2021.

11 I understand that a copy of the Endorsement will be included in the Motion Record. The Company has since determined it will not bring the CPL Motion. PGH's Security for Costs Motion is still returnable on December 4, 2020.

## C. CASH FLOW AND FUNDING

12 As set out in my Initial Affidavit, the Company has understood that funding would need to be provided going forward given that the Company has not been able to generate any revenue since the shutdown in March and purported termination by PGH in July.

13 I understand that an updated cash flow projection will be filed with the Third Report.

14 As set out above, the DIP Lender previously agreed to fund the Company up to $300,000 (the **Original DIP Amount**) pursuant to a DIP Term Sheet dated as of October 16, 2020 (the **DIP Term Sheet**) which was approved by the Court on October 20, 2020. A copy of the DIP Term Sheet is attached hereto as Exhibit "A".

15 As set out below, the Company's expenses are now projected to exceed the Original DIP Amount. As such, the DIP Lender has agreed to increase the Original DIP Amount to $460,000 pursuant to an amendment to the DIP Term Sheet dated November 30, 2020 (the **DIP Amendment**). The Post-Filing Advances will continue to be used to fund the Company's minimal operating costs, litigation and other professional costs of the NOI proceeding. A copy of the DIP Amendment is attached hereto as Exhibit "B".

## D. EXTENSION OF TIME TO FILE A PROPOSAL

16 The current date by which the Company must file a proposal is December 8, 2020. The Company requires an extension of the time in which it must file a proposal to January 22, 2021 so that it may further pursue the Action in accordance with the timetable as set out in the Endorsement. I believe that the continued pursuit of the litigation is in the best interest of creditors.

17 The Company has worked with the Proposal Trustee to prepare a revised cash flow forecast (the **Revised Cash Flow**) for the proposed extension period, a copy of which will be attached to the Third Report. The Revised Cash Flow indicates that the Company will have sufficient funds to fund its expenses during the extension period provided the DIP Amendment is approved.

18 The Company is acting in good faith and with due diligence.

19 I do not believe any stakeholder will be materially prejudiced by the extension.

SWORN BEFORE ME via videoconference this 30th day of November, 2020.

A Commissioner for taking Affidavits *(or as may be)*

Erika Anschuetz

**PETER ELIOPOULOS**

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

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF PETER ELIOPOULOS**
**(Sworn November 30, 2020)**
**(Extension of Time to File a Proposal and DIP Increase)**

**NORTON ROSE FULBRIGHT CANADA LLP**
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Lawyers for 2505243 Ontario Limited

# TAB 5

Estate/Court File No.: 31-2675288

***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**

**AFFIDAVIT OF PETER ELIOPOULOS**
**(Sworn October 16, 2020)**

I, Peter Eliopoulos, of the City of Toronto and the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1 I am the Founder and President of 2505243 Ontario Limited (the **Company**) and, as such, have knowledge of the facts stated herein.

2 Except as otherwise indicated, the facts set forth in this Affidavit are based upon my personal knowledge, my review of relevant documents and information provided to me by employees working under my supervision, or in my opinion based upon my experience, knowledge and information concerning the operations of the Company and the industry in which it operates its business. Where I do not possess personal knowledge, I state the source of my information and, in all such cases, verily believe it to be true.

3 I swear this affidavit in connection with the Company's filing of a notice of intention (**NOI**) to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (**BIA**) and its current motion seeking, among other things, an order (a) an extension of the time in which the Company must file a proposal pursuant to Section 50.4(9) of the BIA; (b) granting the Administration Charge (defined below); and (c) granting a DIP Lender's Charge (defined below).

## A. BACKGROUND

4 The Company is one company in a broader group of companies (the **Group**) that is a family run business that is operated under the business name "byPeterandPauls.com". For over 38 years, the Group has operated in the hospitality industry and we operate several restaurants and event venues across Ontario including Eaton Hall, the Savoy,

Vue, the Clubhouse, Bellagio, Paramount, Universal, The Manor, The Kortright Centre, Black Creek Pioneer Village, Mennagio Restaurant, David Duncan House, PeterandPaulsEventCatering, Peter and Pauls Gifts, S4 Sound Sensation and Audio Visual, and Pure Decor.

5 The Company was formed under the Ontario *Business Corporations Act* and has its registered address in Vaughan, Ontario. The directors of the Company are myself and my business partner, Konstantine Dean Galanis. The Company itself, until recently, provided food, beverage and catering services at the property known as the Hotel X Toronto in Toronto, Ontario located at 111 Princes' Boulevard in Toronto, Ontario (**Hotel X**). Hotel X is operated by Princes Gates GP Inc., the general partner of Princes Gates Hotel Limited Partnership (collectively **PGH**).

6 Further background regarding the Company and the current status of its business and litigation with PGH is set out in my previous affidavit sworn September 25, 2020 (my **Initial Affidavit**) and therefore not repeated herein. I understand that a copy of my Initial Affidavit will be included for reference in the Company's motion record (the **Motion Record**).

7 On September 24, 2020, the Company filed a notice of intention to make a proposal pursuant to the BIA. KSV Restructuring Inc. was appointed as the proposal trustee (the **Proposal Trustee**) in these proceedings. The filing was made in response to the filing of an application for a bankruptcy order (the **Bankruptcy Application**) by PGH and a small number of other trade creditors of the Company.

*The Stay Motion*

8 Immediately upon filing the NOI, the Company brought a motion returnable before the Court to determine the issue of staying the Bankruptcy Application (the **Stay Motion**). The motion was originally returnable on September 29, 2020 but was adjourned to October 9, 2020.

9 On October 9, 2020, the stay motion was heard by this Honourable Court. The decision of the Court was issued on October 9, 2020 confirming that the Bankruptcy Application was stayed. I understand that a copy of the Court's decision (the **Endorsement**) and the order granting the stay (the **Bankruptcy Application Stay Order**) will be included in the Motion Record.

## B. STATUS OF THE LITIGATION

10 Pursuant to the Endorsement, Justice Koehnen indicated that the litigation claim between the Company and PGH called for case management. The Company's counsel has contacted PGH's counsel to agree on the terms of a workable timetable. I understand that any directions necessary will be sought at the return date of this motion.

## C. DIP LENDER'S CHARGE

11 As set out in my Initial Affidavit, the Company has understood that funding would need to be provided going forward. Given that the Company has no projected revenue, I believe trying to obtain third party financing would be difficult if not impossible.

12 As such, Peter and Paul's Gifts Limited (in such capacity, the **DIP Lender**)**,** a related party and member of the Group has agreed to provide secured funding to the Company to ensure sufficient funds are available in accordance with the Company's cash flow forecast.

13 The Company and the DIP Lender are discussing terms of a debtor-in-possession financing term sheet (the **DIP Term Sheet**) which would provide an initial amount of funding of $300,000 to fund the Company's current forecast period. I anticipate that further funding will be made available going forward after the next 45 day period but because of time constraints, the Company needed to ensure at least interim funding was available. I anticipate that the DIP Term Sheet will be finalized in the next day and will be attached to the second report of the Proposal Trustee (the **Second Report**).

14 The willingness of the DIP Lender to provide funding is conditional upon the DIP Lender receiving a super priority charge (the **DIP Lender's Charge**) which will be subject to only the Administration Charge and any amounts owing to the Ministry of Finance to the extent it has a valid priority claim as a result of its personal property registry (**PPR**) financing statement made on August 10, 2020. The Company has no other outstanding secured creditors. Attached as Exhibit "A" is a copy of a PPR search with a file currency date of September 10, 2020.

## D. ADMINISTRATION CHARGE

15 My Initial Affidavit set out the basis for seeking an administration charge to secure the fees and expenses of counsel for the Company, the Proposal Trustee and its counsel (the

**Administration Charge**). I believe that an Administration Charge in the maximum amount of $100,000 is necessary, appropriate and reasonable under the circumstances and should be granted by this Court.

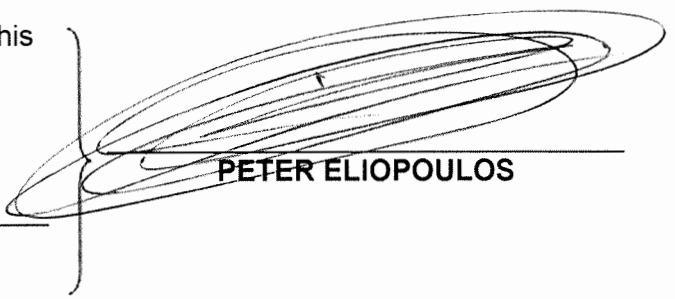
16 I understand that the Proposal Trustee is supportive of the administration charge and the amount thereof.

## E. EXTENSION OF TIME TO FILE A PROPOSAL

17 The current date by which the Company must file a proposal is October 24, 2020. The Company requires an extension of the time in which it must file a proposal for 45 days so that it may further pursue the litigation claim against PGH and look to realize upon any other assets. The Company is acting in good faith and with due diligence.

18 The Company is currently working to finalize a cash flow forecast with the Proposal Trustee which will demonstrate the Company has sufficient funds to fund its proposed extension period. I understand that the finalized cash flow forecast will be attached to the Second Report.

SWORN BEFORE ME via videoconference this 16th day of October, 2020.



**PETER ELIOPOULOS**

Erika Anschuetz
A Commissioner for taking Affidavits *(or as may be)*

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

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF PETER ELIOPOULOS**
**(Sworn October 16, 2020)**

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Lawyers for 2505243 Ontario Limited

# TAB 6

Estate/Court File No.: 31-2675288

***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**

# AFFIDAVIT OF PETER ELIOPOULOS
**(Sworn September 25, 2020)**

I, Peter Eliopoulos, of the City of Toronto and the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1 I am the Founder and President of 2505243 Ontario Limited (the **Company**) and, as such, have knowledge of the facts stated herein.

2 Except as otherwise indicated, the facts set forth in this Affidavit are based upon my personal knowledge, my review of relevant documents and information provided to me by employees working under my supervision, or in my opinion based upon my experience, knowledge and information concerning the operations of the Company and the industry in which it operates its business. Where I do not possess personal knowledge, I state the source of my information and, in all such cases, verily believe it to be true.

3 I swear this affidavit in connection with the Company's recent filing of a notice of intention (**NOI**) to make a proposal under the *Bankruptcy and Insolvency Act*, R.S.C. 1985 c. B-3 (**BIA**) and its current motion seeking, among other things, an order (a) granting an administration charge in favour of the Company's counsel and the Proposal Trustee (defined below) and its counsel; and (b) confirming the application of the NOI Stay (defined below) to the Bankruptcy Application (defined below).

## A. BACKGROUND

4 The Company is one company in a broader group of companies (the **Group**) that is a family run business that is operated under the business name "byPeterandPauls.com". For over 38 years, the Group has operated in the hospitality industry and we operate several restaurants and event venues across Ontario including Eaton Hall, the Savoy,

Vue, the Clubhouse, Bellagio, Paramount, Universal, The Manor, The Kortright Centre, Black Creek Pioneer Village, Mennagio Restaurant, David Duncan House, PeterandPaulsEventCatering, Peter and Pauls Gifts, S4 Sound Sensation and Audio Visual, and Pure Decor.

5 The Company was formed under the Ontario *Business Corporations Act* and has its registered address in Vaughan, Ontario. The directors of the Company are myself and my business partner, Konstantine Dean Galanis. The Company itself, until recently, provided food, beverage and catering services at the property known as the Hotel X Toronto in Toronto, Ontario located at 111 Princes' Boulevard in Toronto, Ontario (**Hotel X**). Hotel X is operated by Princes Gates GP Inc., the general partner of Princes Gates Hotel Limited Partnership (collectively **PGH**).

6 The Company now finds itself in the unfortunate position of having had to file a NOI in response to the high-handed actions of PGH in order to preserve the businses, including:

(a) PGH's termination of the Service Agreements (defined below) between PGH and the Company on the eve of Hotel X re-opening in July 2020 after being closed for several months due to the worldwide pandemic; and

(b) PGH filing an application for a bankruptcy order (the **Bankruptcy Application**) after PGH was served with a statement of claim by the Company in connection with what we believe to have been an unlawful termination of the Service Agreements.

*The Business at Hotel X*

7 As set out above, the Company was the main operating entity for the restaurants and catering services provided to Hotel X pursuant to two commercial leasing agreements both dated as of January 4, 2017 with Hotel X (collectively, the **Leases**) and a Food and Beverage Agreement dated as of January 4, 2017 with Hotel X, and amended March 16, 2018 (the **F&B Agreement** and together with the Leases, the **Service Agreements**). The Service Agreements all contain "Events of Default", the process for written notification of such and the applicable "cure periods" during which the Company may remedy outstanding Events of Default.

8 Pursuant to the Service Agreements, the Company was to be the exclusive provider of food and beverage services at Hotel X through its banquet facilities, conference room facilities, cinema, rooftop bar, VIP lounge and room service offerings (the **Services**).

9 We were initially very excited about the opportunity to work with PGH and operate at Hotel X. During the negotiations of the Service Agreements, extensive representations were made by PGH as to the Hotel's construction and sales that had been booked. However, in reality, Hotel X's construction was delayed for years and even to this date, certain parts of Hotel X remain unfinished and no "grand opening" has ever occurred.

10 The Company commenced operations under the Service Agreements in March 2018, first opening the restaurant Maxx's Kitchen and, after extensive delay, opened its second restaurant, Petros 82 (and together with Maxx's Kitchen, the **Restaurants**) in September 2019. The Company has invested over $7 million in connection with the Service Agreements and operations at Hotel X.

11 On March 23, 2020, as a result of the Province-wide shut down due to COVID-19, Hotel X closed. As a result, the Company had to cease operating at Hotel X immediately although it continued to pay rent through the end of March. The Company was forced to lay off over 275 employees.

12 To mitigate its losses, while Hotel X was closed, the Company:

(a) sought Hotel X's permission to re-open Petros82 and Maxx's Kitchen for take-out services and patio dining once that option became available; and

(b) requested that Hotel X management work with us to pursue government assistance under the Canada Emergency Commercial Rent Assistance (**CECRA**) program for which the Company and PGH qualify.

13 Hotel X has refused to cooperate with any mitigation or revenue generating attempts by the Company and instead, on July 2, 2020, Hotel X purported to terminate the Service Agreements.

14 The Termination Letter sets out a number of alleged defaults under the Service Agreements. Notably, the Company was not provided an opportunity to cure any alleged default following receipt of the Termination Letter as required by the Service Agreements.

15 None of the alleged defaults outlined in the Termination Letter in my opinion constitute an event of default entitling Hotel X to terminate the Service Agreements in circumstances where Hotel X was in fact closed and we were unable to operate.

16 After the issuance of the Termination Letter, PGH:

(a) Changed passwords and blocked access to PGH's systems and servers and email accounts used by over 50 of the Company's employees in respect of Hotel X matters;

(b) Broke the locks on approximately 100 lockers that contained personal effects of the Company staff which were left "bagged and tagged" in the loading dock area and gave no opportunity for the Company or its employees to assess whether employee belongings are missing; and

(c) Sent harmful and misleading written and oral communications to the Company's suppliers, clients, former employees and landlords.

17 All of these actions were taken with no notice to the Company. To this date, we are still unsure of the status of some of our remaining assets which remain on the premises and to which we have not had access.

18 The Termination Letter coincided with the scheduled reopening of Hotel X and the announcement that Hotel X had been selected as one of the venues to accommodate players from the National Hockey League who were resuming their 2020 season.

19 It is now abundantly clear that Hotel X has taken this high handed and, in our view, improper approach to permit its new preferred operator, Harlo Entertainment (**Harlo**) to come in to operate the Restaurants and provide the Services.

*The Company's Litigation Claim*

20 On July 20, 2020, the Company commenced an action in the Ontario Superior Court of Justice, bearing Court File No. CV-20-644262, against PGH (as amended, the **Action**). The Action seeks, among other things, the following relief:

(a) An interim, interlocutory and permanent injunction prohibiting Hotel X from interfering with the Company's right of possession at the Hotel X premises in connection with the Leases;

(b) An interim, interlocutory and permanent injunction prohibiting Hotel X from interfering with the Company's right of access to and use of the facilities during the term of the F&B Agreement;

(c) A certificate of pending litigation with respect to the premises at Hotel X;

(d) A declaration that the Service Agreements had not been terminated and remain in force; and

(e) In the alternative, damages for breach of contract and breach of the duty of good faith in contractual performance in the amount of $50,000,000.

A copy of the Company's Amended Amended Statement of Claim is attached hereto as Exhibit "A".

21 PGH has not yet responded to the Action.

*The Bankruptcy Application*

22 Instead of responding to the Action, on September 9, 2020, PGH commenced a Bankruptcy Application against the Company seeking a bankruptcy order in respect of the Company's property, bearing Court File No. BK-20-00208450-OT31 (**Bankruptcy Application**). A copy of the Bankruptcy Application is attached hereto as Exhibit "B". There are five (5) other creditors of the Company's listed as applying creditors on the Bankruptcy Application. To the best of my knowledge, the Company had not been contacted by any of the creditors formally demanding payment of these outstanding amounts and disputes certain of the amounts listed as outstanding including, importantly, the "debt" claim of PGH.

23 The hearing date of the Bankruptcy Application is scheduled for September 28, 2020.

*The NOI Filing*

24 On September 24, 2020, the Company made the decision to file an NOI pursuant to the BIA in order to restructure the business and ultimately make a proposal to the Company's creditors. In connection with the NOI, KSV Restructuring Inc. was appointed as proposal trustee (the **Proposal Trustee**) in the NOI proceedings. The Company's counsel notified PGH's lawyers of the NOI filing on September 24, 2020 a copy of which is attached as Exhibit "C". The certificate of NOI filing dated September 24, 2020 is attached as Exhibit "D".

25 The decision to file an NOI was not made lightly by the Company. We take pride in our reputation and our business but given the ongoing tactics and behaviour of PGH, we felt

it was the right thing for this company and our creditors to seek protection under the BIA so that we may obtain a streamlined and clear path forward on the Action with the ultimate goal of recovery from PGH and repayment of our creditors.

*Financial Position and Cash Flow Forecast*

26 The Company has not been able to generate any revenue since the shutdown in March and purported termination by PGH in July and has been forced to terminate substantially all of its employees. The Company has outstanding trade creditor debt of approximately $2 million. Additionally other members of the Group are owed over $4 million for the investment put into the Company at Hotel X.

27 There is currently an investigation by the Ministry of Labour in connection with employee termination and severance claims due to specific provisions of the *Employment Standards Act* relating to service providers. The Company paid all employees their wages and vacation pay up to their last day of work.

28 The Company has no outstanding secured creditors with registrations under the personal property registry of Ontario other than the Ministry of Finance in respect of a small amount of Employer Health Tax that is owing. The Company also has approximately $150,000 owing in respect of other government remittances.

29 With the assistance of the Proposal Trustee, the Company is in the process of preparing cash flow forecast which it expects to file with the assistance of the Proposal Trustee within the required time.

**B. RELIEF SOUGHT**

*Stay of the Bankruptcy Application*

30 I am advised by Jennifer Stam of NRFC that for technical legal reasons we are seeking confirmation that the Bankruptcy Application is “stayed” as a result of the filing of the NOI.

*Administration Charge*

31 During these proceedings, the Company will require the continued assistance of its counsel, NRFC as well as the Proposal Trustee and its counsel.

32 I am advised by Ms. Stam that in NOI proceedings, it is common to seek approval of a charge on the assets of the debtor company to secure payment of professional fees. I believe that an administration charge in the maximum amount of $100,000 is necessary, appropriate and reasonable under the circumstances and should be granted by this Court.

33 I understand that the Proposal Trustee is supportive of the administration charge and the amount thereof.

## C. CONCLUSION AND NEXT STEPS

34 In the event that this relief is granted, the Company intends to immediately engage with PGH (through counsel) to attempt to reach consensus on an efficient and expeditious path to proceed with the Action. Although I am hopeful that a sensible roadmap may be reached, I anticipate that further guidance and the Court may be needed and if that is the case, we anticipate returning to this Court in the near future.

SWORN BEFORE ME via videoconference this 25th day of September, 2020.

A Commissioner for taking Affidavits *(or as may be)*

Erika Anschuetz

**PETER ELIOPOULOS**

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

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**AFFIDAVIT OF PETER ELIOPOULOS**
**(Sworn September 25, 2020)**

**NORTON ROSE FULBRIGHT CANADA LLP**
222 Bay Street, Suite 3000, P.O. Box 53
Toronto, ON M5K 1E7

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Fax: 416-216-3930

Lawyers for 2505243 Ontario Limited

# TAB 7

Estate/Court File No.: 31-2675288

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

| | | |
|---|---|---|
| THE HONOURABLE | ) | FRIDAY, THE 9TH |
| | ) | |
| | ) | |
| JUSTICE KOEHNEN | ) | DAY OF OCTOBER, 2020 |

**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**

**ORDER**

THIS MOTION, made by 2505243 Ontario Limited (the **Company**) for an order, among other things, (a) declaring and confirming that the Bankruptcy Application (defined below) is stayed pursuant to section 69(1) of the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the **BIA**); and (b) granting an administration charge on the Company's property was heard this day via Zoom videoconference as a result of the COVID 19 pandemic.

ON READING the affidavit of Peter Eliopoulos sworn on September 25, 2020, the affidavit of Peter Tae-Min Choi sworn on September 26, 2020, the First Report dated September 28, 2020 (the **First Report**) of KSV Restructuring Inc., in its capacity as proposal trustee of the Company (the **Proposal Trustee**), the affidavit of Christopher Lambert sworn on September 28, 2020, and the affidavit of Amanda Adamo sworn on October 5, 2020, and on being advised that the Motion Record of the Company and the Reply Motion Record of Princes Gates GP Inc., Lowell Security Inc., The Small Winemakers Collection Inc., D.N.B. Media Group Inc. PR CC Plated Meals Inc. and Platinum Valet Hotel Cleaners Inc. (collectively, the **Bankruptcy Applicants**) were served to those parties listed on the Service List, and on hearing the submissions of counsel for the Company, counsel for the Proposal Trustee and counsel for the Bankruptcy Applicants, no one else appearing although duly served as appears from the Affidavit of Service of Gianni Bianchi sworn on September 25, 2020;

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Notice of Motion, the Motion Record and the First Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**STAY OF PROCEEDINGS**

2. **THIS COURT ORDERS** that the bankruptcy application commenced by the Bankruptcy Applicants on September 9, 2020, bearing Court File No. BK-20-00208450-OT31 (the **Bankruptcy Application**) is hereby stayed.

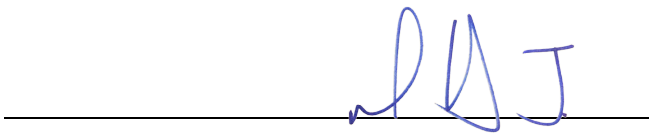
**SERVICE AND NOTICE**

3. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the **Protocol**) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at http://www.ontariocourts.ca/scj/practice/practice-directions/toronto/eservice-commercial/) shall be valid and effective service. Subject to Rule 17.05, this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a case website shall be established in accordance with the Protocol with the following URL: https://www.ksvadvisory.com/insolvency-cases/case/2505243-ontario-limited.

4. **THIS COURT ORDERS** that if the service or distribution of documents in accordance with the Protocol is not practicable (including as a result of COVID-19), the Company and the Proposal Trustee is at liberty to serve or distribute this Order, any other materials and orders in these proceedings, any notices or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile transmission or electronic message to the Company's creditors or other interested parties at their respective addresses (including email addresses) as last shown on the records of the Company and that any such service or distribution by courier, personal delivery, facsimile transmission or electronic message shall be deemed to be received on the next business day following the date of forwarding thereof, or if sent by ordinary mail, on the third business day after mailing.

**GENERAL**

5. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Company, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Company and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Company and the Proposal Trustee and their respective agents in carrying out the terms of this Order.



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

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**ORDER**

**NORTON ROSE FULBRIGHT CANADA LLP**
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Lawyers for 25054243 Ontario Limited

CAN_DMS: \135457949

# TAB 8

Estate/Court File No.: 31-2675288

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

| | | |
|---|---|---|
| THE HONOURABLE | ) | TUESDAY, THE 20TH |
| | ) | |
| JUSTICE KOEHNEN | ) | DAY OF OCTOBER, 2020 |
| | ) | |

**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**

**ORDER**
**(Extension, Administration Charge and DIP Lender's Charge)**

**THIS MOTION**, made by 2505243 Ontario Limited (the **Debtor**) for an order, among other things, extending the time for the Debtor to file a proposal pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the **BIA**); granting an Administration Charge (defined below); and the DIP Lender's Charge (defined below) was heard this day virtually via Zoom videoconference as a result of the COVID 19 pandemic.

**ON READING** the affidavit of Peter Eliopoulos sworn October 16, 2020 (the **Eliopolous Affidavit**), the second report of KSV Restructuring Inc., in its capacity as proposal trustee (in such capacity, the **Proposal Trustee**) dated October 18, 2020 (the **Second Report**), and on hearing the submissions of counsel for the Debtor, the Proposal Trustee and those other parties present, no one else appearing although duly served as evidenced by the Affidavit of Service of Gianni Bianchi sworn October 16, 2020, filed;

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the Second Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**EXTENSION OF TIME TO FILE A PROPOSAL**

2. **THIS COURT ORDERS** that pursuant to section 50.4(9) of the BIA, the time for the Debtor to file a proposal with the Official Receiver be and is hereby extended to December 8, 2020.

**ADMINISTRATION CHARGE**

3. **THIS COURT ORDERS** that the Proposal Trustee, counsel to the Proposal Trustee and counsel to the Debtor shall be entitled to the benefit of and are hereby granted a charge (the **Administration Charge**) on all of the Debtor's current and future assets, undertakings, properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the **Property**), which charge shall not exceed an aggregate amount of $100,000 as security for their professional fees and disbursements, incurred at their standard rates and charges, both before and after the granting of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 8 and 10 hereof.

**DIP FINANCING AND DIP LENDER'S CHARGE**

4. **THIS COURT ORDERS** that the Debtor is hereby authorized and empowered to borrow monies (**Post-Filing Advances**) from Peter and Paul's Gifts Limited (in such capacity, the **DIP Lender**) pursuant to the DIP Term Sheet (as defined in and attached to the Second Report) in order to finance the Debtor's restructuring proceedings substantially in accordance with the cash flow budget attached to the Second Report (the **Cash Flow**).

5. **THIS COURT ORDERS** that pursuant to section 50.6 of the BIA, the DIP Lender shall be entitled to the benefit of and is hereby granted a charge (the **DIP Lender's Charge**) on the Property, which DIP Lender's Charge shall secure only advances made to the Debtor under the DIP Term Sheet after this Order is made as well as any accrued and unpaid interest and professional fees of counsel to the DIP Lender.

6. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order or the provisions of section 69 of the BIA:

(a) the DIP Lender may take such steps from time to time as it may deem necessary or appropriate to file, register, record or perfect the DIP Lender's Charge;

(b) the foregoing rights and remedies of the DIP Lender shall be enforceable against any receiver, receiver and manager, interim receiver or trustee in bankruptcy of the Debtor or the Property.

**VALIDITY AND PRIORITY OF CHARGES**

7. **THIS COURT ORDERS** that the priorities of the Administration Charge and DIP Lender's Charge, as among them, shall be as follows:

(a) First: Administration Charge (to the maximum amount of $100,000); and

(b) Second: DIP Lender's Charge.

8. **THIS COURT ORDERS** that the filing, registration or perfection of the Administration Charge and the DIP Lender's Charge (collectively, the **Charges**) shall not be required, and that the Charges shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

9. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and the Charges shall rank ahead in priority to all other security interests, trusts, liens, charges and encumbrances claims of secured creditors, statutory or otherwise (collectively, **Encumbrances**) in favour of any person but subject to sections 14.06(7) and 81.3(1) of the BIA and any properly perfected purchase money security interests in existence and in priority to advances already made under the DIP Term Sheet as at the time of this Order or any valid priority lien held by the Ministry of Finance in respect of its PPR registration (as defined and described in the Eliopoulos Affidavit).

10. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Debtor shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges, unless the Debtor also obtains the prior written consent of the beneficiaries of the applicable Charges or further Order of this Court.

11. **THIS COURT ORDERS** that the Charges shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the **Chargees**) thereunder shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency (expressly or impliedly) made

herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the BIA, or any bankruptcy order made pursuant to such application(s); (c) the filing of any assignments for the general benefit of creditors made or deemed to have been made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan documents, lease, sublease, offer to lease or other agreement (collectively, an **Agreement**) which binds the Debtor, and notwithstanding any provision to the contrary in any Agreement:

(a) the creation of the Charges or the execution, delivery, perfection, registration or performance in connection thereof shall not create or be deemed to constitute a breach by the Debtor of any Agreement to which it is a party; and

(b) the payments made by the Debtor pursuant to this Order and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

12. **THIS COURT ORDERS** that the Charges created by this Order over leases of real property in Canada shall only be a charge in the Debtor's interest in such real property leases.

**RECOGNITION**

13. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Debtor, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Debtor and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

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

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**ORDER**
**(Extension, Administration Charge & DIP Lender's Charge)**

**NORTON ROSE FULBRIGHT CANADA LLP**
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Fax: 416-216-3930

Lawyers for 2505243 Ontario Limited

CAN_DMS: \135861274

# TAB 9

**From:** Koehnen, Mr. Justice Markus (SCJ)
**Sent:** November 10, 2020 4:05 PM
**To:** Sutton, Randy <randy.sutton@nortonrosefulbright.com>; Anissimova, Alsou (MAG) <Alsou.Anissimova@>; Stam, Jennifer <jennifer.stam@nortonrosefulbright.com>; Choi, Peter <peter.choi@nortonrosefulbright.com>; Bobby Kofman <bkofman@ksvadvisory.com>; Anschuetz, Erika <erika.anschuetz@nortonrosefulbright.com>
**Cc:** Jeff.Larry@paliareroland.com; pcarey@loonix.com; tlambert@loonix.com;
**Subject:** Re: 31-2675288 - In the Matter of the Notice of Intention to Make a Proposal of 2505243 Ontario Limited

This email constitutes my endorsement arising of today's hearing and should be placed into the court file.

The following dates were confirmed or set during today's case conference:

December 4, 2020 2 PM before Conway J: motion for security for costs, certificate of pending litigation and to extend the stay.

February 9, 2021 at 10 AM: pretrial settlement conference before Justice Haney for two hours.

February 22, 2021 at 11 AM trial management conference before Justice McEwen

March 1, 2021: seven day trial before Justice McEwen

**Justice Markus Koehnen**

**From:** Anissimova, Alsou (MAG) <Alsou.Anissimova@ontario.ca>
**Sent:** November 15, 2020 10:42 AM
**To:** Sutton, Randy; Stam, Jennifer; Choi, Peter; bkofman@ksvadvisory.com; Anschuetz, Erika
**Cc:** Jeff.Larry@paliareroland.com; pcarey@loonix.com; tlambert@loonix.com
**Subject:** RE: 31-2675288 - In the Matter of the Notice of Intention to Make a Proposal of 2505243 Ontario Limited

Hello!
Please be informed that due to further adjustment on our schedule we made changes , those changes reported to Justice Koehnen and approved by His Honour.
Please see changes in red below:

- December 4, 2020 at 2:00 PM before Conway J , now scheduled before Justice Cavanagh on Dec 4 at 11:00am , 2.5hrs .
  - Motion for security for costs, certificate of pending litigation and to extend the stay.
- February 9, 2021 at 10:00 AM before Hainey J (Two hours), no changes
  - Pretrial settlement conference before
- February 22, 2020 at 11:00 AM before McEwen J , now scheduled on Feb 19, at 10:00am , 90min , before Justice Gilmore .
  - Trial management conference
- March 1, 2021 before McEwen J, now scheduled before Justice Gilmore
  - Seven day trial before Justice Gilmore from march 1, 2021

Thank you

Alsou Anissimova

Superior Court of Justice
Commercial & Estates Trial coordinator
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# TAB 10

Estate/Court File No.: 31-2675288

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

| | | |
|---|---|---|
| THE HONOURABLE | ) | FRIDAY, THE 4TH |
| | ) | |
| | ) | |
| JUSTICE CAVANAGH | ) | DAY OF DECEMBER, 2020 |

**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**

**ORDER**
**(Extension of Time to File a Proposal and DIP Increase)**

**THIS MOTION**, made by 2505243 Ontario Limited (the **Debtor**) for an order, among other things, (a) extending the time for the Debtor to file a proposal pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the **BIA**); (b) increasing the maximum borrowing available in Post-Filing Advances (as defined in the Order of this Court dated October 20, 2020, the **October 20 Order**); and (c) approving the Third Report of the Proposal Trustee (as both terms are defined below) and the activities of the Proposal Trustee described therein, was heard this day virtually via Zoom videoconference as a result of the COVID 19 pandemic.

**ON READING** the affidavit of Peter Eliopoulos sworn November 30, 2020 (the **Eliopoulos Affidavit**), the third report of KSV Restructuring Inc., in its capacity as proposal trustee (in such capacity, the **Proposal Trustee**) dated December 1, 2020 (the **Third Report**), and on hearing the submissions of counsel for the Debtor, the Proposal Trustee and those other parties present, no one else appearing although duly served as evidenced by the Affidavit of Service of Gianni Bianchi sworn December 1, 2020, filed;

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the Third Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**EXTENSION OF TIME TO FILE A PROPOSAL**

2. **THIS COURT ORDERS** that pursuant to section 50.4(9) of the BIA, the time for the Debtor to file a proposal with the Official Receiver be and is hereby extended to January 22, 2021.

**AMENDMENTS TO DIP FINANCING**

3. **THIS COURT ORDERS** that the Debtor shall be authorized and empowered to obtain further additional Post-Filing Advances on the same terms as authorized by the October 20 Order.

4. **THIS COURT ORDERS** that the DIP Lender's Charge (as defined in the October 20 Order) and the priority afforded thereto shall apply to any Post-Filing Advances.

**ACTIVITIES OF THE PROPOSAL TRUSTEE**

5. **THIS COURT ORDERS** that the Third Report and the activities of the Proposal Trustee as set out therein be and are hereby approved.

**RECOGNITION**

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Debtor, the Proposal Trustee and their respective agents in

carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Debtor and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

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

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**ORDER**
**(Extension of Time to File a Proposal and DIP Increase)**

**NORTON ROSE FULBRIGHT CANADA LLP**
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Toronto, ON M5K 1E7

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Fax: 416-216-3930

Lawyers for 2505243 Ontario Limited

CAN_DMS: \136611083

# TAB 11

**From:** Cavanagh, Justice Peter (SCJ)
**Sent:** December 7, 2020 8:29 AM
**To:** Sutton, Randy; Anschuetz, Erika; pcarey@loonix.com; apilieci@loonix.com; Jeff.Larry@paliareroland.com
**Cc:** JUS-G-MAG-CSD-Toronto-SCJ Commercial List
**Subject:** CV-20-00644262 2504243 Ontario Inc. v. Princes Gate GP Inc.
**Attachments:** Estate - Court File No. 31-2675288_ Re NOI of 2505243 Ontario Limited_Order December 4, 2020.pdf

**Counsel:**

| | |
|---|---|
| Counsel for the Plaintiff: | Randy Sutton, Erika Anschuetz |
| Counsel for the Defendant: | Peter Carey, Amanda Pilieci |
| Counsel for the Proposal Trustee: | Jeff Larry |

**Endorsement**:

There were two motions before me that I heard on December 4, 2020.

The plaintiff filed a Notice of Intention to make a Proposal ("NOI") on September 24, 2020. The plaintiff moves for (i) an extension of time to file a proposal under the BIA from December 8, 2022 and to and including January 22, 2021; (ii) to increase the maximum borrowing available in post-filing advances (as defined in an order dated October 20, 2020) from $300,000 to $460,000; and (iii) for approval of the Proposal Trustee's activities as set out in the Third Report of the Proposal Trustee. The defendant took no position on this motion. I am satisfied that this relief is justified, and I granted this motion at the beginning of the hearing.

The second motion is the defendant's motion for security for costs. I grant this motion for the reasons that follow.

Factual Background

The plaintiff has sued the defendant for injunctive and declaratory relief and, in the alternative, damages in the amount of $50,000,000 for breach of contract and breach of a duty of good faith and honest performance, and punitive and aggravated damages of $10,000,000. The defendant has defended and counterclaimed, claiming the sum of $2,000,000 for unpaid rents and service charges.

The commencement date for the trial of the action was accelerated and it is scheduled to begin on March 1, 2021, for seven days.

The defendant operates Hotel X, a recently opened hotel in Toronto. The plaintiff is an Ontario corporation which provides food, beverage, and catering services. Hotel X entered into two leases with the plaintiff to operate two restaurants at Hotel X. In addition, the defendant entered into a Food and Beverage Services Agreement with the plaintiff whereby the plaintiff became the exclusive provider of food and beverage services at Hotel X. The leases and the Food and Beverage Services Agreement were interlinked such that a default under any of the three agreements would be a default under all the agreements.

In February 2020, the plaintiff wrote to the defendant and indicated that it wished to "dissolve" its relationship with the defendant. There followed a series of communications about the relationship. On June 26, 2020, the plaintiff offered to agree to a mutual termination of the agreements in exchange for a substantial lump sum cash payment. No agreement was reached. On July 2, 2020, the defendant terminated the leases and the Food and Beverage Services Agreement on the basis that the plaintiff had defaulted and continued to be in default of these agreements, including through failure to pay rent.

On July 20, 2020, the plaintiff commenced this action in which it claims that the leases and the Food and Beverage Service Agreement were wrongfully terminated and the purported terminations amounted to breaches thereof, and that the defendant acted in bad faith. The plaintiff seeks injunctive and declaratory relief and, alternatively, damages.

On September 9, 2020, the defendant and a number of other creditors of the plaintiff commenced an application to petition the plaintiff into bankruptcy. On September 24, 2020, the plaintiff filed a Notice of Intention to file a proposal ("NOI") pursuant to section 50.4 of the *BIA* which permits an insolvent person to file an NOI. On September 25, 2020, the plaintiff brought a motion to stay the bankruptcy application to allow it to make a proposal to his creditors. The stay was granted by Justice Koehnen on October 9, 2020. Accordingly, the plaintiff is permitted to continue its action against the defendant.

On October 20, 2020, the plaintiff brought a motion in the NOI proceeding seeking, among other things, an order authorizing it to borrow an initial sum of $300,000 from a related company to fund its action against the defendant. An order was made allowing the plaintiff to do so.

Analysis

The issues on the defendant's motion are whether the plaintiff should be ordered to post security for costs and, if so, based on what scale and in what amount.

Rule 56.01 of the *Rules of Civil Procedure* governs motions for security for costs. Rule 56.01(1)(d) provides that the court may make such order for security for costs as is just where it appears that the plaintiff is a corporation and there is good reason to believe that the plaintiff has insufficient assets in Ontario to pay the costs of the defendant.

On a motion for security for costs on this ground, the court will engage in a two-stage inquiry to determine whether an order for security for cause should be made: (a) first, the initial onus is on the defendant to show that it appears that there is good reason to believe that the matter comes within rule 56.01(d); and (b) once the defendant has met this initial onus, the plaintiff can rebut the onus by either demonstrating that (i) it has sufficient assets in Ontario or in a reciprocating jurisdiction to satisfy a costs order; (ii) the plaintiff is impecunious and justice demands that it be permitted to continue with the action where it is not plainly devoid of merit; or (iii) if the plaintiff cannot establish that it is impecunious, but the plaintiff does not have sufficient assets to meet a costs order, the plaintiff must meet a high threshold to satisfy the court of its chances of success. See *Coastline Corp. v. Canaccord Capital Corp*., [2009] O.J. No. 1790, at para. 7, per Master Gluestein, as he then was.

Merits have a role in any application under rule 56.01. The court on a security for costs motion is not required to embark on an analysis such as on a motion for summary judgment. The analysis is primarily on the pleadings with recourse to evidence filed on the motion, and in appropriate cases, to selective references to excerpts of the examination for discovery where it is available. See *Coastline*, at para. 7. The principles set out in *Coastline* are cited in *Canadian Metal Buildings Inc. v. 1467344 Ontario Limited*,2019 CarswellOnt 698, at para. 13.

The Court of Appeal has held that in deciding motions for security for costs, judges are obliged to first consider the specific provisions of the *Rules* governing those motions and then effectively to take a step back and consider the justice of the order sought in all the circumstances of the case, with the interest of justice at the forefront: *Yaiguaje v. Chevron Corporation*, 2017 ONCA 827, at para. 22. In *Novak v. Demetrius (Ukrainian Catholic) Development*, 2018 ONCA 219, at para. 7, the Court of Appeal held that the approach set out in *Chevron* does not alter the established test for ordering security for costs.

By filing the NOI, the plaintiff has acknowledged that that it is insolvent. The proposal trustee retained by the plaintiff confirmed that the plaintiff is insolvent. The defendant has satisfied its initial onus of demonstrating that the plaintiff has insufficient assets in Ontario to pay the costs of the defendant. Once the rule is engaged, the onus shifts to the plaintiff to show that an order for security for costs would be unjust.

The plaintiff does not contend that it is impecunious. The plaintiff seeks to discharge its onus through (i) evidence as to the merits of its claim, and (ii) evidence stating that other companies operated by principals and shareholders of the plaintiff, Mr. Peter Eliopoulos and Mr. Galanis, and the individual shareholders themselves, lack sufficient funds to pay the amount of security for costs that is sought and that it would create a significant financial hardship for these companies, or the principals to personally, fund the amount sought in the current financial environment.

Merits of the litigation

In *Aviaco International Leasing Inc. v. Boeing Canada Inc.*, 2009 CarswellOnt 3061, Nordheimer J. (as he then was) explained, at para. 19, how the merits of the litigation are considered on a motion for security for costs:

> Where does this review of the authorities lead? I believe that the plaintiffs are correct that the use of the words "as is just" in rule 56.01 does allow the court to have a consideration of the merits of the claim in determining whether there should be an order granted requiring security for costs to be posted. Where I find myself in disagreement with the plaintiffs is the assertion, which is inherent in their position, that it could be just not to require a corporate plaintiff, who has access to resources, to post security just because it has a meritorious claim. While accepting that anything is possible, it is difficult for me to conceive of the circumstances where such a conclusion would be a just or appropriate result. Here, for example, we have plaintiffs who are advancing a claim for damages which, by any definition, involves a huge sum of money and whose principal shareholder is admittedly possessed of considerable resources such that it could allow the plaintiffs to post security if it so chose. In such circumstances, could it be said to be just to remove that requirement just because the plaintiffs may have a meritorious claim? I do not believe so.

There was considerable evidence filed on this motion concerning the merits of the litigation. Although the defendant contends that the suit lacks merit, I am satisfied that the action has sufficient merit that it should proceed to trial. This is not a case, however, where the merits of the plaintiff's claim are so overwhelming that the risk to the defendant of having unpaid costs award is virtually non-existent and where consideration of the merits should persuade the court not to order security even in the absence of a finding of impecuniosity. See *1483677 Ontario Inc. v. Crain*, 2008 CarswellOnt 4892, at para. 20.

Financial circumstances of companies operated by the principals of the plaintiff

Mr. Eliopoulos filed an affidavit in response to the motion for security for costs. Mr. Eliopoulos is a principal of the plaintiff and a shareholder. In his affidavit, he states that this action is the only real asset of the plaintiff. He states that each of the other companies in the group of companies which operate businesses under the banner "byPeterandPauls.com" ("PnP") are in the hospitality business and operate restaurants, event spaces, special events and related services and/or specialty gifts. He states that each of these companies has been hit hard financially by the COVID-19 pandemic and the related closures and limits imposed on social gatherings and events. He states that revenue is down in each of these companies very substantially, in the range of 90%. He states that some of the companies are partially owned by third parties and they are not available sources of funds for the purpose of posting security for costs. Mr. Eliopoulos states that none of the companies has sufficient "cash on hand" to post security for costs on behalf of the plaintiff and, given their need to conserve any available cash and credit facilities due to the ongoing closures and limits imposed on social gatherings, it would create significant hardship for any of the companies to be required to fund the amount sought by the defendant as security for costs. In support of these statements, Mr. Eliopoulos appends recent bank statements for several of these companies. He acknowledges that the plaintiff has borrowed money from one company in the group, Peter and Paul's Gifts Limited, as the DIP lender in the NOI process, but states that this company does not have sufficient funds to post security for costs in the amount sought on this motion.

Mr. Eliopoulos states in his affidavit that he is advised by Dino Galanis, his business partner (who also is a shareholder of the plaintiff), that he does not have sufficient funds to pay the amount of security for costs that is sought by the defendant. Mr. Eliopoulos states that he also does not personally have sufficient funds to pay the amount of security for costs that is sought. He states that it would create a significant financial hardship for Mr. Galanis and for him to fund the amount of security for costs requested in the current financial environment.

In *Crain*, at para. 23, Master MacLeod (as he then was) explained the policy behind rule 56.01(1)(d) of the *Rules of Civil Procedure*:

> Where, as here, a corporation has been incorporated as the vehicle for a project or investment, its only asset is the subject matter of the dispute and its source of funds has always been the investor or investors behind the corporation, it is not appropriate to refuse an order for security without compelling evidence that injustice would result. A closely held special purpose corporation is intended to insulate the investors from liability should the project fail for any reason. This is the legitimate purpose of limited liability but it is also the reason that Rule 56.01(1)(d) exists. The policy behind the rule is to protect defendants from suits by shell corporations and where appropriate to require the ultimate beneficiaries of the litigation to post security.

Although Mr. Eliopoulos states that the shareholders lack sufficient funds to pay the amount of security requested, he has not made robust disclosure of his financial affairs or those of Mr. Galanis or the other companies in the PnP group. Mr. Eliopoulos has not provided any records which show the assets he or Mr. Galanis own personally, or their values. He

has not provided detailed financial disclosure concerning the companies in the PnP group. I am unable to conclude from Mr. Eliopoulos' evidence that the shareholders of the plaintiff are unable to raise sufficient funds to satisfy the request for security for costs. Indeed, the fact that DIP financing from a related company in the amount of $460,000 has been arranged supports the conclusion that funds are available. Mr. Eliopoulos does not say in his affidavit that the plaintiff would be unable to pursue the action if an order for security for costs were to be made.

I conclude that the plaintiff has failed to discharge its onus of showing that an order for security for costs would be unjust in the circumstances.

Amount of security

The defendant seeks an order requiring the plaintiff to post security for costs on a substantial indemnity scale or, alternatively, on a partial indemnity scale. The amount claimed on a substantial indemnity scale, based on the draft Bill of Costs provided in support of this motion, is $486,816.90. The amount on a partial indemnity scale is $322,453.40. Both amounts are inclusive of fees and HST on fees, but exclusive of disbursements and HST on disbursements.

In support of its position that security for costs should be posted on a substantial indemnity scale, the defendant relies upon the terms of its leases with the plaintiff which include the following provision:

> The Tenant shall indemnify and save harmless the Landlord Insured Parties against and from any and all claims, including without limiting the generality of the foregoing, all claims for personal injury, death or property damage arising from (i) any act or omission of the Tenant or any assignee, sub tenant, agent, contractor, employee, invitee or licensee of the Tenant, (ii) any occurrence in or upon the Lease Premises, and (iii) any default by the Tenant of any of its covenants and obligations under this Lease, and against and from all costs, counsel fees, expenses and liabilities incurred in or about any such claim or action or proceeding brought him thereon. The Tenant's obligation hereunder shall survive the expiration or sooner termination of this this Lease.

The defendant submits that the plaintiff defaulted on its obligations under the leases and the Food and Beverage Services Agreement and, if it is successful in this litigation, the defendant will be contractually entitled to indemnification from the plaintiff for "all costs, counsel fees, expenses and liabilities" incurred in this litigation.

In my view, if the defendant is successful in the litigation, it will be open to it to seek costs on a substantial indemnity scale, based on the indemnity provisions in the leases. It is at least arguable that such an award could be made. Whether such an award is made if the defendant is successful will be for the trial judge to decide. However, unless security is posted for costs on a substantial indemnity scale, the defendant will be unable to recover an award of costs on this scale, if one is made. In the absence of robust financial disclosure from the shareholders of the plaintiff, who will benefit from this litigation if it is successful, showing that they do not have access to credit sufficient to post the security sought, in my view, security should be posted for costs on a substantial indemnity scale. The plaintiff will be able to recover all or some of the amount posted as security if it succeeds in the litigation or if costs awarded are less than the amount posted as security.

The defendant submits that the amount of costs requested is reasonable having regard to the nature of the litigation, the expedited timetable for the litigation, and the services which will be needed for the defendant to defend the plaintiff's claims and prosecute its counterclaim. The amount requested for fees is in the same range as the amount of DIP funding which has been approved ($460,000) to fund the plaintiff through to January 22, 2021. The amount requested as security for costs on a substantial indemnity scale appears to be in the range of, or possibly less than, the amount that the plaintiff expects will be needed to fund this litigation through to the conclusion of trial.

I have reviewed the defendant's draft bill of costs. In the circumstances, in my view, the amount of security for costs which should be posted on a substantial indemnity scale, inclusive of fees, disbursements and HST, is $500,000.

Disposition

1. In respect of the plaintiff's motion, order to issue in form of attached order signed by me.
2. For these reasons, I grant the defendant's motion for security for costs. I order that the plaintiff post security in the amount of $500,000 in the form of cash, or in the form of a letter of credit or other security satisfactory to the defendant, within 45 days of this order.

If counsel are unable to agree on the proper form of order, I may be spoken to. If the parties are unable to resolve costs of this motion, they may make brief written submissions with the defendant's submissions to be made within 15 days and the plaintiff's responding submissions to be made within 15 days thereafter.

Cavanagh, J.

# TAB 12

**Endorsement of Mr. Justice Koehnen dated December 22, 2020**

**From:** Koehnen, Mr. Justice Markus (SCJ)
**Sent:** December 22, 2020 10:20 AM
**To:** Carey, Peter <pcarey@loonix.com>; Sutton, Randy <randy.sutton@nortonrosefulbright.com>; Anschuetz, Erika <erika.anschuetz@nortonrosefulbright.com>; Pilieci, Amanda <apilieci@loonix.com>
**Cc:** Bobby Kofman <bkofman@ksvadvisory.com>
**Subject:** Re: Peter Carey's Zoom Meeting

**Email Endorsement**

The following are my directions arising out of today's case conference:

1. The dates for examinations for discovery are changed to January 22, 25 and 26, 2021.
2. The date for delivery of experts' reports is extended to February 5, 2021.
3. The date for answers to undertakings is extended to February 8, 2021.

In addition, if the plaintiff produces any more documents between now and the examinations for discovery, plaintiff's counsel will advise defence counsel on which of those documents the plaintiff will rely during the examinations for discovery and on which they will rely at trial.

**Justice Markus Koehnen**
Ontario Superior Court of Justice

# TAB 13

Estate/Court File No.: 31-2675288

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

| | | |
|---|---|---|
| THE HONOURABLE | ) | FRIDAY, THE 22ND |
| | ) | |
| JUSTICE HAINEY | ) | DAY OF JANUARY, 2021 |
| | ) | |

**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**

**ORDER**
**(Extension of Time to File a Proposal and Further DIP Increase)**

**THIS MOTION**, made by 2505243 Ontario Limited (the **Debtor**) for an order, among other things, (a) extending the time for the Debtor to file a proposal pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the **BIA**); (b) further increasing the maximum borrowing available in Post-Filing Advances (as defined in the Order of this Court dated October 20, 2020, the **October 20 Order**) on the terms as amended by the second amendment to the DIP Term Sheet dated January 18, 2021 (the **Second DIP Amendment**); and (c) approving the Fourth Report of the Proposal Trustee (as both terms are defined below) and the activities of the Proposal Trustee described therein, was heard this day virtually via Zoom videoconference as a result of the COVID 19 pandemic.

**ON READING** the affidavit of Peter Eliopoulos sworn January 18, 2021 (the **Eliopoulos Affidavit**), the fourth report of KSV Restructuring Inc., in its capacity as proposal trustee (in such capacity, the **Proposal Trustee**) dated January 19, 2021 (the **Fourth Report**), and on hearing the submissions of counsel for the Debtor, the Proposal Trustee and those other parties

present, no one else appearing although duly served as evidenced by the Affidavit of Service of Gianni Bianchi sworn January 19, 2021, filed;

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the Fourth Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**EXTENSION OF TIME TO FILE A PROPOSAL**

2. **THIS COURT ORDERS** that pursuant to section 50.4(9) of the BIA, the time for the Debtor to file a proposal with the Official Receiver be and is hereby extended to March 8, 2021.

**AMENDMENTS TO DIP FINANCING**

3. **THIS COURT ORDERS** that the Debtor shall be authorized and empowered to obtain further additional Post-Filing Advances on the same terms as authorized by the October 20 Order with such changes as are reflected in the Second DIP Amendment.

4. **THIS COURT ORDERS** that the DIP Lender's Charge (as defined in the October 20 Order) and the priority afforded thereto shall apply to any Post-Filing Advances.

**ACTIVITIES OF THE PROPOSAL TRUSTEE**

5. **THIS COURT ORDERS** that the Fourth Report and the activities of the Proposal Trustee as set out therein be and are hereby approved.

**RECOGNITION**

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Debtor, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Debtor and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

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

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**ORDER**
**(Extension of Time to File a Proposal and Further DIP Increase)**

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Lawyers for 2505243 Ontario Limited

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# TAB 14

Estate/Court File No.: 31-2675288

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

| | | |
|---|---|---|
| THE HONOURABLE | ) | _____, THE _____ |
| | ) | |
| | ) | |
| JUSTICE GILMORE | ) | DAY OF MARCH, 2021 |

**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**

**ORDER**
**(Extension of Time to File a Proposal and Further DIP Increase)**

**THIS MOTION**, made by 2505243 Ontario Limited (the **Debtor**) for an order, among other things, (a) extending the time for the Debtor to file a proposal pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3, as amended (the **BIA**); (b) further increasing the maximum borrowing available in Post-Filing Advances (as defined in the Order of this Court dated October 20, 2020, the **October 20 Order**) on the terms as amended by the third amendment to the DIP Term Sheet dated February 24, 2021 (the **Third DIP Amendment**); and (c) approving the Fifth Report of the Proposal Trustee (as both terms are defined below) and the activities of the Proposal Trustee described therein, was heard this day virtually via Zoom videoconference as a result of the COVID 19 pandemic.

**ON READING** the affidavit of Peter Eliopoulos sworn February 24, 2021 (the **Eliopoulos Affidavit**), the fifth report of KSV Restructuring Inc., in its capacity as proposal trustee (in such capacity, the **Proposal Trustee**) dated February ●, 2021 (the **Fifth Report**), and on hearing the submissions of counsel for the Debtor, the Proposal Trustee and those other parties present, no

one else appearing although duly served as evidenced by the Affidavit of Service of Gianni Bianchi sworn February 24, 2021, filed;

**SERVICE**

1. **THIS COURT ORDERS** that the time for service of the Motion Record in respect of this motion and the Fifth Report is hereby abridged and validated so that this motion is properly returnable today and hereby dispenses with further service thereof.

**EXTENSION OF TIME TO FILE A PROPOSAL**

2. **THIS COURT ORDERS** that the time for the Debtor to file a proposal with the Official Receiver be and is hereby extended to 15 business days after the day on which the Court releases its final decision with respect to the Debtor's litigation claim in the Ontario Superior Court of Justice, bearing Court File No. CV-20-644262.

**AMENDMENTS TO DIP FINANCING**

3. **THIS COURT ORDERS** that the Debtor shall be authorized and empowered to obtain further additional Post-Filing Advances on the same terms as authorized by the October 20 Order with such changes as are reflected in the Third DIP Amendment.

4. **THIS COURT ORDERS** that the DIP Lender's Charge (as defined in the October 20 Order) and the priority afforded thereto shall apply to any Post-Filing Advances.

**ACTIVITIES OF THE PROPOSAL TRUSTEE**

5. **THIS COURT ORDERS** that the Fifth Report and the activities of the Proposal Trustee as set out therein be and are hereby approved.

**RECOGNITION**

6. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States, to give effect to this Order and to assist the Debtor, the Proposal Trustee and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Debtor and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Proposal Trustee in any foreign proceeding, or to assist the Debtor and the Proposal Trustee and their respective agents in carrying out the terms of this Order.

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

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**ORDER**
**(Extension of Time to File a Proposal and Further DIP Increase)**

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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

Estate/Court File No.: 31-2675288

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

Proceeding commenced at TORONTO

**MOTION RECORD OF 2505243 ONTARIO LIMITED**
**(Extension of Time to File a Proposal and DIP Increase)**

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