

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

**IN THE MATTER OF *THE BANKRUPTCY AND INSOLVENCY*  
ACT, R.S.C. 1985, c. B-3, AS AMENDED**

**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP  
AND YSL RESIDENCES INC.**

Applicants

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**FACTUM OF  
CONCORD PROPERTIES DEVELOPMENTS CORP.**

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(Returnable July 16, 2021)

July 15, 2021

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**FACTUM OF  
CONCORD PROPERTIES DEVELOPMENTS CORP.  
(Returnable July 16, 2021)**

**PART I - INTRODUCTION**

1. This factum is submitted by Concord Properties Developments Corp. (the "**Proposal Sponsor**") in support of the amended order seeking, among other things, approval of the Amended Proposal #3 of YG Limited Partnership ("**YG LP**") and YSL Residences Inc. (together with YG LP, the "**Applicants**") dated July 14, 2021 (the "**Proposal**"), which proposed form of order reflects certain amendments to the form of order included in the Applicants' motion record dated June 18, 2021. A blackline of the amended order against the version served June 18, 2021 is attached hereto as Schedule "C". The amended order is referred to herein as the "**Approval Order**".

2. Specifically, this factum is filed in support of paragraph 9 of the Approval Order, which provides that the Approval Order may be provisionally executed notwithstanding any appeal therefrom pursuant to Section 195 of the *Bankruptcy & Insolvency Act*, RSC 1985, c B-3, as amended (the "**BIA**").

3. If the Court is inclined to issue the Approval Order, the Proposal Sponsor submits that the inclusion of the provisional execution in the Approval Order is necessary and appropriate in the circumstances of this case, and that the Court has the inherent jurisdiction to grant such relief.

## **PART II - FACTS**

4. In Amended Proposal #2 dated June 15, 2015, subject to approval of the Court, that proposal was to have been implemented on June 30, 2021, pursuant to Section 8.02(g) thereof.<sup>1</sup> The parties attended hearings on June 23 and 28, 2021 regarding the approval of Amended Proposal #2.

5. Subsequent to the issuance of the Amended Reasons for Interim Decision dated July 2, 2021 (the "**Interim Decision**"), on July 9, 2021 the Proposal Sponsor served Amended Proposal #3 dated July 8, 2021, a copy of which has been posted to the website of KSV Restructuring Inc., the proposal trustee in these proceedings (in such capacity, the "**Proposal Trustee**").<sup>2</sup> In this iteration of the proposal, an implementation of date of July 16, 2021 was contemplated (being seven days following the July 9 hearing). The July 9 hearing was adjourned to July 16, 2021.

6. Following the July 9 hearing, the Proposal Trustee, the Applicants and the Proposal Sponsor made certain revisions to Amended Proposal #3 to address concerns raised by the Proposal Trustee, as described in the Proposal Trustee's Fourth Report dated July 15, 2021 (the "**Fourth Report**"), and a further Amended Proposal #3 dated July 15, 2021 was filed with the Official Receiver and appended to the Fourth Report. In its final form, the Proposal provides for implementation to take place three (3) business days from the issuance of the Approval Order – or

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<sup>1</sup> Third Report of KSV Restructuring Inc., as Proposal Trustee dated June 18, 2021 (the "**Third Report**") at [Appendix B](#).

<sup>2</sup> [Third Amended Proposal](#) dated July 8, 2021.

July 21, 2021 on the current timeline, should the Approval Order be granted at the July 16 attendance.

7. Throughout the relevant period the secured interests of the Applicants' senior secured lender, Timbercreek Mortgage Servicing Inc. (together with 2292912 Ontario Inc., "**Timbercreek**") have been forestalled. The agreed forbearance period contemplated by the Third Forbearance Amendment between Timbercreek and the Applicants lapsed as of June 30, 2021.<sup>3</sup>

8. The Proposal is supported by all creditors with proven claims, but is opposed by the group of Class "A" unit holders of YG LP (collectively, the "**Investors**"), and a former executive within the Cresford group, Maria Athanasoulis.

### **PART III – ISSUE**

9. The sole issue addressed in this factum is whether, if the Court is inclined to issue the Approval Order, it is appropriate to include the provisional execution language expressed in paragraph 9 thereof.

### **PART IV – LAW AND ARGUMENT**

10. The provisional execution language included in the Approval Order is expressly contemplated by Section 195 of the BIA, which provides:

**Except to the extent that an order or judgment appealed from is subject to provisional execution, notwithstanding any appeal therefrom,** all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, but the Court of Appeal or a judge thereof may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being

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<sup>3</sup> Affidavit of Patrick Smith sworn June 16, 2021 [at para 10](#).

prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper. [emphasis added]

11. Although provisional execution language is not common, it has been used in Ontario in appropriate circumstances. For example, in *Century Services Inc. v. Brooklin Concrete Products*, the Honourable Justice Campbell issued an endorsement approving the inclusion of provisional execution language to permit the closing of a transaction while the appeal of a vesting order was still under consideration by potential appellant parties.<sup>4</sup>

12. In approving provisional execution language, Justice Campbell observed that "there are Ontario cases which have recognized the concept," and that "the concept is within the inherent jurisdiction of this Court," although he observed such jurisdiction should be exercised sparingly.<sup>5</sup>

13. More recently, in the decision of *Computershare Trust Company of Canada v. Beachfront Developments Inc. and Beachfront Realty Inc.*, the Honourable Justice Newbould also approved provisional execution language in in the context of a sale process approval order subject to a potential appeal.<sup>6</sup>

14. Accordingly, the Proposal Sponsor submits that this Court has the jurisdiction to approve provisional execution in this case, and that for the reasons that follow it is appropriate to do so. Although, unlike the *Beachfront* decision, no appeal has been commenced at present because the Approval Order has not yet been granted, it is reasonable to apprehend that, based on the actions of the opposing parties in the present case to date, an appeal may well be commenced if the

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<sup>4</sup> *Century Services Inc. v. Brooklin Concrete Products Inc.*, 2005 CanLII 9668 (ONSC) ("**Brooklin**") [at para 5](#).

<sup>5</sup> *Brooklin* [at para 5](#).

<sup>6</sup> *Computershare Trust Company of Canada v. Beachfront Developments Inc. and Beachfront Realty Inc.*, 2010 ONSC 4833 ("**Beachfront**") [at para 1](#).

Approval Order is issued, and a stay of proceedings resulting from such appeal could cause significant delays to the implementation of the Proposal.

15. The inclusion of the provisional execution language in the Approval Order is a clear indication of the intention of the Applicants and Proposal Sponsor to implement the Proposal expeditiously following its approval. Implementation of the Proposal will provide an immediate benefit to the creditors of the Applicants and especially to their senior secured lender, Timbercreek, which would receive payment in full of its secured claim as early as next week. The same is true for those claimants that entered into claims assignment arrangements with the Proposal Sponsor – implementation will result in the expedient resolution of such creditors' claims next week. It is expected that a distribution to affected creditors would follow shortly after the establishment of the reserves contemplated by Section 5.03 of the Proposal.

16. Following the unanimous approval of the Proposal by creditors, the Applicants and the Proposal Sponsor have worked diligently to address the concerns of this Court set out in the Interim Decision, and those of the Proposal Trustee, as expressed in the Fourth Report, in order to present a fair and reasonable proposal in the circumstances. If the Court is inclined to issue the Approval Order on July 16, it will do so because the parties' efforts have been successful and because the Proposal represents the will of the Applicants' creditors.

17. The intention of those parties opposed to the Proposal throughout these proceedings has been to impede the development of a proposal in order to extract value for themselves, at risk to the Applicants' other creditors. There is no reason to believe these attempts will stop should the Proposal be approved. Instead, the foreseeable result would be protracted appeal proceedings, and a resulting delay to creditor recovery and the development of the YSL Project.

18. This Court must bear in mind that there is no evidence of any prospect of any return to the Investors if the Proposal does not move forward – they are not "in the money" under any circumstances. Just as acceding to those Investors' complaints by refusing the Proposal would have been tantamount to gambling with the creditors' money, so too would be the refusal to include the provisional execution language in the Approval Order.

19. Similarly, the concerns raised on behalf of Ms. Athanasoulis as set out in the Interim Decision have been addressed in the final Proposal. Ms. Athanasoulis is, at best, a contingent creditor of the Applicants (as she has been deemed to be in recent insolvency processes stemming from Cresford group condominium development projects).<sup>7</sup>

20. It is appropriate that the Court take steps to protect the body of creditors from the prospect of further interference in the resolution of their claims by providing the parties with the tools necessary to implement the proposal expeditiously, namely the requested provisional execution language.

21. While the jurisprudence suggests that provisional execution language must be used sparingly,<sup>8</sup> the Proposal Sponsor submits that its use is appropriate here because:

- (a) the expeditious implementation of the Proposal will benefit the entire body of the Applicants' creditors;
- (b) failure to pay Timbercreek promptly could result in substantial accrual of interest under the Timbercreek loan during a stay resulting from an appeal period;

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<sup>7</sup> See, e.g., the [Endorsement of the Honourable Hainey J. issued January 8, 2021](#) in *The Clover on Yonge* proceedings, at para 8, and *The Clover on Yonge Inc.*, 2020 ONSC 5444 at para 39.

<sup>8</sup> *Brooklin* at para 5.

- (c) the parties opposed to the Proposal have not adduced any evidence that a better outcome than that presented by the Proposal is possible;
- (d) the threat of appeal increases the likelihood of Timbercreek's receivership application moving forward – a sub-optimal result for Timbercreek, and a likely woeful outcome for the body of creditors (particularly given the likely costs of a receivership), with the creditors' prejudice far outweighing any detriment to potential appellant parties;
- (e) the Investors' ability to pursue claims against YG LP and its principals is not released by the Proposal;<sup>9</sup> and
- (f) if the Approval Order is granted, it is because this Court has decided on a complete record and after having heard submissions from counsel to all interest parties at four attendances that the Proposal is fair and reasonable – this is a finding of mixed law and fact unlikely to be interfered with on appeal.

## **PART V – RELIEF REQUESTED**

22. For these reasons, the Proposal Sponsor submits that if the Court is inclined to grant the Approval Order, such order should include the requested provisional execution language.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED**

July 15, 2021.



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**BENNETT JONES LLP**

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<sup>9</sup> Although claims as against the real property are released by the Proposal, a necessary imperative of the Proposal Sponsor's financier, and as is typical in a transaction of this nature.



### **Schedule "A" – List of Authorities**

1. *Century Services v. Brooklin Concrete Products Inc.*, 2005 CanLII 9668 (ONSC)
2. *Computershare Trust Company of Canada v. Beachfront Developments Inc. and Beachfront Realty Inc.*, 2010 ONSC 4833
3. *The Clover on Yonge Inc.*, 2020 ONSC 5444

## Schedule "B" – Rules and Statutes

### **Bankruptcy and Insolvency Act, RSC 1985, c B-3**

#### **Stay of proceedings on filing of appeal**

195. Except to the extent that an order or judgment appealed from is subject to provisional execution notwithstanding any appeal therefrom, all proceedings under an order or judgment appealed from shall be stayed until the appeal is disposed of, but the Court of Appeal or a judge thereof may vary or cancel the stay or the order for provisional execution if it appears that the appeal is not being prosecuted diligently, or for such other reason as the Court of Appeal or a judge thereof may deem proper.

**Schedule "C"**  
**Blackline of Approval Order to June 16 Version**

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

THE HONOURABLE MR. ) ~~WEDNESDAY~~FRIDAY, THE ~~23<sup>rd</sup>~~16<sup>TH</sup>  
)  
JUSTICE DUNPHY ) DAY OF ~~JUNE~~JULY, 2021

IN THE MATTER OF THE *BANKRUPTCY AND INSOLVENCY ACT*,  
R.S.C. 1985, c. B-3 AS AMENDED

IN THE MATTER OF THE NOTICES OF INTENTION  
TO MAKE A PROPOSAL OF  
YG LIMITED PARTNERSHIP AND YSL RESIDENCES INC.

ORDER  
(Proposal Approval)

**THIS MOTION**, made by YSL Residences Inc. ("**YSL Inc.**"), and YG Limited Partnership ("**YG LP**", and together with YSL Inc., "**YSL**") pursuant to the *Bankruptcy and Insolvency Act*, R.S.C. 1985, c. B-3 as amended (the "**BIA**"), for an Order, among other things: (i) abridging the time for service of the Motion Record and other materials relied upon for this motion, and validating service thereof; (ii) approving the Amended Proposal #3 filed with the Official Receiver on ~~June 3, 2021, which proposal was accepted by the requisite majority of creditors of YSL at a meeting on June~~July 15, 2021, in the form attached hereto as Schedule "A" (the "**Proposal**"); and (iii) such further and other relief as counsel may request and this Honourable Court may deem just was heard this day by videoconference due to the COVID-19 Pandemic.

**ON READING** the Motion Record of YSL and the Third Report of KSV Restructuring Inc. in its capacity as proposal trustee of YSL (in such capacity, the "**Proposal Trustee**") dated June ~~18~~18, 2021, the Supplement to the Third Report dated June 22, 2021, and the Fourth

Report of the Proposal Trustee dated July 13, 2021, and on hearing the submissions of counsel for YSL, Concord Properties Developments Corp. ~~and for~~ the Proposal Trustee, Maria Athanasoulis, and 2504670 Canada Inc., 8451761 Canada Inc., Chi Long Inc., YongeSL Investment Limited Partnership, 2124093 Ontario Inc., SixOne Investment Ltd., E&B Investment Corporation and Taihe International Group Inc., and such other counsel as were present at hearings held June 23, 2021, June 28, 2021, July 9, 2021 and July 16, 2021, no one appearing for any other person on the service list, although properly served as appears from the affidavit of ~~[●] dated~~ Diana McMillen sworn June ~~[●]~~ 21, 2021, filed,

## SERVICE

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

## DEFINITIONS

2. **THIS COURT ORDERS** that all capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Proposal.

## APPROVAL OF THE PROPOSAL

3. **THIS COURT ORDERS** that the Proposal be and is hereby approved.
4. **THIS COURT ORDERS** that, as of the Proposal Implementation Date at the time or times and in the manner set forth in the Proposal: (i) the Proposal and all associated steps, compromises, settlements, satisfactions, releases, discharges, transactions and arrangements contemplated thereby are approved, binding, and effective in accordance with the provisions of the Proposal and the BIA; and (ii) the treatment of Affected Creditor Claims under the Proposal shall be final and binding for all purposes on YSL, the Affected Creditors, and all Persons affected by the Proposal and their respective heirs, executors, administrators and other legal representatives, successors and enure to the benefit of YSL.

## IMPLEMENTATION OF THE PROPOSAL

5. **THIS COURT ORDERS** that the Proposal Trustee be and is hereby authorized, directed and empowered to perform its functions and to fulfill its obligations under the Proposal to facilitate the Implementation of the Proposal.
6. **THIS COURT ORDERS** that the Proposal Trustee and any other Person required to make distributions, deliveries or allocations or take any steps or actions related thereto pursuant to the Proposal, are hereby authorized and directed to complete such distributions, deliveries or allocations and to take any such related steps or actions, as the case may be, in accordance with the terms of the Proposal, and such distributions, deliveries and allocations, and steps and actions related thereto, are hereby approved.
7. **THIS COURT ORDERS** that, effective upon the Implementation of the Proposal and commencing at the Effective Time, the events or transaction set out in section 6.01 of the Proposal will occur, or be deemed to have occurred and be taken and effected in the order setout therein.
8. **THIS COURT ORDERS** that YSL is authorized and directed to take all actions necessary or appropriate to enter into, adopt, execute, deliver, implement, and consummate all matters contemplated under the Proposal and all agreements, transactions, and documents contemplated by the Proposal.
9. **THIS COURT ORDERS** that this Order is subject to provisional execution notwithstanding any appeal brought in respect of this Order, pursuant to section 195 of the BIA.
10. **THIS COURT ORDERS** that any issuance of any securities or other consideration pursuant to the Proposal will be free and clear of any charge, mortgage, lien, pledge, claim, restriction, hypothec, adverse interest, security interest or other encumbrance whether created or arising by agreement, statute or otherwise at law, attaching to property, interest and rights.

**ADDITIONAL PROVISIONS**

11. ~~10.~~ **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada and as against all Persons against whom it may otherwise be enforced.
12. ~~11.~~ **THIS COURT ORDERS** that the Proposal Trustee may from time to time apply to this Court for advice and directions in the discharge of its powers and duties hereunder.
13. ~~12.~~ **THE COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in any foreign jurisdiction, to give effect to this Order and to assist the parties 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 parties and to the Proposal Trustee, as an officer of this Court, as may be necessary or desirable to give effect to this Order or to grant representative status to the Proposal Trustee in any foreign proceeding.
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**SCHEDULE "A"**



**IN THE MATTER OF THE NOTICES OF INTENTION TO  
MAKE A PROPOSAL OF YG LIMITED PARTNERSHIP AND  
YSL RESIDENCES INC.**

Consolidated Court File No. 31-2734090

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

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**ORDER**  
**(Proposal ~~Sanction~~Approval)**

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Document 2 ID	iManage://BJWORK.LEGAL.BJLOCAL/WSLegal/27718820/3
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Rendering set	Standard

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**IN THE MATTER OF THE NOTICES OF INTENTION TO MAKE A PROPOSAL OF YG LIMITED  
PARTNERSHIP AND YSL RESIDENCES INC.**

Estate/Court File No.: 31-2734090

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

Proceedings commenced in Toronto

**FACTUM OF**  
**CONCORD PROPERTIES DEVELOPMENTS**  
**CORP.**  
**(Returnable July 16, 2021)**

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